

DESIGN SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") is dated February 5, 2019 ("Effective Date") and is between the City of Manhattan Beach, a California municipal corporation ("City") and Pacific Advanced Civil 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. 1192-19 on November 5, 2018, titled "Professional Design Services for the Larsson Street Booster Pump Station Upgrade Project". Consultant submitted a proposal dated December 4, 2018 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.

The Parties therefore agree as follows:

1. **Consultant's Services.**

A. Scope of Services. Consultant shall perform the services described in the Scope of Services (the "Services") for design services for the Larsson Street Booster Pump Station, 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 James A. Matthews, Senior Vice President – Environmental Water Division (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 in conformance with the project timeline set forth in **Exhibit A**.

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.

2. Term of Agreement. The term of this Agreement shall be from the Effective Date through December 31, 2019, 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 \$138,116.00 (the "Maximum Compensation").

B. Expenses. City shall only reimburse Consultant for those actual and necessary expenses expressly set forth in **Exhibit B**.

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 the City Representative 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.

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, surveys, studies, drawings, plans, maps, models, photographs, discussion, or other information (collectively "Data and Documents") 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 and Documents 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 Data and Documents, including computer files containing Data and Documents generated for the Services, 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. Indemnity for Design Professional Services. To the fullest extent permitted by law, Consultant shall, at its sole cost and expense, protect, indemnify, and hold harmless 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, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith, and reimbursement of attorney's fees and costs of defense (collectively "Liabilities"), whether actual, alleged or threatened, which arise out of, are claimed to

arise out of, pertain to, or relate to, in whole or in part, the negligence, recklessness or willful misconduct of Consultant, its officers, agents, servants, employees, subcontractors, material men, contractors or their officers, agents, servants or employees (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of design professional services under this Agreement by a "design professional," as the term is defined under California Civil Code Section 2782.8(c)(2).

B. Other Indemnities.

1) Other than in the performance of design professional services, and to the fullest extent permitted by law, Consultant shall, at its sole cost and expense, defend, hold harmless and indemnify the Indemnitees from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, 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 "Claims"), 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, contractors 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 Claims 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 Claim 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 the 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 B.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 indemnities, Consultant shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from and against any and all Claims 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's subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, contractors 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 Claims arising from the sole negligence or willful misconduct of the Indemnitees, as determined by court decision or by the agreement of the Parties.

C. Workers' Compensation Acts not Limiting. Consultant's 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.

D. 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 hold harmless and indemnification provisions in this Section shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liabilities, Claims, tax, assessment, penalty or interest asserted against City.

E. Survival of Terms. The indemnification in 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 \$1,000,000.00 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 limit of \$100,000.00 per occurrence and \$300,000.00 in aggregate 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. 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:

If to City:

Attn: Anastasia Seims
City of Manhattan Beach
3621 Bell Avenue
Manhattan Beach, California 90266
Telephone: (310) 802-5361
Email: aseims@citymb.info

If to Consultant:

ATTN: JAMES MATTHEWS
PACE
17520 NEW HOPE ST. #200
FOUNTAIN VALLEY, CA 92708
T: 714 481 7300 X-221
JMATTHEWS@PACEWATER2.COM

With a courtesy copy to:

Quinn M. Barrow, City Attorney
1400 Highland Avenue
Manhattan Beach, California 90266
Telephone: (310) 802-5061
Email: qbarrow@rwglaw.com

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 and B 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:

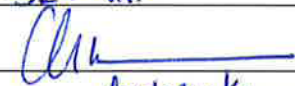
Pacific Advanced Civil Engineering, Inc.,
a California corporation

By: _____

Name: Bruce Moe
Title: City Manager

By:  _____
Name: JAMES MATTHEWS PE
Title: SR. V.P.

ATTEST:

By:  _____
Name: Andrew Komer
Title: V.P.

By: _____

Name: Liza Tamura
Title: City Clerk

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

APPROVED AS TO FORM:

By: _____

Name: Quinn M. Barrow
Title: City Attorney

APPROVED AS TO CONTENT:

By: _____

Name: Steve S. Charelian
Title: Finance Director

EXHIBIT A SCOPE OF SERVICES

This Agreement includes the scope of services outlined below. For all project deliverables identified in the included scope of services, electronic files shall be provided in native program file types and in PDF.

TASK 1.0 – PRELIMINARY DESIGN SERVICES	
1.1 Project Kick-off Meeting	PACE will initiate a project and kick-off meeting for the purpose of reviewing the project scope and objectives and for receiving pertinent project information from the City.
1.2 Structural Evaluation	Based on the site walk and in preparation for this proposal, preliminary evaluation of cracks in the pump station vault are unlikely to be structurally unsound, as they may have occurred due to vibrations caused by cycling of pumps with pipes not installed with sleeves to separate vibration against the vault walls. With that said, PACE is optimistic and can recommend a cost-effective method to repair such cracks. If during preliminary design, the coordinated review of past geotechnical reports, structural and mechanical systems determine that a new vault is necessary for the project, the team can proceed with the design of a new vault (optional service).
1.3 Geotechnical Evaluation of Existing Report	Based on the site walk and information provided by City staff to-date, a Geotechnical Investigation is not needed for crack repairs in the existing vault. PACE will evaluate existing soil condition through existing soils report to be provided by the City. Sub-surface information and soil stability information found in existing soils report can help make sound decisions for the design and construction of improvements surrounding the pump station.
1.4 Flow Study	<p>PACE will conduct field measurements on the actual distribution system, using our in-house flow and pressure logging equipment. The field measurements will be time-coordinated with City SCADA data. The two sets of data from the test period will be compared to determine the level of accuracy of the SCADA information, so that correlation factors can be developed which will allow use of the historical data from the SCADA system.</p> <p>Based on the existing hydraulic model provided by the City, along with site-specific hydraulic testing above, SCADA data, and other operational knowledge/constraints provided by City staff, PACE will run multiple scenarios to determine the current minimum, maximum and average demand conditions for the Hill Area system. Additionally, PACE will determine the operating pressures required to provide adequate residential and fire service pressures under the various flow conditions.</p>
1.5 Design Options, Mechanical and Electrical Evaluation and Preliminary Pump Selection	Based on the site walk and preliminary visual inspection of the existing station mechanical systems, it is likely that a majority of the existing piping, valves and equipment will need to be removed and replaced due to significant increase in the pump station capacity. PACE will conduct an on-site inspection of the mechanical systems for the purpose of evaluating

<p>... 1.5 continued</p>	<p>and verifying existing conditions. PACE will take interior field measurements and photo-document existing equipment within the vault for the development of a digital model of the existing station for use in the preparation of the Design Development Documents.</p> <p>PACE will review existing hydraulic modeling, engineering reports, As-built and operational data from the City to develop sizing and selection criteria for the new pumping, piping and valve equipment, and will evaluate the need for a pressure relief valve, and will also evaluate the need to reconfigure existing electrical conduits. The basis of the selection will be to present up to four alternatives using either vertical turbine or split-case pumping equipment in either 3-pump or 4-pump configurations. All alternatives will have at least two equipment manufacturers who can be used in the Final Design. Preliminary layouts of each of the alternatives will be presented. The findings of the preliminary equipment selection and recommendations will be included in the Design Development Documents.</p>
<p>1.6 Electrical, Instrumentation and Controls Evaluation</p>	<ol style="list-style-type: none"> a. PACE shall conduct a site evaluation of the existing electrical equipment to confirm size and condition and determine if equipment can be salvaged and reused in the project. b. If a new, larger service is required with SCE, PACE shall incorporate the larger service requirements into the preliminary design. c. Based on findings and evaluation, PACE will prepare Preliminary One-line Diagrams and load calculations for 3-pump and 4-pump alternatives per the Mechanical Evaluation. d. PACE will meet with City O&M staff to review the existing control operation and to develop any new sequences of operation that will be required for the pump station. e. PACE will review the existing instrumentation and control systems to determine if any additional hardware will be required to implement the new operational sequences. f. Based on these requirements, PACE will review the existing documented PLC and HMI programs, to determine what additional programming, configuration and hardware will be needed to added. g. PACE will summarize its findings as part of the Design Development Documents.
<p>1.7 Preliminary Engineering Evaluation Meeting</p>	<ol style="list-style-type: none"> a. Prior to proceeding with the preparation of the Preliminary Cost Estimate and Design Development Documents, PACE shall coordinate a Preliminary Engineering Evaluation Meeting which will include members of the consulting team who will present and discuss the initial findings and recommendations. This meeting is an opportunity for the City staff to ask questions and provide feedback on the progress of the project to-date, prior to the consulting team memorializing its findings in the Design Development Documents.
<p>1.8 Site Base Survey</p>	<ol style="list-style-type: none"> a. Since improvements are expected to take place within existing vaults, minimal survey is required for the project. PACE will conduct a site survey to develop a digital base map, in AutoCAD format, which will include the location of the site property boundary, location of existing site improvements, including the building and ancillary structures and topographic data needed for design development. b. In addition to surveying above-ground improvements, PACE will conduct an underground utility location evaluation and have that information incorporated into the base map. Based on the findings of the utility locating effort, potholing of existing underground utilities may need to be performed to verify location and depth. However, this is not included in the current proposal, but can be done under separate authorization, if necessary.
<p>1.9 Preparation of a Preliminary Estimate of Project Cost</p>	<ol style="list-style-type: none"> a. Based on the information gathered and the development of up to four alternatives, PACE shall prepare an Engineer's Estimate of Project Cost. The validity of the estimates presented will be based on limited level of design detail and shall provide a basis for further evaluating or eliminating alternatives from consideration. The estimates will be incorporated into the Design Development Documents.

1.10 Preparation of Design Development Documents (DDD) and Final Design Memorandum	<ul style="list-style-type: none"> a. PACE shall incorporate all findings and recommendations from the site investigations, preliminary equipment evaluations and preliminary layout drawings into a consolidated Design Development Documents report. This report will be prepared and presented in draft form to the City for review. b. A Preliminary Design Review meeting will be held to go over the information contained in the report and to solicit comments and feedback from City staff. Based on the discussions and comments presented, the design team (City and Consultants) will determine the best alternative to proceed with for Final Design and PACE will revise the Design Development Documents to incorporate comments and prepare a Final Design Memorandum to memorialize the selected project alternative. The Final Design Memorandum shall serve as the basis for preparation of the Final Design and Bid Documents.
1.11 Preparation of Basis of Design Report (BDR) for 2BPS	<ul style="list-style-type: none"> a. PACE shall conduct a field site inspection of the mechanical, structural, electrical, control and fuel supply systems at the existing 2nd Street Booster Pump Station and prepare a Preliminary Site Assessment memo of the existing conditions. The Preliminary Site Assessment will evaluate the existing vibration issues and determine the feasibility of adding vibration mitigation to the existing equipment, a determination of remaining useful life of the equipment, and identification of additional recommended improvements to the facility. b. Based on the conditions and mitigation measures needed, PACE will prepare a Basis of Design Report, which provides preliminary design and selection of equipment, preliminary design of installation and modifications needed, and evaluates and provides recommendations for current and future upgrades to the 2BPS. Specific attention will be given to the opportunity to coordinate the control and operation of the 2BPS with the LBPS and/or replace the 2BPS capacity at the LBPS facility.

DELIVERABLES

Design Development Documents to include preliminary plans for site, mechanical, electrical, vault crack evaluation, conduit reconfiguration, and flow study. In addition, Site Condition Assessment Memo and Basis of Design Report for the 2BPS. All documents listed above shall be delivered in electronic (PDF) format via direct email or PACE's secure FTP site.

TASK 2.0 – FINAL DESIGN SERVICES

2.1 Project Design Coordination Meetings	<ul style="list-style-type: none"> a. PACE shall coordinate and attend up to three scheduled Design Coordination Meetings during the course of the final design period. The meetings shall include a final design kick-off meeting and project review meetings at the 50% and 90% progress submittals.
2.2 50% Design Drawings & Specifications	<ul style="list-style-type: none"> a. PACE shall prepare a 50% Design Drawing and Technical Specification Package for submittal to the City for review and comment. The 50% Design Package will contain the following Design Sections: <ul style="list-style-type: none"> G – Sheets Cover Sheet & General Notes C – Sheets Civil site improvements, grading and drainage, field piping and details D – Sheets Demolition Plan and details M – Sheets Mechanical layouts, pumping, piping, valves, PRV, equipment and HVAC S – Sheets Structural retrofit layout plan and details A – Sheets Architectural plan and elevations, roofing plan and architectural details E – Sheets One-line Diagram, SES and MCC elevations, equipment and conduit layouts I – Sheets Process and Instrumentation Diagrams b. PACE shall prepare a 50% Technical Specification Package which will contain standard

... 2.2 continued	<p>general construction specifications along with proposed major equipment specific specifications for submittal to the City for review and comment.</p> <p>c. Based on the 50% Design, PACE shall prepare a Preliminary Engineer's Cost Estimate.</p> <p>d. Preliminary plans and exhibits will be available for City to use for public outreach meetings. PACE staff can attend to assist City staff with this effort.</p>
2.3 90% Design Drawings & Specifications	<p>a. Based on approval of the 50% Plans and Specifications, PACE shall prepare a 90% Design Drawing Package for submittal to the City for review and comment. The 90% Design Package will build on the sheet sections contained in the 50% Design Package. In all, PACE anticipates that the final design drawing package will be approximately 25 to 30 sheets.</p> <p>b. PACE shall prepare a 90% Project Specifications Package which will contain revised and updated standard and site-specific technical construction specifications from the 50% submittal. PACE will revise and incorporate City-provided standard front-end documents, develop bid forms for the project and include these documents in the Project Specifications Package for review and approval by the City.</p> <p>c. Based on the 90% developed Bid Package, PACE shall update the Engineer's Cost Estimate to reflect any changes from the 50% design level.</p> <p>d. Updated plans and exhibits will be available for City to use for public outreach meetings. PACE staff can attend to assist City staff with this effort.</p>
2.4 Final 100% Design Drawings & Specifications	<p>a. Based on approval of the 90% Plans and Specifications, PACE shall prepare a Final 100% Design Package for Public Bid. The Final Plans, Specifications and Bid Form shall incorporate the City's comments and shall be delivered in both a printed wet-ink reproducible set and in electronic (PDF) set for use by the City in providing Bid Documents.</p> <p>b. Based on the Final 100% Design Package, PACE shall prepare a Final Engineer's Cost Estimate for submittal to the City.</p>
DELIVERABLES 50%, 90% and Final 100% Design Plans and Specifications, Revised and Incorporated City-provided front-end documents, Project Specific Bid Form, Engineer's Cost Estimate at 50%, 90% and Final 100% submittal stages. All documents shall be delivered in electronic (PDF) format via direct email or PACE's secure FTP site.	
TASK 3.0 – CONSTRUCTION PERIOD DESIGN SUPPORT SERVICES (OPTIONAL)	
3.1 Pre-Bid and Bid Services	<p>a. PACE shall attend the City's Pre-Bid meeting and site-walk.</p> <p>b. PACE shall, at the request of the City, assist the City with answering questions and providing clarifications to the Bid Documents during the bid period.</p> <p>c. PACE shall, at the request of the City, provide a technical review of bids received to assist the City in selection of a contractor for the project.</p>
3.2 Contractor Submittal and RFI Review Services	<p>a. PACE shall provide engineering staff for the purpose of technical review of Contractor Submittals for conformance with the Final Plans and Specifications. PACE shall also provide engineering staff to respond to Project RFIs and provide, as needed, supplemental information and design during construction. The fee for these services is based on an estimated 20 submittal packages and 5 RFI requests.</p>
3.3 Construction Progress Meetings	<p>a. PACE shall provide engineering staff for the purpose of attending periodic on-site progress meetings in support of the City project management team. We anticipate attending up to twelve (12) Construction Progress Meetings over a period of 6 to 8 months.</p>

3.4 Controls and Integration Services for the Pump Station and Central SCADA System	<ul style="list-style-type: none"> a. PACE shall provide Controls and Instrumentation Specialist staff for the purpose of integration, networking and programming the new/rehabilitated pump station. Programming services shall also include re-programming of the existing PLC and HMI for operational control sequences to maximize energy efficiency and improve performance. b. PACE shall provide the services of its Controls and Instrumentation Specialist for the purpose of programming updates to the City's existing Central SCADA system to incorporate modifications made to the local pump station controls. c. Any required additional hardware will be supplied and installed by the project contractor as part of the construction contract.
3.5 Final Inspection and Start-up Assistance	<ul style="list-style-type: none"> a. PACE shall provide engineering staff for the purpose of conducting a Substantial Completion Inspection. PACE shall conduct said inspection and provide the City with punch-list of items to be included in the Final Punch-list provided to the contractor. b. After Substantial Completion but prior to Final Completion, PACE shall provide start-up assistance to the City and the City's contractor to conduct performance tests, control checks and general guidance with the commissioning of new equipment and controls. c. Upon completion of the Punch-list, PACE shall conduct a Final Inspection and provide a Letter of Final Completion to the City.
3.6 Preparation of Station SOP Manual	<ul style="list-style-type: none"> a. PACE shall review and approve the Contractor provided O&M manuals for all new equipment supplied as part of the project. b. PACE shall coordinate Contractor-provided O&M manuals and integrate them into a digital SOP Manual for the pump station which will include Operation and Maintenance Schedules, Specific Station Operation Sequences, Standard Operating Procedures and Process Check-lists. Development of specific Video SOPs will be provided which cover local and remote start-up, shutdown and emergency operational procedures. c. The Final SOP Manual (including the Contractor supplied manuals) shall be delivered in digital format with embedded video clips for SOP procedures.
3.7 Preparation of Project Record Drawings	<ul style="list-style-type: none"> a. PACE shall review Contractor supplied field mark-ups (Redlines) for accuracy based on observations made during progress meetings and at the Final Completion Inspection. From these plans and observations, PACE shall prepare a final Record Drawing set for submittal to the City for their files, and be in a printed set and electronic format (PDF).
TASK 4.0 – OPTIONAL DESIGN SERVICES	
4.1 Additional Geotechnical Services	<p>If a new pump station vault is required for the project, additional geotechnical services will likely be required to obtain sub-surface soil stability information to make sound decisions for the design and construction of the new vault. The geotechnical work will be performed by GMU Geotechnical, Inc. as a sub-consultant to PACE. Their scope will consist of reviewing existing site conditions, available soil data bases, one (1) hollow-stem soil boring to depth of 50 feet, laboratory analysis of field samples, and to prepare a geotechnical report for the earthwork/grading, foundation, soil corrosively and slope stability design parameters.</p>
4.2 Additional Site Base Survey Services	<p>Potholing of existing underground utilities may need to be performed to verify location and depth. However, this is not included in the base proposal. The City may want to separately contract through their own on-call surveying services and provide data to PACE. In that case, there would be no cost from PACE for this task item.</p>

EXHIBIT B
APPROVED FEE SCHEDULE



FEE PROPOSAL
PROJECT WORKSHEET

Project Data
Project Name: Larsson Booster Pump Station
Client: City of Manhattan Beach
PACE Job Number: B438
Estimate Date: December 4, 2018

2018 PACE Hourly Rate Schedule	
Description	Hourly Rate
Principal	\$240
Sr. Proj. Mgr./Sr. Consulting Engr.	\$210
Sr. Electrical Engineer / Sr. GIS Analyst	\$195
Project Manager /Consulting Engr.	\$190
Sr. Proj. Engr./Sr. Design Engr.	\$165
Instrumentation & Controls Specialist	\$150
Proj. Engr/Design Engineer II	\$140
Design Engineer	\$120
Sr. CAD Designer	\$120
CAD Designer/GIS Analyst	\$95
Graphic Designer	\$95
Proj. Coordinator/Admin. Support	\$80
Assistant Designer	\$75
G.P.S. Survey Unit (w/Operator)	\$240
Expert Witness/Legal Consultation	\$350 + Exp.

Total Fee Amount (Not Including Optional Tasks):	\$125,560
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Item No.	Work Item Description	Estimated Manhours																Man-Power Subtotal	Reimburs. Expenses	Total Task Costs
		Principal	Sr. Project Manager/Sr. Consulting Engr.	Sr. Electrical Engineer/Sr. GIS Analyst	Project Mgr./ Consulting Engr.	Sr. Project Engineer/Sr. Design Engr.	Inst. & Controls Specialist	Project Engineer /Design Engr. II	Design Engineer	Sr. CAD Designer	CAD Designer /GIS Analyst	Graphic Designer	Proj. Coord/Admin Support	Assistant Designer	GPS Survey Unit (w/Operator)	Structural Engineer	Geotechnical Engineering Sub			
1	Preliminary Design Services																			
1.1	Project Kick-off Meeting	2			2			4					2					\$1,580		\$1,580
1.2	Structural Evaluation				2	4		4					2			25		\$6,760		\$6,760
1.3	Geotechnical Evaluation of Existing Report				1	2		8					2					\$1,800		\$1,800
1.4	Flow Study	1			2	4		8				2	4	40				\$5,910		\$5,910
1.5	Design Options, Mechanical and Electrical Evaluation and Preliminary Pump Selection	1		2	2	8		40		8	24	4	2	24				\$13,510		\$13,510
1.6	Electrical, Instrumentation and Control Evaluation	1		2	2	8	16						2	24				\$6,690		\$6,690
1.7	Preliminary Engineering Evaluation Meeting	1			2	2	2	8					2	4				\$2,830		\$2,830
1.8	Site Base Survey	1			2			16		16	24		2	24	4			\$9,980		\$9,980
1.9	Preparation of a Preliminary Estimate of Project Cost	1			2	4		8					2	4				\$2,860		\$2,860
1.10	Preparation of Design Development Documents (DDD) and Final Design Memorandum	1		8	2	8	4	24		2	4		4	4				\$8,700		\$8,700
1.11	Preparation of Basis of Design Report (BDR) for 2BPS	1		8	4	8	4	30		4	16		4	24				\$12,800		\$12,800
	SUBTOTAL TASK 1																	\$73,420		\$73,420
2	Final Design Services																			
2.1	Project Design Coordination Meetings	3			10			10										\$4,020		\$4,020
2.2	50% Design Drawings & Specifications	3		16	8	16	16	40		16	40	8	4	40				\$25,800		\$25,800
2.3	90% Design Drawings & Specifications	3		8	8	8	8	16		8	20	4	4	24				\$13,920		\$13,920
2.4	Final 100% Design Drawings & Specifications	1		4	4	4	4	16		2	8		4	24				\$8,400		\$8,400
	SUBTOTAL TASK 2																	\$52,140		\$52,140
	TOTAL TASK 1-2	20	0	48	53	76	54	232	0	56	136	18	40	236	4	25	0	\$125,560		\$125,560
	OPTIONAL TASKS IF REQUESTED																			
3	CONSTRUCTION PERIOD DESIGN SUPPORT SERVICES (OPTIONAL, NOT REQUIRED IN THE RFP)	0																		
3.1	Pre-Bid and Bid Services		0		4			10										\$2,160		\$2,160
3.2	Contractor Submittal and RFI Review Services				5			25										\$4,450		\$4,450
3.3	Construction Progress Meetings				6			24										\$4,500		\$4,500
3.4	Controls and Integration Services for the Pump Station and Central SCADA System			4	8		8	16										\$5,740		\$5,740
3.5	Final Inspection and Start-up Assistance			4	8		8	16										\$5,740		\$5,740
3.6	Preparation of Station SOP Manual				4			24										\$4,120		\$4,120
3.7	Preparation of Project Record Drawings				1			4			16			24				\$4,070		\$4,070
	OPTIONAL SUBTOTAL TASK 3																	\$30,780		\$30,780
4	OPTIONAL DESIGN SERVICES (OPTIONAL, NOT REQUIRED IN THE RFP)																			
4.1	Additional Geotechnical Services																63	\$12,600		\$12,600
4.2	Additional Structural Engineering Services															40		\$8,000		\$8,000
4.3	Additional Site Base Survey Services (by City)																	\$0		\$0
	OPTIONAL SUBTOTAL TASK 4			0	0													\$20,600		\$20,600
	TOTOL OPTIONAL TASK 3-4	0	0	8	36	0	16	119	0	0	16	0	0	24	0	40	63	\$51,380		\$51,380
	TOTAL INLCUDING OPTIONAL TASKS	20	0	48	53	76	54	232	0	56	136	18	40	236	4	25	0	\$176,940	\$0	\$176,940