

**PROFESSIONAL SERVICES AGREEMENT  
FOR ENGINEERING SERVICES**

THIS AGREEMENT is made and entered into this 15<sup>th</sup> day of March, 2011 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and MWH, a California corporation ("Consultant").

**WITNESSETH:**

- A. WHEREAS, City proposes to have Consultant provide professional engineering services for the preliminary design of industrial way water quality and storm drain improvements as described herein below; and
- B. WHEREAS, Consultant represents that it has that degree of specialized expertise contemplated within California Government Code, Section 37103, and holds all necessary licenses to practice and perform the services herein contemplated; and
- C. WHEREAS, City and Consultant desire to contract for specific services in connection with the project described below (the "Project") and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and
- D. WHEREAS, no official or employee of City has a financial interest, within the provisions of California Government Code, Sections 1090-1092, in the subject matter of this Agreement.

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

**1.0. SERVICES PROVIDED BY CONSULTANT**

1.1. Scope of Services. Consultant shall provide the professional services described in the City's Request for Proposal ("RFP") attached hereto as Exhibit "A," and Consultant's Response to City's RFP (the "Response"). A copy of said Response is attached hereto as Exhibit "B" and incorporated herein by this reference.

1.2. Professional Practices. All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise City of any changes in any laws that may affect Consultant's performance of this Agreement.

1.3. Warranty. Consultant warrants that it shall perform the services required by this Agreement in compliance with all applicable Federal and California employment laws including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement. Consultant shall indemnify and hold harmless City from

and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against City for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of Consultant's performance under this Agreement.

1.4. Non-discrimination. In performing this Agreement, Consultant shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender or sexual orientation, except as permitted pursuant to Section 12940 of the Government Code. Violation of this provision may result in the imposition of penalties referred to in Labor Code, Section 1735.

1.5. Non-Exclusive Agreement. Consultant acknowledges that City may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

1.6. Delegation and Assignment. This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of City. Consultant may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Consultant's sole cost and expense.

## 2.0. COMPENSATION AND BILLING

2.1. Compensation. Consultant shall be paid in accordance with the fee schedule set forth in Exhibit "C," attached hereto and made a part of this Agreement (the "Fee Schedule"). Consultant's compensation shall in no case exceed Seventy Thousand Nine Hundred Eighty Seven Dollars (\$70,987.00).

2.2. Additional Services. Consultant shall not receive compensation for any services provided outside the scope of services specified in the Response unless the City or the Project Manager for this Project, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable.

2.3. Method of Billing. Consultant may submit invoices to City's Project Manager for approval on a progress basis, but no more often than monthly. Said invoice shall be based on the total of all Consultant's services which have been completed to City's sole satisfaction. City shall pay Consultant's invoice within forty-five (45) days from the date City receives said invoice. Each invoice shall describe in detail, the services performed and the associated time for completion. Any additional services approved and performed pursuant to this Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

2.4. Records and Audits. Records of Consultant's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to City or its Project Manager for inspection and/or audit at mutually convenient

times for a period of three (3) years from the Effective Date.

### **3.0. TIME OF PERFORMANCE**

3.1. Commencement and Completion of Work. The professional services to be performed pursuant to this Agreement shall commence within five (5) days from the Effective Date of this Agreement. Said services shall be performed in strict compliance with the Project Schedule approved by City as set forth in Exhibit "D," attached hereto and incorporated herein by this reference. The Project Schedule may be amended by mutual agreement of the parties. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

3.2. Excusable Delays. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party.

### **4.0. TERM AND TERMINATION**

4.1. Term. This Agreement shall commence on the Effective Date and continue for a period of two (2) years, ending on March 15, 2013, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.

4.2. Notice of Termination. The City reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing written notice to Consultant. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the City.

4.3. Compensation. In the event of termination, City shall pay Consultant for reasonable costs incurred and professional services satisfactorily performed up to and including the date of City's written notice of termination. Compensation for work in progress shall be prorated as to the percentage of work completed as of the effective date of termination in accordance with the fees set forth herein. In ascertaining the professional services actually rendered hereunder up to the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents pertaining to the services contemplated herein whether delivered to the City or in the possession of the Consultant.

4.4. Documents. In the event of termination of this Agreement, all documents prepared by Consultant in its performance of this Agreement including, but not limited to, finished or unfinished design, development and construction documents, data studies, drawings, maps and reports, shall be delivered to the City within ten (10) days of delivery of termination notice to Consultant, at no cost to City. Any use of uncompleted documents without specific written authorization from Consultant shall be at City's sole risk and without liability or legal expense to Consultant.

## 5.0. INSURANCE

5.1. Minimum Scope and Limits of Insurance. Consultant shall obtain and maintain during the life of this Agreement all of the following insurance coverages:

- (a) Comprehensive general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate.
- (b) Automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate.
- (c) Workers' compensation insurance as required by the State of California. Consultant agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving, subrogation rights under its workers' compensation insurance policy against the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.
- (d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. Consultant shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

5.2. Endorsements. The comprehensive general liability insurance policy shall contain or be endorsed to contain the following provisions:

- (a) Additional insureds: "The City of Costa Mesa and its elected and appointed boards, officers, agents, and employees are additional insureds with respect to this subject project and contract with City."
- (b) Notice: "Said policy shall not terminate, nor shall it be cancelled, nor the coverage reduced, until thirty (30) days after written notice is given to City."
- (c) Other insurance: "Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy."

5.3 If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by City. No policy of insurance issued as to which the City is an additional insured shall contain a provision which requires that no insured except the named insured can satisfy any such deductible or self-insured retention.

5.4. Certificates of Insurance: Consultant shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to performing any services under this Agreement.

5.5. Non-limiting: Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which Consultant may be held responsible for payments of damages to persons or property.

## 6.0. GENERAL PROVISIONS

6.1. Entire Agreement: This Agreement constitutes the entire Agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

6.2. Representatives. The City Manager or his designee shall be the representative of City for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the City, called for by this Agreement, except as otherwise expressly provided in this Agreement.

Consultant shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of Consultant called for by this Agreement, except as otherwise expressly provided in this Agreement.

6.3. Project Managers. City shall designate a Project Manager to work directly with Consultant in the performance of this Agreement.

Consultant shall designate a Project Manager who shall represent it and be its agent in all consultations with City during the term of this Agreement. Consultant or its Project Manager shall attend and assist in all coordination meetings called by City.

6.4. Notices: Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CONSULTANT:

Engineering  
1990 MacArthur Blvd.  
Suite 250

IF TO CITY:

City of Costa Mesa  
77 Fair Drive  
Costa Mesa, CA 92626

Irvine, CA 92612  
Tel: (949) 328-2416  
Fax: (949) 328-2448  
Attn: Richard Plecker, PE

Tel: 714-754-5378  
Fax: 714-754-  
Attn: Fariba Fazeli

6.5. Drug-free Workplace Policy. Consultant shall provide a drug-free workplace by complying with all provisions set forth in City's Council Policy 100-5, attached hereto as Exhibit "E" and incorporated herein by reference. Consultant's failure to conform to the requirements set forth in Council Policy 100-5 shall constitute a material breach of this Agreement and shall be cause for immediate termination of this Agreement by City.

6.6. Attorneys' Fees: In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

6.7. Governing Law: This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California.

6.8. Assignment: Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement.

6.9. Indemnification and Hold Harmless: Consultant shall protect, defend, indemnify and hold harmless City and its elected and appointed officials, officers, and employees from any and all claims, liabilities, expenses, including attorney fees, damage to property or injuries to or death of any person or persons or damages of any nature including, but not by way of limitation, all civil claims or workers' compensation claims arising out of or in any way connected with the intentional or negligent acts, error or omissions of Consultant, its employees, agents or subcontractors in the performance of this Agreement.

6.10. Independent Contractor: Consultant is and shall be acting at all times as an independent contractor and not as an employee of City. Consultant shall secure, at his expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder.

6.11. Ownership of Documents: All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, files and tapes furnished or prepared by

Consultant or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of City. Consultant agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of City. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of City and without liability or legal exposure to Consultant. City shall indemnify and hold harmless Consultant from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from City's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by Consultant. Consultant shall deliver to City any findings, reports, documents, information, data, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other Project related items as requested by City or its authorized representative, at no additional cost to the City.

6.12. Public Records Act Disclosure: Consultant has been advised and is aware that all reports, documents, information and data including, but not limited to, computer tapes, discs or files furnished or prepared by Consultant, or any of its subcontractors, and provided to City may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 6250 et. seq.). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in the California Government Code Section 6254.7, and of which Consultant informs City of such trade secret. The City will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The City shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

6.13. Responsibility for Errors. Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the City's representative, regarding any services rendered under this Agreement at no additional cost to City. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to City, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of City and to participate in any meeting required with regard to the correction.

6.14. Prohibited Employment: Consultant will not employ any regular employee of City while this Agreement is in effect.

6.15. Order of Precedence: In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of the RFP or the Response, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over both the Response and the RFP and the Response shall govern over the RFP.

6.16. Costs: Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

6.17. No Third Party Beneficiary Rights: This Agreement is entered into for the sole benefit of City and Consultant and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

6.18. Headings: Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

6.19. Construction: The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

6.20. Amendments: Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

6.21. Waiver: The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

6.22. Severability: If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party is materially impaired, which determination as made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

6.23. Counterparts: This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

6.24. Corporate Authority: The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so, the parties hereto are formally bound to the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CITY OF COSTA MESA,  
A municipal corporation

\_\_\_\_\_  
Mayor of the City of Costa Mesa

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

CONSULTANT

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Social Security or Taxpayer ID Number

ATTEST:

\_\_\_\_\_  
City Clerk and ex-officio Clerk  
of the City of Costa Mesa

APPROVED AS TO FORM:

*Franklin Hall Berlow*  
\_\_\_\_\_  
City Attorney

Date: 2/10/11

APPROVED AS TO INSURANCE:

\_\_\_\_\_  
Risk Management

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

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Project Manager

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

**EXHIBIT A**  
**CITY'S REQUEST FOR PROPOSAL**

REQUEST FOR PROPOSALS  
FOR PROFESSIONAL SERVICES  
FOR THE PRELIMINARY ENGINEERING PHASE OF  
INDUSTRIAL WAY WATER QUALITY AND STORM DRAIN IMPROVEMENTS

The construction limits for the subject project include upstream at the intersection of Pomona and 18th Street, and downstream at the east side of Newport Boulevard, 1,500 feet south of Industrial Way, within Caltrans right-of-way (see attached map).

The hydrology analysis conducted for this watershed concluded that the generated storm flows are larger than the capacity of the existing system by approximately 340 cfs (cubic feet per second). The City has determined that an upgrade is required. Preliminary computations suggest that a 10 foot in diameter or equivalent conduit is required to supplement the existing system and provide adequate storm protection to this watershed. The watershed in question is primarily zoned industrial along with high density residential. The 361 Acre watershed drains into the Rhine Channel in Lower Newport Bay which is currently listed on the State of California 303d listing (Impaired Water Body List) for the following impairments: copper, lead, mercury, PCBs (polychlorinated biphenyls or electrical chemical waste), sediment toxicity and zinc. The proposed system shall incorporate treatment measures including engineered treatment structures, bio-filtration systems, and gross pollution filtration devices as needed to comply with National Pollutant Discharge Elimination System (NPDES) requirements.

The scope of work for the Preliminary Engineering phase shall include:

- Based on the City's existing Master Drainage Plan, using 25-year storm event data, conduct hydraulic analysis of the existing storm drain system from 19th and Anaheim to Newport Boulevard.
- Develop and evaluate no fewer than three (3) alternative solutions acceptable to Caltrans, and the City of Costa Mesa to mitigate the capacity and flooding concerns and enhance the quality of the runoff into the Lower Newport Bay.
- Conduct hydraulic analysis for all three alternatives.
- Perform utility investigation and feasibility studies for all three alternatives.
- Provide preliminary horizontal alignment for each alternative.
- Provide Environmental permitting costs associated with each alternative.
- Prepare detailed construction cost estimates for each alternative.
- Include NPDES elements with each alternative and make recommendation for potential grants for the construction phase of each alternative.
- Make recommendation as to which alternative will best satisfies the City's needs to accomplish with this project.

**EXHIBIT B**  
**RESPONSE and SCOPE OF SERVICES**

## EXHIBIT A

### Scope of Work

MWH will perform the Scope of Work as described in the RFP and detailed below. Also described are assumptions for each scope item.

#### **TASK 1 PROJECT MANAGEMENT AND COORDINATION**

This task will include project monitoring and administration, attendance at regularly scheduled progress meetings with CITY staff and the project Technical Review Committee, and project quality assurance/quality control (QA/QC) activities. The scope of this task assumes a 3-month project schedule to complete the preliminary engineering services.

- 1.1 Conduct Kickoff Meeting** - The CONSULTANT will conduct a project kickoff meeting with CITY staff to review the scope, schedule, and communication protocols. The CONSULTANT shall have up to 5 key PROJECT personnel in attendance. The CONSULTANT shall prepare meeting agendas and meeting minutes to be reviewed by the CITY prior to issuing final version for distribution.

**Work Product:** kickoff meeting agenda and minutes

- 1.2 Project Monitoring, Administration, and Status Reporting** - The CONSULTANT will establish internal project controls to monitor project status, budget, staffing, and schedule on an on-going basis. Budget and schedule status will be reviewed weekly. The CONSULTANT will prepare monthly status e-mail within 5 working days after the close of the CONSULTANT's accounting month. The status e-mail will describe the work completed during the previous month, anticipated work for the following month, current budget and schedule status, and any project issues requiring discussion or resolution. This subtask also includes preparation of monthly invoices to the CITY and execution and administration of any sub consultant contracts.

**Work Product:** budget and schedule updates; monthly status reports; monthly invoices

- 1.3 Project Progress Meetings** - The CONSULTANT will meet with CITY staff to review project status and discuss project issues. The CONSULTANT shall prepare agendas and record meeting minutes to document key information items or decisions made. A total of two (2) project progress meetings over the duration of the project are assumed. The CONSULTANT shall have in attendance two staff at each meeting. Greater attendance shall orally be approved by the CITY.

**Work Product:** meeting agenda and minutes

- 1.4 Project QA/QC Activities** - The CONSULTANT will perform internal QA/QC activities to obtain expert guidance on project methodology, review project deliverables, and perform checks of engineering calculations and cost estimates. The CONSULTANT will form an internal Technical Review Committee (TRC) composed of 3 senior level engineers experienced in storm drain preliminary and final design. These team members will review project deliverables and provide input on technical issues. The technical review team will meet formally up to two times during the course of the project.

**Work Product:** minutes of technical review meetings; engineering calculation and cost estimate checks

- 1.5 **Utilities and Agencies Coordination Meetings** - The CONSULTANT will coordinate with affected utility companies and agencies to address their concerns on project related issues. Agencies to be contacted will consist of: the City, Caltrans, the City of Newport Beach, Southern California Edison, Orange County Transportation Authority, Costa Mesa Sanitary District, OCSD, Mesa Consolidated Water District, Southern California Gas Company, AT&T, Eller Media, SUNESYS, and Verizon. The CONSULTANT shall record meeting minutes to document key information items or decisions made.

**Work Product:** meeting minutes

## **TASK 2 PRELIMINARY ENGINEERING**

This task will include collecting and reviewing existing data, developing and evaluating alternatives, and Preliminary Design Report preparation activities. The scope of this task assumes a 3-month project schedule to complete the preliminary engineering effort.

- 2.1 **Compile, Organize, and Summarize Existing Documents and Data** - In conjunction with CITY staff, the CONSULTANT will identify pertinent documents and data that provide information required for the project design. These documents will include CITY water, sewer, and storm drainage facility GIS information, record-of-surveys, parcel maps, final maps, improvement plans, grading, drainage, geotechnical reports, hydrology studies, traffic impact analysis reports and corridor studies, traffic signal plans, utility plans, drainage studies, survey datum, basis of bearing, benchmark(s), aerial topographic mapping, design criteria and standards, development improvement plans, and other reports or studies currently being processed by the CITY which will likely affect the PROJECT.

**Work Product:** summary sheet of documents received, organized by subject area

- 2.2 **Utility Investigation** - The CONSULTANT shall coordinate with utility owners within the project R/W. The CONSULTANT shall provide progress drawings to utilities, coordinate with utility representatives, and prepare formal notification letters to alert affected utility agencies of the CITY's needs and requirements and of possible utility removals or relocations, including proposed under grounding of utilities (aerial to underground). Track all utility submittals and comments on a Utility Submittal Matrix. The CITY will be responsible for utility processing fees.

**Work Product:** map showing existing utilities; Utility Submittal Matrix

- 2.3 **Hydrologic Analysis** - The CONSULTANT shall complete a hydrology study for a 25-year recurrence interval in accordance with Orange County Flood Control District (OCFCD) standards and criteria established in the Orange County Hydrology Manual (OCHM) and its Addendum No. 1, and the Orange County Flood Control Design Manual (OCFCDM). The CONSULTANT will review existing technical reports, as-built/record drawings, drainage facility map, and other related data (including existing storm drain improvements, etc.) which will be provided by the City. A field reconnaissance study will be performed to verify existing conditions and accuracy of compiled data and information gathered. It is assumed the CITY will provide Master Plan GIS layers to be used by CONSULTANT as background information for watershed and stormdrain system physical characteristics for the hydrologic and hydraulic simulations.

It is estimated that the watershed boundary is approximately 350 acres and therefore the CONSULTANT will perform the hydrology using the OCFCD's Rational Method based on the most current land use and flow patterns for the tributary area. The Rational Method calculations will be performed using OCFCD approved WMS. The CONSULTANT will use the flow generated from this study to perform a hydraulic analysis of the system as part of the storm drain alternative evaluation.

**Work Product:** 5 copies of Draft Hydrologic Analysis TM, response to comments on the Draft TM

- 2.4 Alternative Evaluation and Hydraulic Analysis** - The CONSULTANT shall conduct a hydraulic analysis of the proposed storm water conveyance system incorporating existing and modified facilities. The technical memorandum will establish the horizontal and vertical alignment of the storm drain, including transition structures, and other hydraulic features for a maximum of three viable alignment alternatives. The CONSULTANT will prepare a hydraulic model to analyze the hydraulic performance of the proposed storm drain alternatives. The model will consider minor losses from bends, angle points, junction structures and manholes. The CONSULTANT will use FlowMaster to determine street flow hydraulics and perform storm drain inlet hydraulic analysis to determine sizes required for drop inlets.

The CONSULTANT will also review up to three options to improve storm water quality benefits and prepare a recommended design concept to enhance the quality of the runoff into Lower Newport Bay. The recommended storm water quality improvements will be consistent with the National Pollutant Discharge Elimination System (NPDES) requirements.

The CONSULTANT will prepare a Draft Hydraulic Analysis and Alternative Evaluation Technical Memorandum (TM) for review by the CITY and Caltrans. The TM will describe the conveyance facility hydraulic modeling and street and storm drain inlet hydraulics. The TM will include preliminary storm drain plan and profile drawings showing the HGL of the recommended alternative. The TM will also include discussion of any grant opportunities and their requirements. Based on the results of the alternative evaluation process, the TM will also include selection of the best alternative, which will best meet the City's needs as established in the evaluation process. Review comments will be addressed and incorporated into the Preliminary Design Report. Written response to the review comments will be included in the Preliminary Design Report.

**Work Product:** 5 copies of Draft Hydraulic Analysis and Design Criteria TM, response to comments on the Draft TM

- 2.5 Preliminary Estimate of Probable Cost** - The CONSULTANT shall prepare an AACE class 5 preliminary engineering opinion of construction cost estimate and a total PROJECT cost to include design and construction management.

**Work Product:** preliminary Cost Estimate Table

- 2.6 Preliminary Design Report (PDR)** - The CONSULTANT shall prepare a PDR that will be a compilation of the previously discussed and reviewed technical memoranda. In addition, the report will include preliminary plan and profile drawings (11" x 17"), an outline of special provisions, AACE class 5 estimate of construction cost broken out by bid items, and calculations, and exhibits and tables to support analyses and recommendations.

The CONSULTANT will prepare a draft PDR for distribution to CITY project team members for review. Review comments will be addressed and incorporated into the Final Preliminary Design Report.

**Work Product:** 5 copies of draft Preliminary Design Report, 5 copies of Final Preliminary Design Report, written response to comments

**EXHIBIT C**  
**FEE SCHEDULE**

EXHIBIT B

Costa Mesa

Task	Professional and Management Personnel						LABOR FEE	Grand Total LABOR FEE	Subconsultant	Other Direct Expenses (ODCs)	Total Fee
	Principal	Principal	Principal	Senior Engineer	Professional	Administration					
1.0 Project Management	1	1	1	1	1	1	\$9,775	\$9,775	\$0	\$9,775	
1.1 Kickoff Meeting					5	16	\$1,235			\$1,235	
1.2 Project Monitoring, Admin, and Status Reporting	4				30	16	\$8,540			\$8,540	
1.3 Project Progress Meetings					16		\$5,120			\$5,120	
1.4 Project QA/QC Activities	2	6					\$1,880			\$1,880	
1.5 Utilities and Agencies Coordination Meetings					24	40	\$9,600			\$9,600	
2.0 Preliminary Design	2	12					\$57,872	\$57,872	\$3,400	\$61,272	
2.1 Research and Investigation						20	\$2,400			\$2,400	
2.2 Utility Investigation						24	\$2,880			\$2,880	
2.3 Hydrology Analysis					8	30	\$4,000		\$400	\$5,600	
2.4 Hydraulic Analysis and Alternative Evaluation	2	6		40		10	\$32,270		\$2,000	\$34,320	
2.5 Preliminary Cost Estimate				32	2		\$6,272			\$6,272	
2.6 Prelim Design Report		4			14	20	\$9,740		\$1,000	\$9,740	
<b>TOTAL</b>					119	277	\$67,587	\$67,587	\$3,400	\$70,987	

**EXHIBIT D**  
**PROJECT SCHEDULE**

PRELIMINARY ENGINEERING PHASE OF  
INDUSTRIAL WAY WATER QUALITY AND STORM DRAIN IMPROVEMENTS

**SCHEDULE**

---

**DATE:**

- |  |          |
|--|----------|
| 1. Proposal Received by the City                   | 12/20/10 |
| 2. Council Award of Consultant Contract            | 03/15/11 |
| 3. Project Kick-off Meeting                        | 03/17/11 |
| 4. Hydraulic Analysis of the existing system       | 05/18/11 |
| 5. Alternative Analysis Report and Recommendations | 08/20/11 |

**EXHIBIT E**

**CITY COUNCIL POLICY 100-5**

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8-8-89	1 of 3

BACKGROUND

Under the Federal Drug-Free Workplace Act of 1988, passed as part of omnibus drug legislation enacted November 18, 1988, contractors and grantees of Federal funds must certify that they will provide drug-free workplaces. At the present time, the City of Costa Mesa, as a sub-grantee of Federal funds under a variety of programs, is required to abide by this Act. The City Council has expressed its support of the national effort to eradicate drug abuse through the creation of a Substance Abuse Committee, institution of a City-wide D.A.R.E. program in all local schools and other activities in support of a drug-free community. This policy is intended to extend that effort to contractors and grantees of the City of Costa Mesa in the elimination of dangerous drugs in the workplace.

PURPOSE

It is the purpose of this Policy to:

1. Clearly state the City of Costa Mesa's commitment to a drug-free society.
2. Set forth guidelines to ensure that public, private, and nonprofit organizations receiving funds from the City of Costa Mesa share the commitment to a drug-free workplace.

**POLICY**

The City Manager, under direction by the City Council, shall take the necessary steps to see that the following provisions are included in all contracts and agreements entered into by the City of Costa Mesa involving the disbursement of funds.

1. Contractor or Sub-grantee hereby certifies that it will provide a drug-free workplace by:
  - a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in Contractor's and/or sub-grantee's workplace, specifically the job site or location included in this contract, and specifying the actions that will be taken against the employees for violation of such prohibition;

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8-8-89	2 of 3

- b. Establishing a Drug-Free Awareness Program to inform employees about:
  - 1. The dangers of drug abuse in the workplace;
  - 2. Contractor's and/or sub-grantee's policy of maintaining a drug-free workplace;
  - 3. Any available drug counseling, rehabilitation and employee assistance programs; and
  - 4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- c. Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by subparagraph A;
- d. Notifying the employee in the statement required by subparagraph 1 A that, as a condition of employment under the contract, the employee will:
  - 1. Abide by the terms of the statement; and
  - 2. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- e. Notifying the City of Costa Mesa within ten (10) days after receiving notice under subparagraph 1 D 2 from an employee or otherwise receiving the actual notice of such conviction;
- f. Taking one of the following actions within thirty (30) days of receiving notice under subparagraph 1 D 2 with respect to an employee who is so convicted:
  - 1. Taking appropriate personnel action against such an employee, up to and including termination; or
  - 2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health agency, law enforcement, or other appropriate agency;

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8-8-89	3 of 3

- g. Making a good faith effort to maintain a drug-free workplace through implementation of subparagraphs 1 A through 1 F, inclusive.
- 2. Contractor and/or sub-grantee shall be deemed to be in violation of this Policy if the City of Costa Mesa determines that:
  - a. Contractor and/or sub-grantee has made a false certification under paragraph 1 above;
  - b. Contractor and/or sub-grantee has violated the certification by failing to carry out the requirements of subparagraphs 1 A through 1 G above;
  - c. Such number of employees of Contractor and/or sub-grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the contractor and/or sub-grantee has failed to make a good faith effort to provide a drug-free workplace.
- 3. Should any contractor and/or sub-grantee be deemed to be in violation of this Policy pursuant to the provisions of 2 A, B, and C, a suspension, termination or debarment proceeding subject to applicable Federal, State, and local laws shall be conducted. Upon issuance of any final decision under this section requiring debarment of a contractor and/or sub-grantee, the contractor and/or sub-grantee shall be ineligible for award of any contract, agreement or grant from the City of Costa Mesa for a period specified in the decision, not to exceed five (5) years. Upon issuance of any final decision recommending against debarment of the contractor and/or sub-grantee, the contractor and/or sub-grantee shall be eligible for compensation as provided by law.

**EXHIBIT F**  
**CERTIFICATES OF INSURANCE**



# CERTIFICATE OF LIABILITY INSURANCE

8/31/2011

DATE (MM/DD/YYYY)

1/25/2011

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

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

<b>PRODUCER</b> Lockton Companies, LLC Denver 8110 E Union Avenue Suite 700 Denver CO 80237 (303) 414-6000	<b>CONTACT NAME:</b> <b>PHONE (A/C, No. Ext):</b> <b>E-MAIL ADDRESS:</b>	<b>FAX (A/C, No):</b>	
	<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
<b>INSURED</b> 1311890 MWH Americas, Inc. 370 Interlocken Blvd., Suite 300 Broomfield, CO 80021	<b>INSURER A:</b> Traveler's Indemnity Company		25674
	<b>INSURER B:</b> Travelers Property Casualty Co of America		
	<b>INSURER C:</b> St. Paul Fire & Marine Ins. Co.		
	<b>INSURER D:</b> LEXINGTON INSURANCE COMPANY		
	<b>INSURER E:</b>		
<b>INSURER F:</b>			

**COVERAGES MWHGL01 TX CERTIFICATE NUMBER: 11141265**
**REVISION NUMBER: XXXXXXXX**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC	X	Y	VTC2KCO5643B187IND10	8/31/2010	8/31/2011	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ Excluded PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COM/OP AGG \$ 2,000,000
B	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	X	Y	VTC2JCAP5643B083TIL10	8/31/2010	8/31/2011	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$	X	Y	QK08300773	8/31/2010	8/31/2011	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
B B B	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	VTC2JUB5026L18110 (AOS) VTRJUB5643B09510 (AZ,MA,OR,WI)	8/31/2010 8/31/2010	8/31/2011 8/31/2011	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	Professional Liability			015449003	10/1/2010	10/1/2011	\$5,000,000 each claim \$5,000,000 aggregate

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
 Industrial Way Water Quality and Storm Drain Improvements / Proposal for Preliminary Engineering Services.

**CERTIFICATE HOLDER**  
 11141265

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

 City of Costa Mesa  
 Fariba Fazeli, PE  
 77 Fair Drive, 4th Floor  
 Costa Mesa, CA 92628

*Charles M. McDaniel*