

## PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“Agreement”) is dated August 18, 2020 (“Effective Date”) and is between the City of Manhattan Beach, a California municipal corporation (“City”) and Butier Engineering, Inc., a California corporation (“Consultant”). City and Consultant are sometimes referred to herein as the “Parties”, and individually as a “Party”.

### RECITALS

A. City issued Request for Proposals No. E1245-20S on May 11, 2020, titled “Professional Construction Management and Inspection Services for the 8 MG Peck Reservoir Replacement Project”. Consultant submitted a proposal dated June 10, 2020 in response to the RFP.

B. Consultant represents that it is fully qualified to perform such services by virtue of its experience and the training, education and expertise of its principals and employees.

C. City desires to retain Consultant as an independent contractor and Consultant desires to serve City to perform these services in accordance with the terms and conditions of this Agreement.

#### 1. Consultant’s Services.

A. Scope of Services. Consultant shall perform the services described in the Scope of Services (the “Services”) for Construction Management and Inspection Services for the 8MG Peck Reservoir Replacement Project, attached as **Exhibit A**. City may request, in writing, changes in the Scope of Services to be performed. Any changes mutually agreed upon by the Parties, and any increase or decrease in compensation, shall be incorporated by written amendments to this Agreement.

B. Party Representatives. For the purposes of this Agreement, the City Representative shall be the City Manager, or such other person designated in writing by the City Manager (the “City Representative”). For the purposes of this Agreement, the Consultant Representative shall be Mark M. Butier Jr., President/CFO (the “Consultant Representative”). The Consultant Representative shall directly manage Consultant’s Services under this Agreement. Consultant shall not change the Consultant Representative without City’s prior written consent.

C. Time for Performance. Consultant shall commence the Services on the Effective Date and shall perform all Services by the deadline established by the City Representative or, if no deadline is established, with reasonable diligence.

D. Standard of Performance. Consultant shall perform all Services under this Agreement in accordance with the standard of care generally exercised by like

professionals under similar circumstances and in a manner reasonably satisfactory to City.

E. Personnel. Consultant has, or will secure at its own expense, all personnel required to perform the Services required under this Agreement. All of the Services required under this Agreement shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such Services.

F. Compliance with Laws. Consultant shall comply with all applicable federal, state and local laws, ordinances, codes, regulations and requirements.

G. Permits and Licenses. Consultant shall obtain and maintain during the Agreement term all necessary licenses, permits and certificates required by law for the provision of Services under this Agreement, including a business license.

H. Prevailing Wages. This Agreement calls for services that, in whole or in part, constitute “public works” as defined in the California Labor Code. Therefore, as to those services that are “public works”, Consultant shall comply in all respects with all applicable provisions of the California Labor Code, including those set forth in **Exhibit C** hereto.

**2. Term of Agreement.** The term of this Agreement shall be from the Effective Date through December 31, 2023, unless sooner terminated as provided in Section 12 of this Agreement or extended.

**3. Compensation.**

A. Compensation. As full compensation for Services satisfactorily rendered, City shall pay Consultant at the hourly rates set forth in the Approved Fee Schedule attached hereto as **Exhibit B**. In no event shall Consultant be paid more than \$2,555,229.00 (the “Maximum Compensation”) for such Services.

B. Expenses. The amount set forth in paragraph 3.A. above includes reimbursement for all expenditures incurred in the performance of this Agreement.

C. Unauthorized Services and Expenses. City will not pay for any services not specified in the Scope of Services, unless the City Council or the City Representative, if applicable, and the Consultant Representative authorize such services in writing prior to Consultant’s performance of those services or incurrence of additional expenses. Any additional services or expenses authorized by the City Council, or (where authorized) the City Manager shall be compensated at the rates set forth in **Exhibit B**, or, if not specified, at a rate mutually agreed to by the Parties. City shall make payment for additional services and expenses in accordance with Section 4 of this Agreement.

**4. Method of Payment.**

A. Invoices. Consultant shall submit to City an invoice, on a monthly basis, for the Services performed pursuant to this Agreement. Each invoice shall itemize the Services rendered during the billing period, hourly rates charged, if applicable, and the amount due. City shall review each invoice and notify Consultant in writing within ten Business days of receipt of any disputed invoice amounts.

B. Payment. City shall pay all undisputed invoice amounts within 30 calendar days after receipt up to the Maximum Compensation set forth in Section 3 of this Agreement. City does not pay interest on past due amounts. City shall not withhold federal payroll, state payroll or other taxes, or other similar deductions, from payments made to Consultant. Notwithstanding the preceding sentence, if Consultant is a nonresident of California, City will withhold the amount required by the Franchise Tax Board pursuant to Revenue and Taxation Code Section 18662 and applicable regulations.

C. Audit of Records. Consultant shall make all records, invoices, time cards, cost control sheets and other records maintained by Consultant in connection with this Agreement available during Consultant's regular working hours to City for review and audit by City.

**5. Independent contractor.** Consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its officers, agents or employees are in any manner employees of City.

**6. Information and Documents.**

A. Consultant covenants that all data, reports, documents, discussion, or other information (collectively "Data") developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed or released by Consultant without prior written authorization by City. City shall grant such authorization if applicable law requires disclosure. Consultant, its officers, employees, agents, or subcontractors shall not without written authorization from the City Manager or unless requested in writing by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary," provided Consultant gives City notice of such court order or subpoena.

B. Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder or with respect to any project or property located within the City. City may, but has no obligation to, represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct or rewrite the response.

C. All Data required to be furnished to City in connection with this Agreement shall become City's property, and City may use all or any portion of the Data submitted by Consultant as City deems appropriate. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files containing data generated for the Services, surveys, notes, and other documents prepared in the course of providing the Services shall become City's sole property and may be used, reused or otherwise disposed of by City without Consultant's permission. Consultant may take and retain copies of the written products as desired, but the written products shall not be the subject of a copyright application by Consultant.

D. Consultant's covenants under this Section shall survive the expiration or termination of this Agreement.

**7. Conflicts of Interest.** Consultant and its officers, employees, associates and subcontractors, if any, shall comply with all conflict of interest statutes of the State of California applicable to Consultant's Services under this Agreement, including the Political Reform Act (Gov. Code § 81000, *et seq.*) and Government Code Section 1090. During the term of this Agreement, Consultant may perform similar Services for other clients, but Consultant and its officers, employees, associates and subcontractors shall not, without the City Representative's prior written approval, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute. Consultant shall incorporate a clause substantially similar to this Section into any subcontract that Consultant executes in connection with the performance of this Agreement.

**8. Indemnification, Hold Harmless, and Duty to Defend.**

A. Indemnities.

1) To the fullest extent permitted by law, Consultant shall, at its sole cost and expense, defend, hold harmless and indemnify City and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and

those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees"), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith and the payment of all consequential damages (collectively "Liabilities"), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Consultant, its officers, agents, servants, employees, subcontractors, materialmen, consultants or their officers, agents, servants or employees (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties. Consultant shall defend the Indemnitees in any action or actions filed in connection with any Liabilities with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. Consultant shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith.

2) Consultant shall pay all required taxes on amounts paid to Consultant under this Agreement, and indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant shall fully comply with the workers' compensation law regarding Consultant and Consultant's employees. Consultant shall indemnify and hold City harmless from any failure of Consultant to comply with applicable workers' compensation laws. City may offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this subparagraph A.2).

3) Consultant shall obtain executed indemnity agreements with provisions identical to those in this Section from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity obligations, Consultant shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from and against any and all Liabilities at law or in equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Consultant's subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, consultants or their officers, agents, servants or employees (or any entity or individual that Consultant's subcontractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties.

B. Workers' Compensation Acts not Limiting. Consultant's indemnifications and obligations under this Section, or any other provision of this Agreement, shall not be limited by the provisions of any workers' compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.

C. Insurance Requirements not Limiting. City does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. The indemnities in this Section shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liabilities, tax, assessment, penalty or interest asserted against City.

D. Survival of Terms. Consultant's indemnifications and obligations under this Section shall survive the expiration or termination of this Agreement.

## **9. Insurance.**

A. Minimum Scope and Limits of Insurance. Consultant shall procure and at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

1) Commercial General Liability Insurance with a minimum limit of \$2,000,000.00 per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of \$2,000,000.00 per project or location. If Consultant is a limited liability company, the commercial general liability coverage shall be amended so that Consultant and its managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.

2) Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with a combined single limit of \$2,000,000.00 per accident for bodily injury and property damage. If Consultant does not use any owned, non-owned or hired vehicles in the performance of Services under this Agreement, Consultant shall obtain a non-owned auto endorsement to the Commercial General Liability policy required under subparagraph A.1) of this Section.

3) Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance with a minimum limit of \$1,000,000.00 per accident for bodily injury or disease. If Consultant has no employees while performing Services under this Agreement, workers' compensation policy is not required, but Consultant shall execute a declaration that it has no employees.

4) Professional Liability/Errors and Omissions Insurance with minimum limits of \$2,000,000.00 per claim and in aggregate.

B. Acceptability of Insurers. The insurance policies required under this Section shall be issued by an insurer admitted to write insurance in the State of California with a rating of A:VII or better in the latest edition of the A.M. Best Insurance Rating Guide. Self-insurance shall not be considered to comply with the insurance requirements under this Section.

C. Additional Insured. The commercial general and automobile liability policies shall contain an endorsement naming City and its elected and appointed officials, officers, employees, agents and volunteers as additional insureds. This provision shall also apply to any excess/umbrella liability policies.

D. Primary and Non-Contributing. The insurance policies required under this Section shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance available to City. Any insurance or self-insurance maintained by City, its elected and appointed officials, officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.

E. Consultant's Waiver of Subrogation. The insurance policies required under this Section shall not prohibit Consultant and Consultant's employees, agents or subcontractors from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against City.

F. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by City. At City's option, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond guaranteeing payment of losses and expenses.

G. Cancellations or Modifications to Coverage. Consultant shall not cancel, reduce or otherwise modify the insurance policies required by this Section during the term of this Agreement. The commercial general and automobile liability policies required under this Agreement shall be endorsed to state that should the issuing insurer cancel the policy before the expiration date, the issuing insurer will endeavor to mail 30 days' prior written notice to City. If any insurance policy required under this Section is canceled or reduced in coverage or limits, Consultant shall, within two Business Days of notice from the insurer, phone, fax or notify City via certified mail, return receipt requested, of the cancellation of or changes to the policy.

H. City Remedy for Noncompliance. If Consultant does not maintain the policies of insurance required under this Section in full force and effect during the term of this Agreement, or in the event any of Consultant's policies do not comply with the requirements under this Section, City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may, but has no duty to, take out the necessary insurance and pay, at Consultant's expense, the premium thereon. Consultant shall promptly reimburse City for any premium paid by City or City may withhold amounts sufficient to pay the premiums from payments due to Consultant.

I. Evidence of Insurance. Prior to the performance of Services under this Agreement, Consultant shall furnish City's Risk Manager with a certificate or certificates of insurance and all original endorsements evidencing and effecting the coverages required under this Section. The endorsements are subject to City's approval. Consultant may provide complete, certified copies of all required insurance policies to City. Consultant shall maintain current endorsements on file with City's Risk Manager. Consultant shall provide proof to City's Risk Manager that insurance policies expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Consultant shall furnish such proof at least two weeks prior to the expiration of the coverages.

J. Indemnity Requirements not Limiting. Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duty to indemnify City under Section 8 of this Agreement.

K. Broader Coverage/Higher Limits. If Consultant maintains broader coverage and/or higher limits than the minimums required above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

L. Subcontractor Insurance Requirements. Consultant shall require each of its subcontractors that perform Services under this Agreement to maintain insurance coverage that meets all of the requirements of this Section.

## **10. Mutual Cooperation.**

A. City's Cooperation. City shall provide Consultant with all pertinent Data, documents and other requested information as is reasonably available for Consultant's proper performance of the Services required under this Agreement.

B. Consultant's Cooperation. In the event any claim or action is brought against City relating to Consultant's performance of Services rendered under this Agreement, Consultant shall render any reasonable assistance that City requires.

**11. Records and Inspections.** Consultant shall maintain complete and accurate records with respect to time, costs, expenses, receipts, correspondence, and other such information required by City that relate to the performance of the Services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to City, its designees and representatives at reasonable times, and shall allow City to examine and audit the books and records, to make transcripts therefrom as necessary, and to inspect all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three years after receipt of final payment.



## **12. Termination of Agreement.**

A. Right to Terminate. City may terminate this Agreement at any time, at will, for any reason or no reason, after giving written notice to Consultant at least five calendar days before the termination is to be effective. Consultant may terminate this Agreement at any time, at will, for any reason or no reason, after giving written notice to City at least 60 calendar days before the termination is to be effective.

B. Obligations upon Termination. Consultant shall cease all work under this Agreement on or before the effective date of termination specified in the notice of termination. In the event of City's termination of this Agreement due to no fault or failure of performance by Consultant, City shall pay Consultant based on the percentage of work satisfactorily performed up to the effective date of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the Services required by this Agreement. Consultant shall have no other claim against City by reason of such termination, including any claim for compensation.

**13. Force Majeure.** Consultant shall not be liable for any failure to perform its obligations under this Agreement if Consultant presents acceptable evidence, in City's sole judgment, that such failure was due to acts of God, embargoes, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond Consultant's reasonable control and not due to any act by Consultant.

## **14. Default.**

A. Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default.

B. In addition to the right to terminate pursuant to Section 12, if the City Manager determines that Consultant is in default in the performance of any of the terms or conditions of this Agreement, City shall serve Consultant with written notice of the default. Consultant shall have ten calendar days after service upon it of the notice in which to cure the default by rendering a satisfactory performance. In the event that Consultant fails to cure its default within such period of time, City may, notwithstanding any other provision of this Agreement, terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

**15. Notices.** Any notice, consent, request, demand, bill, invoice, report or other communication required or permitted under this Agreement shall be in writing and conclusively deemed effective: (a) on personal delivery, (b) on confirmed delivery by

courier service during Consultant's and City's regular business hours, or (c) three Business Days after deposit in the United States mail, by first class mail, postage prepaid, and addressed to the Party to be notified as set forth below:

TO CITY:

City of Manhattan Beach  
Department of Public Works  
Attn: Gilbert Gamboa, Project Manager  
1400 Highland Avenue  
Manhattan Beach, California 90266

TO CONSULTANT:

Butier Engineering, Inc.  
Attn: Mark M. Butier Jr.  
17822 E. 17<sup>th</sup> Street, Suite 404  
Tustin, California 92780

COPY TO CITY ATTORNEY:

City of Manhattan Beach  
Attn: City Attorney  
1400 Highland Avenue  
Manhattan Beach, CA 90266

**16. Non-Discrimination and Equal Employment Opportunity.** In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information, sexual orientation or other basis prohibited by law. Consultant will take affirmative action to ensure that subcontractors and applicants are employed, and that employees are treated during employment, without regard to their race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information or sexual orientation.

**17. Prohibition of Assignment and Delegation.** Consultant shall not assign any of its rights or delegate any of its duties under this Agreement, either in whole or in part, without City's prior written consent. City's consent to an assignment of rights under this Agreement shall not release Consultant from any of its obligations or alter any of its primary obligations to be performed under this Agreement. Any attempted assignment or delegation in violation of this Section shall be void and of no effect and shall entitle City to terminate this Agreement. As used in this Section, "assignment" and "delegation" means any sale, gift, pledge, hypothecation, encumbrance or other transfer of all or any portion of the rights, obligations, or liabilities in or arising from this Agreement to any person or entity, whether by operation of law or otherwise, and regardless of the legal form of the transaction in which the attempted transfer occurs.

**18. No Third Party Beneficiaries Intended.** This Agreement is made solely for the benefit of the Parties to this Agreement and their respective successors and assigns, and no other person or entity may have or acquire a right by virtue of this Agreement.

**19. Waiver.** No delay or omission to exercise any right, power or remedy accruing to City under this Agreement shall impair any right, power or remedy of City, nor shall it be construed as a waiver of, or consent to, any breach or default. No waiver of any breach, any failure of a condition, or any right or remedy under this Agreement shall be (1) effective unless it is in writing and signed by the Party making the waiver, (2) deemed to be a waiver of, or consent to, any other breach, failure of a condition, or right or remedy, or (3) deemed to constitute a continuing waiver unless the writing expressly so states.

**20. Final Payment Acceptance Constitutes Release.** The acceptance by Consultant of the final payment made under this Agreement shall operate as and be a release of City from all claims and liabilities for compensation to Consultant for anything done, furnished or relating to Consultant's work or services. Acceptance of payment shall be any negotiation of City's check or the failure to make a written extra compensation claim within ten calendar days of the receipt of that check. However, approval or payment by City shall not constitute, nor be deemed, a release of the responsibility and liability of Consultant, its employees, subcontractors and agents for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by City for any defect or error in the work prepared by Consultant, its employees, subcontractors and agents.

**21. Corrections.** In addition to the above indemnification obligations, Consultant shall correct, at its expense, all errors in the work which may be disclosed during City's review of Consultant's report or plans. Should Consultant fail to make such correction in a reasonably timely manner, such correction may be made by City, and the cost thereof shall be charged to Consultant. In addition to all other available remedies, City may deduct the cost of such correction from any retention amount held by City or may withhold payment otherwise owed Consultant under this Agreement up to the amount of the cost of correction.

**22. Non-Appropriation of Funds.** Payments to be made to Consultant by City for services performed within the current fiscal year are within the current fiscal budget and within an available, unexhausted fund. In the event that City does not appropriate sufficient funds for payment of Consultant's services beyond the current fiscal year, this Agreement shall cover payment for Consultant's services only to the conclusion of the last fiscal year in which City appropriates sufficient funds and shall automatically terminate at the conclusion of such fiscal year.

**23. Exhibits. Exhibits A, B and C** constitute a part of this Agreement and are incorporated into this Agreement by this reference. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, or between a

provision of this Agreement and a provision of Consultant's proposal, the provisions of this Agreement shall control.

**24. Entire Agreement and Modification of Agreement.** This Agreement and all exhibits referred to in this Agreement constitute the final, complete and exclusive statement of the terms of the agreement between the Parties pertaining to the subject matter of this Agreement and supersede all other prior or contemporaneous oral or written understandings and agreements of the Parties. No Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation or warranty except those expressly set forth in this Agreement. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by both Parties.

**25. Headings.** The headings in this Agreement are included solely for convenience of reference and shall not affect the interpretation of any provision of this Agreement or any of the rights or obligations of the Parties to this Agreement.

**26. Word Usage.** Unless the context clearly requires otherwise, (a) the words "shall," "will" and "agrees" are mandatory and "may" is permissive; (b) "or" is not exclusive; and (c) "includes" or "including" are not limiting.

**27. Time of the Essence.** Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a Party of the benefits of any grace or use period allowed in this Agreement.

**28. Business Days.** "Business days" means days Manhattan Beach City Hall is open for business.

**29. Governing Law and Choice of Forum.** This Agreement, and any dispute arising from the relationship between the Parties to this Agreement, shall be governed by and construed in accordance with the laws of the State of California, except that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Agreement. Any dispute that arises under or relates to this Agreement (whether contract, tort or both) shall be resolved in a superior court with geographic jurisdiction over the City of Manhattan Beach.

**30. Attorneys' Fees.** In any litigation or other proceeding by which a Party seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing Party shall be entitled to recover all attorneys' fees, experts' fees, and other costs actually incurred in connection with such litigation or other proceeding, in addition to all other relief to which that Party may be entitled.

**31. Severability.** If a court of competent jurisdiction holds any provision of this Agreement to be illegal, invalid or unenforceable for any reason, the validity of and

enforceability of the remaining provisions of this Agreement shall not be affected and continue in full force and effect.

**32. Counterparts.** This Agreement may be executed in multiple counterparts, all of which shall be deemed an original, and all of which will constitute one and the same instrument.

**33. Corporate Authority.** Each person executing this Agreement on behalf of his or her Party warrants that he or she is duly authorized to execute this Agreement on behalf of that Party and that by such execution, that Party is formally bound to the provisions of this Agreement.

*[SIGNATURE PAGE FOLLOWS]*

The Parties, through their duly authorized representatives are signing this Agreement on the date stated in the introductory clause.

City:

City of Manhattan Beach,  
a California municipal corporation

Consultant:

Butier Engineering, Inc.,  
a California corporation

DocuSigned by:  
By: Bruce Moe 8/19/2020  
Name: Bruce Moe  
Title: City Manager

DocuSigned by:  
By: Mark M. Butier, Jr. 8/11/2020  
Name: Mark M. Butier Jr.  
Title: President/CFO

ATTEST:

DocuSigned by:  
By: Liza Tamura 8/19/2020  
Name: Liza Tamura  
Title: City Clerk

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**PROOF OF AUTHORITY TO BIND  
CONTRACTING PARTY REQUIRED**

APPROVED AS TO FORM:

DocuSigned by:  
By: Quinn Barrow 8/19/2020  
Name: Quinn M. Barrow  
Title: City Attorney

APPROVED AS TO FISCAL IMPACT:

DocuSigned by:  
By: Steve S Charelian 8/18/2020  
Name: Steve S. Charelian  
Title: Finance Director

APPROVED AS TO CONTENT:

DocuSigned by:  
By: Stephanie Katsouleas 8/17/2020  
Name: Stephanie Katsouleas  
Title: Public Works Director

## **EXHIBIT A SCOPE OF SERVICES**

### **Task 1 – Preconstruction Services**

#### **1.1 Review Construction Documents**

The Butier Team will review the contract plans, specifications, quantities, permits and other project related documents, including requirements found in the Special Provisions for possible errors and deficiencies and report such findings to the City Project Manager.

#### **1.2 Field Investigation**

The Construction Manager (CM) and Field Inspectors will conduct a pre-construction site video survey with the Contractor prior to the NTP. The survey will document the existing condition of all areas potentially impacted by the Project work. The Butier Team will take digital photographs as necessary to document the existing site conditions. **Including a drone survey of the entire impacted project area.**

#### **1.3 Project Construction Management Plan**

The CM will review the Project Construction Management Plan (CMP) and staging plans and will propose revisions for construction, as necessary.

#### **1.4 Phasing and Sequencing**

The CM will analyze phasing and sequencing of operations to be performed during construction prior to the submittal of the proposed baseline schedule.

#### **1.5 Review Contractor's Baseline Schedule**

Butier's CM and Senior Scheduler will evaluate the Contractor's Baseline Schedule and will confer with the City Project Manager regarding feasibility of the schedule and propose revisions for improvement.

#### **1.6 Traffic Control Plan**

The CM will provide a cursory review the submitted Traffic Control Plan. Our review will be limited to ensuring the contractor has followed the traffic plan presented in the bidding documents during pre-construction reviews including methods of pedestrian and vehicular school area traffic control.

#### **1.7 Construction Phase Filing System**

The Project Manager and CM will develop and maintain a construction phase filing system. The system will be discussed further under Task 2. Construction Phase.

#### **1.8 Conflict and Dispute Resolution**

Butier will implement proven methods for resolving conflicts in the plans and specifications, responses to RFI, PCO, CCO, and providing work directives. These will be included in Butier's CM Communications Manual, which will be submitted to the City's Project Manager for approval.

## **1.9 Pre-construction Meeting**

The PM and CM will schedule and facilitate a pre-construction meeting with the Contractor, the City, the Design Engineer, School District representatives, affected utility companies, and other critical project stakeholders. The project team will outline the following: contract administration guidelines, contractual roles, reinforcement of specific requirements for safety, access, and coordination issues for the work.

## **1.10 Progress Payment Procedures**

The PM and CM will develop Contractor progress payment procedures and other CM procedural items for approval by the City.

## **1.11 Safety**

The CM and Field Inspectors will maintain an awareness of safety and health requirements and enforce applicable regulations and contract provisions for the protection of the public and project personnel. The Team will review the Contractor's Injury and Illness Prevention Plan (IIPP) and Job Hazard Analyses (JHA) and will observe the Contractor's work to ensure conformance with OSHA requirements.

## **1.12 Permits**

The Butier Team will assist the Contractor in obtaining building and special permits for temporary and permanent improvements, except for permits required to be obtained directly by the various subcontractors.

## **Task 2 – Construction Services**

### **2.1 Mobilization**

The CM Team will coordinate the installation of a Contractor-furnished field office facility. The CM Team will maintain a fully equipped project field office to perform all required duties, conduct meetings, and coordinate on-site temporary facilities. Butier will provide the necessary field equipment or services beyond those provided by the Contractor per the Special Provisions

### **2.2 Project Coordination & Correspondence**

#### **a) CM Communications Manual**

The PM and CM will prepare a Construction Management Communications Manual to be approved by the City's Project Manager. The Communication Manual will include the following:

**Project Organization:** Individual assignments, responsibilities, phone numbers, lines of communication, and methods for interfacing with the City, local agencies, subcontractors, other contractors under contract to the City, and Contractor.  
Organization chart showing relationships between the parties involved.



**Communication Management:** Document control systems and procedures; distribution lists for each type of project documentation; and examples of all required Contractor forms to transmit and formalize all RFIs, submittals, and substitution requests.

**Meeting and Notice Procedures:** Schedules, notices, agendas, reporting procedures, documentation requirements, and timely acceptance processes.

**QA/QC:** Procedures, laboratory testing, field-testing, factory inspection and testing, coordination checks, and construction inspection activities for all project features, equipment, and materials; and separate sections for each specification section; and

**Contract Administration:** Description of control systems and procedures **utilizing Procore** for performing and documenting submittal reviews, clarifications, RFIs, change orders, claims management, contract closeout activities, and other contract administration procedures.

#### **b) Electronic Document Control System**

The Butier Team utilizes **Procore**—a cloud-based construction project management solution—to organize, manage and control project documentation. The advantages of Procore include unlimited users, unlimited storage, 24/7 visibility into project status, and a centralized, comprehensive platform to manage vital project data. All parties involved have access to the system. Each user can access the program via a web browser on their computer or mobile device using secure log-in information.

Additionally, Procore can be configured to display the latest **Primavera P6** construction project schedule and weather information, both current and forecast. At the conclusion of the project, project-related documentation is converted to PDF format and distributed to the appropriate parties.

#### **c) Construction Progress Meetings**

The CM will schedule, coordinate, and conduct weekly (or as necessary) construction contract coordination/progress meetings with the Contractor, the City, and other necessary stakeholders. The meetings will cover site safety, progress, job problems, and any actions requiring clarification of design intent, ambiguities in contract documents, and other key issues. Action monitoring will be implemented to ensure compliance and timely response by all parties.

#### **d) Labor Compliance Reviews**

The CM will perform labor compliance reviews and correspond with the Contractor on any outstanding issues.

#### **e) Monthly Construction Progress Reports**

The CM will prepare a written summary report with progress photos monthly for the City's internal review. The summary report will provide details of the entire project, including project costs to date citing the status of time and costs associated with the project; reconciliation of contract time, work progress, and manpower usage by the Contractor; and key issues addressed or arising from the project requiring resolution..

## **f) Construction Documents**

The CM will maintain at the Project site for the City one record copy of all contracts, drawings, specifications, addenda, change orders and other modifications.

## **g) Record Drawings**

The Butier Team will review the Contractor's record drawings monthly to ensure that timely recording is being accomplished. The CM will ensure that City record drawings identify RFIs, shop drawing revisions, change order modifications, etc. and that they are updated weekly. The record drawings will be submitted to the Design Engineer at the completion of the project. The CM will coordinate the submittal of completed record drawings to the City's Project Manager. Butier will be utilizing **Blue Beam for as-built generation.**

## **2.3 Construction Schedule Management**

The CM and Senior Scheduler will review and monitor the Contractors' Baseline Schedule to ensure it conforms to the Contract Documents and contains all project tasks. In addition, they will review and monitor the Contractor's two-week look-ahead schedule, monthly schedule updates, Time Impact Analyses, schedule revisions, and as-built schedule submittals. The CM will update the project schedule to reflect actual progress and changes. All Contractor delays, reasons for delay, length of time for delay, and phases of work will be documented.

## **2.4 Progress Payment Requests**

Receive, check, and verify all Contractor monthly progress payment requests and other project-related invoices based upon the cost-loaded schedule. The progress payment worksheet will be based on an approved schedule of values.

## **2.5 Requests for Information**

Coordinate the RFI review process and route all RFIs to the appropriate reviewer. The documentation will be logged, tracked, maintained, and organized in the electronic document control system in PDF format. All responses will be monitored with suspense action dates and follow-up procedures implemented to ensure timely action by all parties to project issues including input from City staff.

## **2.6 Shop Drawings and Submittal Reviews**

Using a systematic tracking procedure established by the CM for timely submittal review and processing of shop drawings with means for acceleration of review possible for significant critical controlling shop drawings. Submittal tracking will be introduced into the electronic document control system and status of submittals will always be known. The CM will provide limited reviews as shop drawings are received during the construction phase and provide recommendations and review comments supplemented by City staff.

## **2.7 Contract Change Orders (CCO)**

Prepare contract change orders on City-provided forms within 30 calendar days of completion of change order work. The CM will track, document, and negotiate changes for added costs or credits with the Contractor and evaluate schedule impacts of changes. The

CM will have no authority to issue changes or modifications to the contract documents. The CM will advise the City's PM of equitable cost and time adjustments for proposed or authorized changes.

## **2.8 Construction Observation/Inspection**

The Butier Team will provide both day-to-day on-the-job observation/inspection of all construction work on the project over a 30-day preconstruction period and a 360-working day construction period, including full-time inspector(s) and as-needed specialty inspector(s). We will provide on-site inspection services as necessary to verify the Contractor's work is performed in compliance with the contract documents, industry standards. Additional Field Inspector responsibilities include the following:

- **Pre-Construction Survey:** Perform a pre-construction site video survey with the Contractors prior to the NTP. Document the existing condition of all areas that will be impacted by construction. The Field Inspectors will take digital photographs to document the existing conditions. **Butier will also provide drone video as part of our service.**
- **Schedule Review:** Reviewing the Contractors' two week "look ahead" schedules and coordinate staffing needs with Butier's Project Manager.
- **RFIs:** Discuss responses to RFIs with Butier's CM as required and coordinate the replies to the Contractors; review of the submittals; provide non-conformance reports; and provide documentation of construction activities, duration of activities, manpower and equipment allocation.
- **Daily Inspection Reports:** Maintain daily inspection reports, which will be submitted to the City on a weekly basis. The reports will document construction activities for each well, including the date, day of week, and weather conditions; hours of work; personnel on site; equipment being used; details of each activity; controversial matters/disputes; deficiencies; violations and instructions issued to the construction contractor; safety concerns;
- **Photographic Records:** Provide weekly photographic/digital records of each project during construction. Log construction digital photographs daily. A digital photographic library will be maintained of significant construction activities. The photographs will be labeled with the date, location, and narrative information.

**Reports will include all scope items listed in Task 2.7 in the Request for Proposal.**

## **2.9 Claims Management**

Butier's CM will evaluate all claims by the Contractor seeking additional costs or additional time. The documentation of claims issues is included in the Document Control System and provide the Team with detailed data for determining the validity of requests. Butier's CM will assess whether the claim is merited and make recommendations on resolution or denial of claimed costs. The CM will identify, prepare, log and monitor Contractor claims or changes and will prepare a position paper setting forth the contractual basis of the change order entitlement, background leading to the request for potential change order.

## **2.10 Safety Program**

The CM and Field Inspectors will maintain an awareness of safety and health requirements and enforce applicable regulations and contract provisions for the protection of the public and project personnel. The Team will review the Contractor's Injury and Illness Prevention Plan (IIPP) and Job Hazard Analyses (JHA) and will observe the Contractor's work to ensure conformance with OSHA requirements. The CM will promptly notify the Contractor and the City's Project Manager of any observed safety violations.

## **2.11 Utility Coordination**

The CM will include the City Project Manager on all correspondence; coordinate with any impacted outside agency staff in matters of utility conflict or inspection in order to achieve expedited resolution; monitor, log and ensure the Contractor's compliance with the Contract Documents and Underground Service Alert (USA) regarding the location and preserving the integrity of existing underground utilities at the site; assist in the coordination with the required undergrounding of existing overhead utilities including, but not limited to electrical and fiber optic communication services to the site; and assist in the coordination of temporary and permanent relocation of City owned network communication antennae.

## **2.12 City Furnished Materials and Services**

The CM Team will arrange for the delivery, storage, protection, and security of City purchased materials, systems and equipment that are a part of the project until such items are incorporated into the project. The CM Team will assist the City's programming vendor with control strategy and instrumentation programming integration including testing the program and demonstrating the functionality of all equipment specified in the Contract Documents.

## **2.13 Testing and Startup**

With the Design Engineer and the City's maintenance personnel, the CM and Field Inspectors will observe the Contractor's final equipment testing and plant startup of all utilities, operational systems, and equipment.

The CM Team will ensure the Contractor's compliance with all applicable tests, check out, startup and related requirements indicated in the Contract Documents; verify all applicable manufacturer installation inspections have been completed by the Contractor; and review the Testing and Startup Plan developed by the Contractor to ensure compliance with Contract Documents and manufacturer requirements.

Due to the highly complex operations involved with the startup of a treatment plant, the CM Team will assist in the coordination of all required parties for a successful startup. In addition, they will monitor the use of product water during startup and ensure the water is discharged appropriately.

## **Task 3 – Public Relations and Outreach**

Butier has selected Murakawa Communications (Murakawa) to provide Public Relations and Outreach services for the Peck Reservoir Project.

At the start of the project, the public outreach team will work with the key principal team members to establish an effective communications protocol to ensure we are well informed with project facts.

Staff will participate in the pre-construction and or kick-off meeting(s) as well as regular progress meetings maintaining regular communication with principal parties to proactively identify key issues and potential challenges.

### **3.1 Develop Collateral Material**

All collateral material will be developed in communication and cooperation with the City project manager, construction manager, with information from the contractor and any other parties as needed. All approvals will be in place before production and distribution. Collateral materials may include the following:

#### **a) Internal/External FAQ**

An internal frequently asked questions document will be produced for the project team and will serve to provide consistent responses to expected questions by project team members.

#### **b) Project Fact Sheet**

A general project fact sheet will be developed to describe each project, its needs, benefits, and importance.

#### **c) Construction Notices and Emergency Notices**

Notices will contain pertinent information including the dates, times and locations of affected work, what stakeholders should expect during the construction activity and where to call, email or access more details about the project, Construction notices will be posted on the City's website and distributed to institutional stakeholders (school district, schools, etc.), and dropped off door-to-door to those directly affected.

#### **d) Copy for the Project Website**

We will develop copy for the project webpage that will be hosted by the City of Manhattan Beach.

#### **e) Meeting Flyers**

We will develop a meeting flyer or a set of meeting flyers to promote community meetings or this project.

#### **f) Presentations**

A standard (template) presentation will be developed and tailored for use for public meetings and presentations to key stakeholder organizations that may include commissions, city council, homeowners, businesses, and others.

#### **g) Project Business Cards**

We will develop project business cards that we will distribute to residents and stakeholders directly affected by the construction of these projects. The information will include the construction outreach team member's name, email address and a phone number along with

the website address for more information, so stakeholders will know who to call with questions, concerns or issues about the projects.

#### **h) Social Media Posts**

Key project information will be on the City's **NextDoor** account directing residents to the project webpage on the City's website. We will make a strategic recommendation about whether to include Facebook, Instagram, and Twitter as part of the construction awareness for this project.

#### **i) Nixle/South Bay Alerts**

Depending on significant construction activity and impacts or major milestone events that could include traffic impacts or parking restrictions, we may draft copy for Nixle alerts or South Bay Alerts to drive residents to the City website project page for details.

#### **j) E-newsletters/Patch**

If we build a project database of key stakeholders, we may produce a project newsletter distributed via email or we may provide newsletter articles that include photos showing progress that can be included in the City's email updates.

We could also send articles and photos to the Manhattan Beach Patch.

### **3.2 Project Website**

As stated above, we will develop copy for the City's website for the project. Information will include the project description outlining the purpose, benefits and needs along with the project fact sheet and construction notices for download, a map of the project area, general description of the timeframe for the construction activities, photos showing progress, renderings (optional) and the phone number, email and name of a member of our team for questions and concerns.

### **3.3 Public Outreach Meetings and Events**

We will coordinate public meetings as needed for the project to raise awareness among the directly affected stakeholders so they will know who to contact about any questions or concerns related to the project and its construction.

#### **a) Public Meetings**

We will coordinate up to three (3) public meetings if deemed necessary by the City and project team at a City venue. After the project kick-off meeting, we may determine other methods to communicate to stakeholders.

#### **b) Neighborhood Pop-Up Meetings or Neighborhood Office Hours**

Another option in addition or in lieu of the formal public meeting format that we also recommend is neighborhood pop-up meetings and neighborhood office hours. Neighborhood pop-up meetings and office hours are promoted via canvas and on the project webpage on the City's website.

#### **c) Groundbreaking/Milestone Special Events**

The project team will plan and coordinate major milestone events to publicly celebrate project successes. These may include an official groundbreaking event, topping off ceremonies, first pours, and the grand opening/ribbon cutting event.

#### **d) City Council Presentations/Updates**

We will work with the project team to coordinate regular quarterly project updates for the city council as appropriate.

### **3.4 Public Concerns and Complaints**

We will work with the project team and handle all concerns, questions, and complaints with stakeholders.

#### **a) Community Construction Information Hotline and Email**

Create a construction information hotline for stakeholders to call that will go directly to a team member's cell phone so calls will be answered live. It is our regular practice to be available 24/7/365. All contacts will be tracked and logged and included as part of the monthly report.

### **Task 4 – Environmental Impacts Monitoring**

Butier has selected **Ninyo & Moore** to provide Air Quality, Hazardous Materials, and Noise Mitigation services. In addition, **PaleoWest** will be responsible for providing Biological Resources and Cultural Resources services.

As part of the environmental review of the project pursuant to the California Environmental Quality Act (CEQA) guidelines, an Initial Study consisting of a Mitigated Negative Declaration (MND) and Mitigation Monitoring and Reporting Program (MNRP) were prepared and adopted in conjunction with the City of Manhattan Beach Use Permit.

#### **4.1 Air Quality Mitigation**

In accordance with the requirements of the Initial Study for the project, Ninyo & Moore will provide air quality monitoring and documentation services to ensure all mitigation measures described in the Initial Study are implemented during demolition, excavation, grading, and site preparation phases of the project. In addition, Ninyo & Moore staff will monitor the construction areas for proper implementation of mitigation measures.

#### **4.2 Biological Resources**

Paleo West will provide and coordinate mitigation measures under the MBTA if required.

#### **4.3 Cultural Resources**

PaleoWest will provide and coordinate the necessary monitoring resources in the event previously unknown archeological and/or paleontological issues are encountered.

#### **4.4 Hazardous Materials Mitigation**

Ninyo & Moore will provide asbestos abatement monitoring services for the planned removal of asbestos containing mastic and window glazing of the existing operations control building (including any other requested locations) prior to the demolition of the structure. The

monitoring will be performed to confirm containment and compliance with 29 Code of Federal Regulations 1929.1101 for asbestos abatement.

If needed, Ninyo & Moore will also provide an asbestos and lead survey of existing structures planned to be demolished. ASST or CAC will perform asbestos surveys in accordance with (AHERA), (EPA), (NESHAP) and the local South Coast Air Quality Management District Rule 1403 requirements. Asbestos samples will be analyzed at a laboratory that participates in the National Volunteer Laboratory Accreditation Program. The lead survey will be performed by a California Department of Public Health Certified Lead Inspector/Assessor. The survey of the painted surfaces will be patterned after HUD inspection protocol.

Since suspect underground piping is planned to be removed, a Cal-DOSH CAC may have to prepare a Procedure 5 abatement plan in accordance with SCAQMD Rule 1403 requirements.

#### **4.5 Noise Mitigation**

Ninyo & Moore will provide noise monitoring services as needed, during the demolition, excavation, grading, and site preparation phases of the project. Ninyo & Moore will review the Noise Mitigation Plan (MNP) developed by the Contractor for all phases of operations to ensure compliance with all local requirements, including the City of Manhattan Beach municipal code's permitted construction hours. Ninyo & Moore staff possess relevant training to use personal and field noise level meters.

#### **4.6 Traffic Mitigation**

The CM Team will monitor all mitigation measures including Construction Management Plan (CMP), designated construction haul routes, and repaving of local streets adjacent to the project site in order to minimize the potential local traffic impacts generated from construction vehicles traveling to and from the Project site. The CM Team will also review and monitor the CMP detailing measures to minimize disturbance to the neighborhood and school district.

#### **4.7 Vibration Monitoring: GeoVision**

GeoVision will develop a vibration monitoring program that addresses public relations, risk mitigation, and construction activity control. Specific tasks are:

##### **Pre-Construction Survey**

Document the structural and nonstructural condition of the nearby residences prior to the start of demolition. Anticipate that 15 homes for the survey. A photographic survey led by an experienced and California-registered Civil Engineer is the core activity. A brief report with a digital photo archive is the product of this task.

##### **Vibration Monitoring Program Development**

Develop a vibration monitoring plan based on recommendations from the results of Task 1 and a review of the contractor's timeline and methods. This will include recommendations for vibration criteria, vibration monitoring, vibration alerting, and vibration mitigation. The task deliverable is formal structural monitoring program document, to be reviewed and approved by appropriate City staff and consultants.



## Vibration Monitoring

Install, operate, and maintain appropriate construction vibration monitoring stations to measure peak particle velocity (PPV) at locations specified in the Vibration Monitoring Program. These will include a seismograph, sensor, visual alarms if needed, and the capability to automatically send email and text notifications via cellular data if warning and regulatory thresholds are exceeded. Calibrated Instantel MicroMate seismographs will be used. These seismographs have the capability to record both a continuous PPV a from at least 1 Hz to 100 Hz. Tentatively, two fixed stations will be installed in or near residences and two stations will rove with the construction activities. The seismographs will be programmed to monitor continuously on three axes, recording PPV at 1-second intervals continuously and sending out alarms if vibrations exceed the specified threshold. Staff will visit the site every two weeks to perform maintenance, change batteries (if AC power is not available), and collect vibration data.

## Public Relations, Reporting and Meetings

Dr. Robert Nigbor PE will supervise this vibration monitoring effort. He will be available for various meeting of the construction team and their City client as required. Dr. Nigbor can also participate in public or private meetings with the community.

Monthly reports summarizing the monitoring program will be provided per the Task 2 monitoring plan. Should there be alarms, staff will be on call to assess the vibration data and to advise the construction team on the required response to this condition.

For Additional Task 4 detail, see the proposals submitted by Ninyo & Moore and GeoVision, attached to this Scope of Services in Exhibit B (pages B-3 to B-18).

## Task 5 – Traffic Management

The CM Team will ensure that the Contractor minimizes traffic impacts and provides for public safety and convenience during all phases of the work. **The CM Team will be responsible for monitoring the contractor's implementation of the approved traffic control plans and scope items under Task 5. Any deviations from the approved traffic control measures will be submitted to the City of Manhattan Beach. It is imperative the City and its agents ensure any traffic related liability remain with the Contractor.**

## Task 6 – Soils/Materials Testing Services

Butier has selected **Ninyo & Moore** to perform Soils/Materials Testing services. The following is an abbreviated summary of N&M Scope of services. Ninyo will perform all scope elements under Task 6.

Project coordination, technical support, and management, including review of the project plans and specifications, distribution of test data and reports, and work scheduling.

Senior Project Engineer/Geologist for observation of remedial excavation bottoms.

Supplemental written recommendations will be provided as needed.

Field Technician services for observation, sampling and testing during earthwork including during structure pad preparation, structure backfill, trench backfill, subgrade preparation, MSE wall construction and during aggregate base and asphalt concrete pavement operations. Field density tests will be performed to evaluate the Contractor's compaction efforts.

Field Technician services for sampling and testing during concrete and grout placement, including checking mix design, slump and temperature, as well as casting of a set of compressive strength samples to represent each batch.

Preparation of a Final As-Graded Report which presents our opinion of the earthwork observed in the field and summarizes the field density test results.

For Additional Task 6 detail, see the proposal submitted by Ninyo & Moore, attached to this Scope of Services in Exhibit B (pages B-3 to B-14).

## **Task 7 – Post Construction Services**

### **7.1 Punch List and Substantial Completion**

The CM and Field Inspectors will prepare a detailed project punch list and will coordinate with the City, the Design Engineer, and the Contractor for construction testing, technical training, and start-up procedures for final acceptance. **Dispute Resolution and Final Payment**

Negotiate and resolve outstanding Contract Change Orders, global settlements, and any other items necessitating dispute resolution.

Prepare a Project application for final payment based on the Contractor's certificate for final payment. The Consultant's application for payment will constitute a representation to the City.

Make note that filing of Notice of Completion will necessitate formal approval and acceptance of the Project as complete by the City Council.

### **7.2 Project Closeout Deliverables**

Review all final Contractor closeout submittals.

Prepare, organize, and provide all Project File workbooks in electronic format and one hard copy. The closeout procedure will provide the City with a highly organized, searchable pdf files for close-out. Including pictures and video.

Secure and transmit electronically and two (2) hard copies to the City warranties and similar submittals required by the Contract Documents and ensure the Contractor compiles manufacturer's operations and maintenance (O&M) manuals.

Secure final as-built marked plan set from Contractor and coordinate with Design Engineer to provide record as-built drawings.

Assist the Contractor in obtaining the Certificate of Occupancy and closeout of all Building Division related permits.

Prepare final accounting and closeout reports of all indicated report systems to summarize, for historical purposes, any items that are not self-explanatory.

Perform a pre-warranty inspection walk through with the City no later than eleven (11) months following the date of substantial completion of the Project and provide assistance throughout the Contract warranty period.

Manage the transfer of the plant and building operations to the City.

Coordinate the training of City maintenance personnel with the Contractor's suppliers for operation and maintenance of the major systems.



Task 3 – Murakawa Public Outreach Sub-Consultant Cost Matrix

Tasks	Description	TM		JM		DS		Total	Total
		Hours	200	Hours	100	Hours	165	Hours	Cost/Task
1	Meetings and communication with project team (General Outreach Information)	144	28,800	48	4,800	48	7,920	240	41,520
2	Develop Collateral Material	46	9,200	4	400	8	1,320	58	10,920
3	Project Website	22	4,400	0	0	0	0	22	4,400
4	Public Outreach Meetings and Events	74	14,800	36	3,600	36	5,940	146	24340
5	Public Concerns and Complaints	16	3,200	12	1,200	0	0	28	4400
6	Crisis Communications Plan	2	400	2	200	0	0	4	600
7	Monthly Report	40	8,000	0	0	0	0	40	8000
8	Project Close Out	6	1,200	2	200	2	330	10	1730
	Subtotal - labor	350	70,000	104	10,400	94	15,510	548	95910

Direct Costs	Cost
graphic design	2000
printing/photocopies	2000
meeting materials and supplies	2400
Subtotal - direct costs	6400
Total	102310

Notes:

- Events/Meetings include
- 3 community meetings
- 5 neighborhood office hours sessions
- ground breaking event, 4 milestone photo ops, grand opening event
- 5 city council presentations
- canvas program
- community construction hotline

**EXHIBIT C**  
**TERMS FOR COMPLIANCE WITH CALIFORNIA LABOR LAWS**  
**REQUIREMENTS**

1. This Agreement calls for services that, in whole or in part, constitute “public works” as defined in Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code (“Chapter 1”). Further, Contractor acknowledges that this Agreement is subject to (a) Chapter 1 and (b) the rules and regulations established by the Department of Industrial Relations (“DIR”) implementing such statutes. Therefore, as to those Services that are “public works”, Contractor shall comply with and be bound by all the terms, rules and regulations described in 1(a) and 1(b) as though set forth in full herein.

2. California law requires the inclusion of specific Labor Code provisions in certain contracts. The inclusion of such specific provisions below, whether or not required by California law, does not alter the meaning or scope of Section 1 above.

3. Contractor shall be registered with the Department of Industrial Relations in accordance with California Labor Code Section 1725.5, and has provided proof of registration to City prior to the Effective Date of this Agreement. Contractor shall not perform work with any subcontractor that is not registered with DIR pursuant to Section 1725.5. Contractor and subcontractors shall maintain their registration with the DIR in effect throughout the duration of this Agreement. If the Contractor or any subcontractor ceases to be registered with DIR at any time during the duration of the project, Contractor shall immediately notify City.

4. Pursuant to Labor Code Section 1771.4, Contractor’s Services are subject to compliance monitoring and enforcement by DIR. Contractor shall post job site notices, as prescribed by DIR regulations.

5. Pursuant to Labor Code Section 1773.2, copies of the prevailing rate of per diem wages for each craft, classification, or type of worker needed to perform the Agreement are on file at City Hall and will be made available to any interested party on request. Contractor acknowledges receipt of a copy of the DIR determination of such prevailing rate of per diem wages, and Contractor shall post such rates at each job site covered by this Agreement.

6. Contractor shall comply with and be bound by the provisions of Labor Code Sections 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. The Contractor shall, as a penalty to City, forfeit \$200.00 for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the DIR for the

work or craft in which the worker is employed for any public work done pursuant to this Agreement by Contractor or by any subcontractor.

7. Contractor shall comply with and be bound by the provisions of Labor Code Section 1776, which requires Contractor and each subcontractor to: keep accurate payroll records and verify such records in writing under penalty of perjury, as specified in Section 1776; certify and make such payroll records available for inspection as provided by Section 1776; and inform City of the location of the records. Pursuant to Labor Code Section 1771.4, Contractor and each subcontractor shall furnish such records to the Labor Commissioner, at least monthly, in the form specified by the Labor Commissioner.

8. Contractor shall comply with and be bound by the provisions of Labor Code Sections 1777.5, 1777.6 and 1777.7 and California Administrative Code Title 8, Section 200 et seq. concerning the employment of apprentices on public works projects. Contractor shall be responsible for compliance with these aforementioned Sections for all apprenticeable occupations. Prior to commencing work under this Agreement, Contractor shall provide City with a copy of the information submitted to any applicable apprenticeship program. Within 60 days after concluding work pursuant to this Agreement, Contractor and each of its subcontractors shall submit to City a verified statement of the journeyman and apprentice hours performed under this Agreement.

9. The Contractor shall not perform Work with any Subcontractor that has been debarred or suspended pursuant to California Labor Code Section 1777.1 or any other federal or state law providing for the debarment of contractors from public works. The Contractor and Subcontractors shall not be debarred or suspended throughout the duration of this Contract pursuant to Labor Code Section 1777.1 or any other federal or state law providing for the debarment of contractors from public works. If the Contractor or any subcontractor becomes debarred or suspended during the duration of the project, the Contractor shall immediately notify City.

10. Contractor acknowledges that eight hours labor constitutes a legal day's work. Contractor shall comply with and be bound by Labor Code Section 1810. Contractor shall comply with and be bound by the provisions of Labor Code Section 1813 concerning penalties for workers who work excess hours. The Contractor shall, as a penalty to City, forfeit \$25.00 for each worker employed in the performance of this Agreement by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the Labor Code. Pursuant to Labor Code section 1815, work performed by employees of Contractor in excess of eight hours per day, and 40 hours during any one week shall be permitted upon public work upon compensation for all hours worked in

excess of eight hours per day at not less than one and one-half times the basic rate of pay.

11. California Labor Code Sections 1860 and 3700 provide that every employer will be required to secure the payment of compensation to its employees. In accordance with the provisions of California Labor Code Section 1861, Contractor hereby certifies as follows:

“I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.”

12. For every subcontractor who will perform work on the project, Contractor shall be responsible for such subcontractor’s compliance with Chapter 1 and Labor Code Sections 1860 and 3700, and Contractor shall include in the written contract between it and each subcontractor a copy of those statutory provisions and a requirement that each subcontractor shall comply with those statutory provisions. Contractor shall be required to take all actions necessary to enforce such contractual provisions and ensure subcontractor’s compliance, including without limitation, conducting a periodic review of the certified payroll records of the subcontractor and upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages. Contractor shall diligently take corrective action to halt or rectify any failure.

13. To the maximum extent permitted by law, Contractor shall indemnify, hold harmless and defend (at Contractor’s expense with counsel reasonably acceptable to City) City, its officials, officers, employees, agents and independent contractors serving in the role of City officials, and volunteers from and against any demand or claim for damages, compensation, fines, penalties or other amounts arising out of or incidental to any acts or omissions listed above by any person or entity (including Contractor, its subcontractors, and each of their officials, officers, employees and agents) in connection with any work undertaken or in connection with the Agreement, including without limitation the payment of all consequential damages, attorneys’ fees, and other related costs and expenses. All duties of Contractor under this Section shall survive the termination of the Agreement.



AMENDMENT NO. 1 TO THE PROFESSIONAL SERVICES  
AGREEMENT BETWEEN  
THE CITY OF MANHATTAN BEACH AND BUTIER ENGINEERING, INC.

This First Amendment (“Amendment No. 1”) to that certain agreement by and between the City of Manhattan Beach, a California municipal corporation (“City”) and Butier Engineering, Inc., a California corporation, (“Consultant”) (collectively, the “Parties”) is hereby made effective as of the date of the last authorized representative signature below (“Effective Date”).

RECITALS

A. On August 18, 2020, the City and Consultant entered into an agreement for professional services for the Consultant to provide construction management and inspection services for the 8MG Peck Reservoir Replacement Project (the “Agreement”).

B. The Parties now desire to amend the Agreement to increase the maximum compensation to be paid to Consultant (the “Maximum Compensation”) and modify the fee schedule to account for additional construction management and inspection services during the extended duration of the project.

NOW, THEREFORE, in consideration of the Parties’ performance of the promises, covenants, and conditions stated herein, the Parties hereby agree as follows:

Section 1. Section 3.A of the Agreement is hereby revised to increase the Maximum Compensation amount by \$321,301 for a new Maximum Compensation of \$2,876,530.

Section 2. Exhibit B (Approved Fee Schedule) of the Agreement is hereby amended to include the attached Exhibit A of this Amendment No. 1.

Section 3. Except as specifically amended by this Amendment No. 1, all other provisions of the Agreement shall remain in full force and effect.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS THEREOF, the Parties hereto have executed this Amendment No. 1 on the day and year of the last authorized representative signature shown below.

The Parties, through their duly authorized representatives are signing this Amendment No. 1 on the date stated in the introductory clause.

City:

Consultant:

City of Manhattan Beach,  
a California municipal corporation

Butier Engineering, Inc.  
a California corporation

DocuSigned by:  
*Bruce Moe* 8/29/2022  
By: D1A13C56864A441...  
Name: Bruce Moe  
Title: City Manager

DocuSigned by:  
*Mark M. Butier Jr* 8/17/2022  
By: 89AEEDF2EEDD4EC...  
Name: Mark M. Butier Jr.  
Title: President/ CFO

ATTEST:

DocuSigned by:  
*Liza Tamura* 8/29/2022  
By: 975D2FFB9D8446B...  
Name: Liza Tamura  
Title: City Clerk

APPROVED AS TO FORM:

DocuSigned by:  
*Quinn Barrow, City Attorney* 8/29/2022  
By: C24C6E263545445...  
Name: Quinn M. Barrow  
Title: City Attorney

APPROVED AS TO FISCAL IMPACT:

DocuSigned by:  
*Steve Charelian, Finance Director* 8/26/2022  
By: 3801E6D7B4124E9...  
Name: Steve S. Charelian  
Title: Finance Director

APPROVED AS TO CONTENT:

DocuSigned by:  
*Erick Lee* 8/25/2022  
By: 8FDAAFB234CA492...  
Name: Erick Lee  
Title: Public Works Director

**Exhibit A**

July 14, 2022  
City of Manhattan Beach  
Department of Public Works  
Office of the City Engineer  
3621 Bell Avenue  
Manhattan Beach, CA 90266

**Attn: Gilbert Gamboa, P.E., City Project Manager**

Subject: Amendment No. 1 — CM&I, Materials and Geotechnical,  
Additional Specialty Consulting Services for the 8 MG Peck Reservoir  
Replacement Project

Dear Mr. Gamboa:

Butier Engineering, Inc. (Butier) is respectfully requesting an additional **\$321,300.70** to complete our contract scope of work through project completion. The additional costs are attributable to varied project delays and City of Manhattan Beach directives for additional consulting services.

The original budget presented in June 2020 was developed based on a contract duration of 18 months. The City of Manhattan Beach is fully aware of the major issues that have extended the project completion date. The key issues are the following: procurement interruptions, SCE approval delays, interruption of critical path material deliveries (concrete) and owner requested changes. Butier has made every effort to mitigate the impact to the Construction Management budget as a consequence of the schedule challenges. The additional costs are as follows:

**CM&I Services Butier Engineering, Inc.**

Butier’s June 2020 budget was developed based on a contract duration of 18 months represented in the original RFP. Butier staff indicated that 18-month schedule was “aggressive” from the outset of the project. Additionally, City staff is fully aware of the issues that have extended the project final completion date. Butier has made every effort to mitigate the impact to the Construction Management budget as a consequence of the schedule challenges. Project staffing will be reduced as the we reach substantial completion. Based on the most recent baseline schedule update, we foresee the need additional hours to provide Start-Up and Testing Coordination and Project Close-Out activities.

<b>Senior Construction Manager:</b>	<b>80 Hrs. @ \$220.00</b>	<b>17,600.00</b>
<b>Senior QA/QC:</b>	<b>40 Hrs. @ \$155.00</b>	<b>12,400.00</b>
<b>Field Engineer:</b>	<b>40 Hrs. @ \$160.00</b>	<b>6,400.00</b>

**Butier Engineering** **\$36,400.00**

**Additional Services per City of Manhattan Beach:**

The City has directed Butier to add **Sandy Pringle Associates and MTGL** to the Butier team. SPA will be utilized to meet the demands for Inspection on the MS Field Lighting project. SPA services will satisfy the Department of the State Architect requirements for the Manhattan Beach Unified School District. In addition, MTGL will be engaged on the BEGG Sports Field Lighting Improvements to perform Materials Testing and Specialty Inspection. (Please see attached scope)

<b>Sandy Pringle Associates, Inc.</b>	<b>\$17,460.00</b>
<b>MTGL:</b>	<b>\$24,098.72</b>
<b>with 5% Mark-Up</b>	<b><u>\$43,636.65</u></b>

**Current Subconsultants**

**Ninyo and Moore: Specialty Inspection, Materials and Geotechnical**

N&M work scope and budgeted hours were impacted due to the extended period of performance, changes in project sequencing on the primary reservoir and the offsite pipeline and additional materials testing demands. We are projecting an additional \$231,000 thorough project completion. (Please attached scope)

<b>Ninyo &amp; Moore:</b>	<b><u>\$231,000.00</u></b>
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**Geovision: Vibration Monitoring**

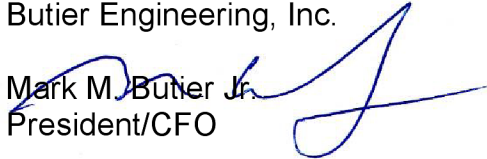
Geovision's additional costs are due to the extended period of performance.

<b>Geovision:</b>	<b>\$ 9,775.00</b>
<b>with 5% Mark-Up</b>	<b><u>\$ 10,263.75</u></b>

We appreciate the opportunity to continue meet the City's project challenges. If you have any questions regarding our proposal, please contact me for clarification at (714) 832-7222 or jrbutier@butier.com.

Respectfully Yours,  
Butier Engineering, Inc.

Mark M. Butier Jr.  
President/CFO



AMENDMENT NO. 2 TO THE PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF MANHATTAN BEACH AND BUTIER ENGINEERING,  
INC.

This Second Amendment (“Amendment No. 2”) to that certain agreement by and between the City of Manhattan Beach, a California municipal corporation (“City”) and Butier Engineering, Inc., a California corporation, (“Consultant”) (collectively, the “Parties”) is hereby made effective as of the date of the last authorized representative signature below (“Effective Date”).

RECITALS

A. On August 18, 2020, the City and Consultant entered into an agreement for professional services for the Consultant to provide construction management and inspection services for the 8MG Peck Reservoir Replacement Project (the “Original Agreement”).

B. On August 29, 2022, the City and Consultant entered into Amendment No. 1 to increase the maximum compensation to be paid to Consultant (the “Maximum Compensation”) and modify the Scope of Services and Approved Fee Schedule. The Original Agreement, as amended by Amendment No. 1, is referred to herein as the “Agreement.”

C. The Parties now desire to amend the Agreement to increase the Maximum Compensation and modify the Scope of Services and Approved Fee Schedule.

NOW, THEREFORE, in consideration of the Parties’ performance of the promises, covenants, and conditions stated herein, the Parties hereby agree as follows:

Section 1. Section 3.A of the Agreement is hereby revised to increase the Maximum Compensation amount by \$435,537.00, for a new Maximum Compensation of \$ 3,312,067.00.

Section 2. Exhibit A (“Scope of Services”) of the Agreement is hereby amended to add the attached Exhibit A of this Amendment No. 2.

Section 3. Exhibit B (“Approved Fee Schedule”) of the Agreement is hereby amended to add the attached Exhibit A of this Amendment No. 2.

Section 4. Except as specifically amended by this Amendment No. 2, all other provisions of the Agreement shall remain in full force and effect.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS THEREOF, the Parties hereto have executed this Amendment No. 2 on the day and year of the last authorized representative signature shown below.

City:

Consultant:

City of Manhattan Beach,  
a California municipal corporation

Butier Engineering, Inc.,  
a California corporation

DocuSigned by:  
*Bruce Moe*  
By: \_\_\_\_\_  
D3A13C66964A441... 1/18/2023  
Name: Bruce Moe  
Title: City Manager

DocuSigned by:  
*Mark M. Butier, Jr., President*  
By: \_\_\_\_\_  
80AEE0F2EE0D4EC... 1/4/2023  
Name: Mark M. Butier, Jr.  
Title: President/CFO

ATTEST:

DocuSigned by:  
*Liza Tamura*  
By: \_\_\_\_\_  
975D2E0B0D8446B... 1/18/2023  
Name: Liza Tamura  
Title: City Clerk

APPROVED AS TO FORM:

DocuSigned by:  
*Quinn Barrow, City Attorney*  
By: \_\_\_\_\_  
C24C6E262646446... 1/11/2023  
Name: Quinn M. Barrow  
Title: City Attorney

APPROVED AS TO FISCAL IMPACT:

DocuSigned by:  
*Steve S Charelian, Finance Director*  
By: \_\_\_\_\_  
3801E6D7B4124E9... 1/9/2023  
Name: Steve S. Charelian  
Title: Finance Director

APPROVED AS TO CONTENT:

DocuSigned by:  
*Erick Lee*  
By: \_\_\_\_\_  
8FDAAFB234CA402... 1/9/2023  
Name: Erick Lee  
Title: Public Works Director

**EXHIBIT A**

December 16, 2022

City of Manhattan Beach  
 Department of Public Works  
 Office of the City Engineer  
 3621 Bell Avenue  
 Manhattan Beach, CA 90266

Attn: Gilbert Gamboa, P.E., City Project Manager

**Subject: Amendment No. 2 – CM&I, Materials and Geotechnical, Additional Specialty Consulting Services for the 8 MG Peck Reservoir Replacement Project**

Dear Mr. Gamboa:

Butier Engineering, Inc. (Butier) respectfully requests an additional \$363,345.00 to complete our construction management, inspection, and materials testing scope services (CM&I). In addition, we are requesting \$72,192.00 to address City's requested additional Start-Up and Operational Support services. The additional costs are attributable to various project delays and City of Manhattan Beach directives for additional post-construction consulting services.

The original budget presented in June 2020 was developed based on a contract duration of 18 months. Butier Amendment No. 1 budgeted additional consulting, geotechnical and material testing services including Division of State Architect required inspections for new lighting improvements at the school district Begg Sports Field per Project Contract Change Order No. 1.

CM&I Services by Butier Engineering, Inc.

Butier's original budget was developed based on a contract duration of 18 months represented in the original RFP. Butier staff indicated that the 18-month schedule was "aggressive" from the project's outset. Additionally, City staff is fully aware of the issues that have extended the project's final completion date an additional 6 months to mid-April 2023. Project staffing will be reduced as we reach final completion. Based on the most recent baseline schedule update, the following additional fee schedule is required to continue to provide field construction management, inspection, and associated project start-up and close-out activities:

Senior Construction Manager:	320 Hrs. @ \$220.00	70,400.00
Resident Engineer:	720 Hrs. @ \$210.00	151,200.00
Electrical Support:	90 Hrs. @ \$210.00	18,900.00
Field Engineer:	240 Hrs. @ \$160.00	38,400.00
Scheduler:	50 Hrs. @ \$210.00	10,500.00
Butier Engineering, Inc.:		<u>\$289,400.00</u>

Additional Services per City of Manhattan Beach:

The City has requested Butier to add Start-Up and Operational Support Services. Butier will provide a Start-up Support Engineer working directly with designated City operations staff, the general contractor (Pacific Hydrotech Corp.), and the design engineer of record (Stantec/Hazen and Sawyer). The Start-up Support Engineer will begin on our about mid-February 2023 and will support City operations staff two days per week through July of 2023. The City may wish to secure these services under a separate Purchase Order given the proposed support budget will be post-construction and during the early warranty period. These services were not included in the original CM budget.

Start-up and Operations Engineering Support: 384 Hrs. @ \$188.00 \$72,192.00

Current Subconsultants:

Specialty Inspection, Geotechnical and Materials Testing by Ninyo & Moore

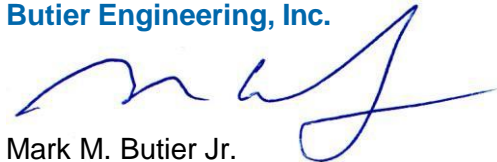
Ninyo & Moore scope of work and budgeted hours were impacted due to the extended period of performance, changes in project sequencing on the primary reservoir and the offsite pipeline work, and additional materials testing demands. We are projecting an additional \$73,945.00 through project completion. Scope of work items to complete include:

- 1) Sitework on civil plans, entire scope of concrete pavement, curb and gutter, street asphalt paving.
- 2) Remaining welding, manganese removal system, structural.
- 3) Onsite piping and trenching, duct banks on the west side of the tank, remaining onsite chemical lines, approximately 500 feet.
- 4) Equipment anchorage, electrical, main switchboard, PLC cabinets.

Ninyo & Moore: \$73,945 .00

If you have any questions regarding our proposal, please contact me for clarification at (714) 832-7222 or [jrbutier@butier.com](mailto:jrbutier@butier.com)

Respectfully Yours,  
**Butier Engineering, Inc.**



Mark M. Butier Jr.  
President/CFO



AMENDMENT NO. 3 TO THE PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF MANHATTAN BEACH AND BUTIER ENGINEERING,  
INC.

This Third Amendment (“Amendment No. 3”) to that certain agreement by and between the City of Manhattan Beach, a California municipal corporation (“City”) and Butier Engineering, Inc., a California corporation (“Consultant”) (collectively, the “Parties”) is hereby made effective as of the date of the last authorized representative signature below (“Effective Date”).

RECITALS

A. On August 18, 2020, the City and Consultant entered into an agreement for professional services for the Consultant to provide construction management and inspection services for the 8MG Peck Reservoir Replacement Project (“Original Agreement”);

B. On August 29, 2022, the City and Consultant entered into Amendment No. 1 to increase the maximum compensation and modify the Scope of Services and Approved Fee Schedule, approved by the City Council.

C. On January 18, 2023, the City and Consultant entered into Amendment No. 2 to increase the maximum compensation to modify the Scope of Services and Approved Fee Schedule, approved by the City Council. The Original Agreement, Amendment No. 1, and Amendment No. 2 are referred to herein as the “Agreement”.

D. The Parties now desire to amend the Agreement to [extend the term.

NOW, THEREFORE, in consideration of the Parties’ performance of the promises, covenants, and conditions stated herein, the Parties hereby agree as follows:

Section 1. Section 2 of the Agreement is hereby revised to extend the term of the Agreement through December 31, 2024, unless sooner terminated as provided in Section 12 of the Agreement.

Section 2. Except as specifically amended by this Amendment No. 3, all other provisions of the Agreement shall remain in full force and effect.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS THEREOF, the Parties hereto have executed this Amendment No. 3 on the day and year of the last authorized representative signature shown below.

City:

Consultant:

City of Manhattan Beach,  
a California municipal corporation

Butier Engineering, Inc.,  
a California corporation

DocuSigned by:  
By: Bruce Moe, City Manager  
Name: Bruce Moe 1/9/2024  
Title: City Manager

DocuSigned by:  
By: Mark M. Butier, Jr., President  
Name: Mark M. Butier, Jr. 1/4/2024  
Title: President/CFO

ATTEST:

DocuSigned by:  
By: Liza Tamura, City Clerk  
Name: Liza Tamura 1/10/2024  
Title: City Clerk

APPROVED AS TO FORM:

DocuSigned by:  
By: Quinn M. Barrow, City Attorney  
Name: Quinn M. Barrow 1/9/2024  
Title: City Attorney

APPROVED AS TO FISCAL IMPACT:

DocuSigned by:  
By: Steve S Charelian, Finance Director  
Name: Steve S. Charelian 1/9/2024  
Title: Finance Director

APPROVED AS TO CONTENT:

DocuSigned by:  
By: Erick Lee  
Name: Erick Lee 1/4/2024  
Title: Public Works Director