

## PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") is dated July 1, 2021, ("Effective Date") and is between the City of Manhattan Beach, a California municipal corporation ("City") and McGowan Consulting, LLC, a California limited liability company, ("Consultant"). City and Consultant are sometimes referred to herein as the "Parties", and individually as a "Party".

### RECITALS

A. City desires to utilize the services of Consultant as an independent contractor to provide environmental consulting services pertaining to the implementation of the municipal separate storm sewer system permit and total maximum daily load implementation under the requirements of the Federal Clean Water Act.

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 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 environmental consulting services pertaining to the implementation of the municipal separate storm sewer system permit and total maximum daily load implementation under the requirements of the Federal Clean Water Act, 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 Kathleen McGowan, Principal (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.

Approved for Use 3/1/2021

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 June 30, 2022, 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 \$49,771 (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, or reimburse for any expenses not set forth in **Exhibit B**, unless the City Council or the City Representative, if applicable, and the Consultant Representative authorize such services or expenses in writing prior to Consultant's performance of those services or incurrence of additional expenses. Any additional services 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. Any additional expense authorized by the City Council or (where authorized) the City Manager shall be reimbursed in the amounts authorized by the City Council or City Manager. 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. Invoices must be submitted to Lou Vargas, Utilities Manager at **lvargas@citymb.info** and **invoices@citymb.info**. 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  
Public Works Department  
Attn: Lou Vargas, Utilities Manager  
3621 Bell Avenue  
Manhattan Beach, California 90266

TO CONSULTANT:

Kathleen McGowan  
McGowan Consulting, LLC  
412 Olive Avenue, #189  
Huntington Beach, California 92648  
Telephone: 310-213-4979

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 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:

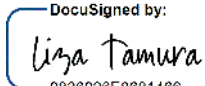
McGowan Consulting, LLC,  
a California limited liability company

By:  7/8/2021  
DocuSigned by:  
EAD3C08648884FC...  
Name: Bruce Moe  
Title: City Manager

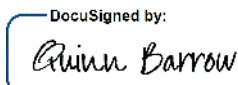
By:  7/6/2021  
DocuSigned by:  
E6CF8516A96741A...  
Name: Kathleen McGowan  
Title: Principal

ATTEST:

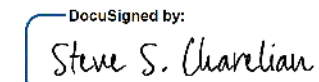
**PROOF OF AUTHORITY TO BIND  
CONTRACTING PARTY REQUIRED**

By:  7/8/2021  
DocuSigned by:  
0826026E8681466...  
Name: Liza Tamura  
Title: City Clerk

APPROVED AS TO FORM:

By:  7/8/2021  
DocuSigned by:  
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Name: Quinn M. Barrow  
Title: City Attorney

APPROVED AS TO FISCAL IMPACT:

By:  7/6/2021  
DocuSigned by:  
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Name: Steve S. Charelian  
Title: Finance Director

APPROVED AS TO CONTENT:

By:  7/6/2021  
DocuSigned by:  
F9F4AFF3A992452...  
Name: Erick Lee  
Title: Public Works Director

## EXHIBIT A SCOPE OF SERVICES

### **Scope of Services – MS4 Permit Consulting FY2021-22**

As authorized by the Federal Clean Water Act and the California Porter-Cologne Act, the Municipal Separate Storm Sewer System Permit (MS4 Permit) identifies conditions, requirements and programs that municipalities must implement to protect regional water resources from adverse impacts associated with pollutants in stormwater and urban runoff. Although the 4<sup>th</sup> Term MS4 Permit<sup>1</sup> has expired, the City of Manhattan Beach (City) is obligated to continue to comply with the requirements of that permit, including commitments made in the Beach Cities Enhanced Watershed Management Program (EWMP) and Coordinated Integrated Monitoring Program (CIMP) until the new Regional MS4 Permit becomes effective which is anticipated to occur during fiscal year 2021-2022 (FY2021-22). This scope of services assumes the City will begin making preparations to implement the Regional MS4 Permit during FY2021-22. The effort assumed in this scope of services to assist the City in preparing for implementation of the Regional MS4 Permit has been based on the requirements described in the Tentative Regional MS4 Permit issued by Regional Board staff in August 2020 and does not reflect any major differences that may arise between the Tentative Regional MS4 Permit and the final adopted Regional MS4 Permit.

This scope of services is organized into tasks based on the MS4 Permit program areas.

- Task 1 - Program Management, Coordination and Individual Reporting
- Task 2 - Public Information and Participation Program
- Task 3 - Commercial and Industrial Facilities Control Program
- Task 4 - Planning & Land Development and Construction Programs
- Task 5 - Public Agency Activities Program
- Task 6 - Illicit Discharge Detection and Elimination Program

#### **Task 1 Program Management, Coordination and Individual Reporting**

The MS4 Permit affects a wide range of municipal activities and requires management and coordination of pollution prevention and implementation activities across municipal functions and among co-permittees. Task 1 is focused on stormwater program management and coordination and annual reporting.

##### ***Subtask 1.1 Coordination, Communication and Program Management***

This subtask provides for time to support City staff in managing and coordinating stormwater program policy and planning throughout the year. An allocation of time is provided for internal project management and coordination, regular communication via email and telephone with City staff, and periodic meetings with City staff on the status of work progress, regulatory and watershed developments, need for action or response, and to obtain direction from City staff as needed. This subtask also provides an allocation of time for McGowan Consulting to support City staff in the preparation of staff reports on key issues for City Council, as directed by City staff.

##### ***Subtask 1.2 MS4 Permit Individual Annual Report***

The 4<sup>th</sup> Term MS4 Permit requires the City to submit an Individual Annual Report to the Regional Board by December 15<sup>th</sup> for the preceding reporting period (July 1<sup>st</sup>-June 30<sup>th</sup>). This subtask covers McGowan

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<sup>1</sup> Order No. R4-2012-0175 as amended by Order WQ 2015-0075, NPDES Permit No. CAS004001 Waste Discharge Requirements for Municipal Separate Storm Sewer System (MS4) Discharges within the Coastal Watersheds of Los Angeles County, except those Discharges Originating from the City of Long Beach.

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Consulting's preparation of the City's Individual Annual Report based on information in-hand and information to be provided by City staff covering activities implemented during the reporting year. A level of effort similar to that of FY2020-21 is assumed. Within six (6) weeks following the close of the FY2020-21 reporting year, McGowan Consulting will provide City staff a list of information needed to complete the annual report. Information requested may include but is not limited to:

- Budgetary information on stormwater expenditures in each required category for FY2020-21 and projected budget for FY2021-22;
- Low impact development (LID) project information for private and public development and redevelopment projects planned or completed within the reporting year provided in the County of Los Angeles Watershed Reporting Adaptive Management and Planning System (WRAMPS) spreadsheet format or LID project information form;
- Records from Building & Safety staff on storm-water related construction inspection and plan check review;
- Public works capital improvement projects related to stormwater, including details on the installation of certified full capture systems for trash; and
- Illicit connection and discharge incident results and records, including enforcement actions taken.

Given receipt of the requested Individual Annual Report information from City staff in the necessary electronic formats by October 1st, McGowan Consulting will prepare a draft Individual Annual Report for City staff review by November 1st. Following receipt of comments from City staff on the draft report, we will revise and finalize the Individual Annual Report in the form of electronic PDF files for inclusion and submittal to the Regional Board with the Watershed Annual Report. A two-week turnaround for City staff review with a consolidated set of comments, and a single revision of the annual report are assumed. The Individual Annual Report and its supporting files will be provided in electronic format for the City's records.

***Subtask 1.2 Deliverables:***

- Information request for Individual Annual Report
- Draft and final Individual Annual Report and supporting files

***Subtask 1.3 Permit-wide Planning and Coordination***

This subtask includes time to participate in MS4 Permit Co-Permittee meetings to share information and address Co-Permittee and Watershed Group challenges cooperatively. An allocation of time is provided for attendance at six (6) bi-monthly LA Permit Group Meetings and is similar to the effort expended in FY2021 for representing the City at these meetings. Time is also allocated to review final revisions to the Regional MS4 Permit and to work in coordination with other MS4 Permittees on implementation strategies for addressing new permit provisions. This subtask also allocates time to track and respond to regulatory actions by the Regional Board and State Water Resources Control Board (State Board) such as: new or revisions to statewide water quality standards applicable to MS4 permits, statewide permitting policies, precedential State Board orders, or a Total Maximum Daily Load (TMDL) reconsideration.

The work in this subtask for attending meetings and tracking regulatory actions will be performed in common for McGowan Consulting clients with similar interests and characteristics, and as such the effort assumed is reduced based on cost-sharing among multiple municipal clients. Time for attending Regional Board meetings and workshops during MS4 Permit negotiations is included in the Beach Cities

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Watershed Coordination scope of services and is thus excluded from this scope of services.

#### ***Subtask 1.4 Safe Clean Water Municipal Program Reporting***

The [Safe Clean Water \(SCW\) Program](#) provides dedicated funding to increase local water supply, improve water quality and protect public health with a key goal of supporting municipalities in meeting MS4 Permit water quality objectives. The City receives its 40% municipal return (approximately \$410,000) of the revenues generated by the SCW parcel tax in August each year and by the preceding April 1 must prepare and submit an annual plan forecasting how the Municipal Program Funds will be spent on eligible expenditures in the upcoming fiscal year. Transparency and public accountability are integral to the SCW Program, and public outreach and reporting is required for all aspects of the SCW Program.

The City has a five-year window to expend each tranche of funds it receives and must also submit an Annual Progress/Expenditure Report to the LA County Flood Control District (LACFCD) within six months of the close of the each fiscal year. The first annual report will be due in December 2021, and is expected to include the following information:

- A summary of Water Quality, Water Supply, and Community Investment Benefits realized through the City's use of SCW Municipal Program Funds;
- The amount of SCW Municipal Program funds expended;
- A description of work accomplished during the reporting period;
- The milestones achieved or deliverables completed during the reporting period;
- The work anticipated to be accomplished during the next reporting period;
- Photo documentation as appropriate;
- A description of the City's stakeholder-engagement activities during the reporting period, including documentation as appropriate.

The LACFCD will review the City's Annual Progress/Expenditure Report to make a preliminary determination of whether and to what extent the City's expenditures achieved SCW Program Goals, and will then forward its preliminary determination to the Regional Oversight Committee who will also review the City's Annual Program/Expenditure Report and develop recommendations as appropriate for the LA County Board of Supervisors and the City.

This subtask provides an allocation of effort for McGowan Consulting to prepare the first Annual Program/Expenditure Report for the City due in December 2021. The LACFCD staff intend to provide municipalities guidance in preparing the SCW Annual Progress/Expenditure Report and use of the online reporting tool, however this guidance and reporting tool access has not yet been provided thus the level of effort for this subtask is uncertain. This task also allocates time to prepare the City's 3<sup>rd</sup> Annual Plan due by April 1, 2022 in a similar manner to the first two plans developed in FY2020-21

This subtask will be performed under the direction and review of City management staff. It is assumed that City staff will be responsible for adherence to the SCW Program financial documentation and audit requirements, compliance with revenue transfer agreement requirements, operation in accordance with best practices and strict accountability for funds, receipts and disbursements as delineated in the SCW Municipal Program Transfer Agreement.

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*Subtask 1.4 Deliverables:*

- Draft and final Annual Progress/Expenditure Report documenting actual expenditures of the City's SCW Municipal funds through June 2021.
- Draft and final Annual Plan describing SCW Municipal Program budget and planned expenditures for upcoming FY2022-23 fiscal year

**Task 2 Public Information and Participation Program**

Each Co-Permittee is responsible for developing and implementing a Public Information and Participation Program (PIPP) that addresses specific MS4 Permit and Beach Cities EWMP requirements. Each of the required elements of the PIPP may be met by the City either through a County-wide, watershed group, or individual program approach. The City is individually responsible for certain elements of the PIPP that are not appropriate for joint implementation, such as providing information links on its website to stormwater websites that include educational materials and offering opportunities for the public to participate in stormwater pollution prevention and clean-up activities.

This subtask provides an allocation of effort for McGowan Consulting to review selected areas of the City's website content and prepare a memo with recommendations for updating and aligning the content with stormwater program efforts and Regional Permit requirements. A similar memo was last provided to the City in FY2016-17. In addition, this subtask allocates effort to assist the City in developing metrics for measuring the effectiveness of the PIPP objectives as required under the new Regional MS4 Permit. City-specific metrics could be based on leveraging the City's existing modes of outreach, such as social media channels and digital email communications.

Effort to develop joint watershed outreach content for PIPP activities is included in the separate contract under the Watershed Coordination task of the Beach Cities CIMP MOU and is excluded from this scope of services. It is assumed that the Los Angeles County Department of Public Works will continue to implement the following efforts on behalf of the Permittees: maintaining the countywide hotline (888-Clean-LA) and website (888cleanLA.com) for public reporting, broadcasting public service announcements and conducting regional advertising campaigns, maintaining the [waterforla.com](http://waterforla.com) and [safecleanwaterla.org](http://safecleanwaterla.org) websites with regional water resources information and opportunities for the public to engage in water resources planning, and implementing a County-wide K-12 outreach program. It is also assumed that the City's solid waste franchisee will continue to disseminate information to residents on proper handling of wastes such as: vehicle waste fluids, household waste materials, construction waste materials, green waste and animal waste. It is further assumed that the City will continue to implement its ongoing programs identified in previous Individual Annual Reports and the Beach Cities EWMP such as: equipping municipal parks and the greenbelt with pet waste collection stations and promoting West Basin Municipal Water Districts landscape irrigation efficiency and related programs to residents and businesses.

*Subtask 2 Deliverable:*

- Memo with recommendations for updating the City's website content and proposing metrics for tracking effectiveness of the City's individual PIPP

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### **Task 3 Commercial and Industrial Facilities Program**

The MS4 Permit requires the implementation of an Commercial and Industrial Facilities Program to track facilities via an electronic inventory, and to educate, inspect and ensure compliance at facilities that are critical sources of pollutants in stormwater. Consistent with the Beach Cities EWMP, the City implements an enhanced annual inspection program for food service establishments with an enhanced inspection checklist and promotion of environmental certification opportunities such as the City's Green Business Certification, the Bay Foundation's Clean Bay Restaurant Certification, and the Surfrider Ocean Friendly Restaurants Certification. The City contracts separately for the required stormwater inspections and as-needed follow up inspections of commercial and industrial facilities within the City, including the annual inspection of food service establishments, nurseries/garden centers, automotive service facilities, retail gasoline stations, and one (1) facility subject to the Industrial General Permit.

This task allocates time for McGowan Consulting to update and maintain the City's electronic Critical Source Inventory based on the annual inspection results and information provided in electronic format by the City's inspection contractor. This task also allocates time for assisting City staff in reviewing results of the annual inspections at food service establishments and making recommendations for sites at which to promote environmental certifications and for sites that need follow-up by Code Enforcement. Effort under this task is consistent with effort expended on this task in previous years. Any as-needed response to complaints related to illicit discharges from commercial facilities are addressed under Task 6 in coordination with Code Enforcement staff.

It is assumed that the City's inspection contractor(s) will provide electronic copies of completed inspection forms and will conduct follow-up inspections and prepare notices of violation for non-compliant facilities.

#### *Subtask 3 Deliverable:*

- Annual update of commercial facilities inventory

### **Task 4 Planning & Land Development and Development Construction Support**

The Planning and Land Development provisions of the MS4 Permit require the City to ensure that private development and redevelopment projects provide for permanent measures to reduce storm water pollutant loads from the development site by conditioning approval of these projects with low impact development (LID) requirements. The City is also responsible for requiring that its qualifying capital improvement projects incorporate LID requirements and/or the City's Green Street Policy as applicable.

In addition, the City is required to implement a Construction Program to track and ensure appropriate BMPs are being implemented on construction sites within its jurisdiction. Most construction sites in the City are less than one acre in size and for such sites the City is responsible for ensuring that development contractors implement a prescribed list of stormwater BMPs outlined in the MS4 Permit—the small site construction brochure developed jointly by the Beach Cities WMG is targeted at small construction site developers and can be used by City Building & Safety staff to educate and enforce these requirements. The City must also ensure construction sites larger than one acre are obtaining coverage under the Statewide Construction General Permit (CGP) and must carry out inspections of these sites at frequencies consistent with the MS4 Permit requirements.

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This task includes time for McGowan Consulting to conduct a training session for Community Development and Engineering staff on the Planning and Land Development Program and Construction Program requirements of the Regional MS4 Permit. This training was last conducted by McGowan Consulting in FY2018-19, however it will be required annually following adoption of the Regional MS4 Permit. In addition, this task also includes time to track and review reporting via the State Board's online SMARTS system by construction sites disturbing 1 acre or more within the City on a quarterly basis to confirm the proper documentation and reporting requirements are being followed by any such large construction site contractors and to identify any notices of violation issued by the Regional Board posted to the SMARTS system for sites within the City.

Since the City's municipal code provides legal authority for current and successor MS4 permits,<sup>2</sup> it is assumed that any minor revisions to the City's stormwater ordinance and updates to the City's LID Developer Guide will be deferred until FY2022-23, the year following adoption of the Regional Permit and approval of the updated Beach Cities EWMP by the Regional Board. It is also assumed that for construction sites one acre and larger the City is utilizing in-house or contracted Building and Safety inspectors that are trained and knowledgeable in CGP requirements (QSD/QSP-trained) and will provide the necessary information to McGowan Consulting for annual reporting purposes.

**Task 4 Deliverable:**

- One (1) interactive training session for Planning, Building & Safety, and Engineering staff on the Regional MS4 Permit Planning and Land Development provisions

**Task 5 Public Agency Activities Training and Support**

The Public Agency Activities program focuses primarily on the capital improvement and maintenance activities of public works and community services departments and requires implementation of best management practices (BMPs) to minimize water quality impacts from the maintenance of public facilities, including parks, streets, recreational and other municipally owned or operated facilities. The City must annually train all employees in targeted positions whose interactions, jobs, and activities affect stormwater quality. This training requirement also applies to contractors performing privatized/contracted municipal services such as landscape maintenance or trash collection. Training must address the requirements of the overall stormwater management program, as well as training specific to the duties carried out by the employee or contractor.

This task provides for preparation and delivery of an interactive or virtually accessible training customized to the City's needs for targeted staff and contracted service providers and will include refresher training of field staff in identification and reporting of illicit discharges. The training will provide an overview of the permit requirements and then focus the majority of training time on city-specific operation and maintenance activities with the potential to impact stormwater quality. An allocation of time is also included in this subtask to provide support and informal training for managerial staff within the Department of Public Works to familiarize management staff with the requirements of the Regional MS4 Permit and to plan for implementation of those provisions as well as implementation of City-specific TMDL and EWMP requirements.

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<sup>2</sup> City of Manhattan Beach Municipal Code, Title 5, Chapter 5.84.020 Definitions, "Municipal NPDES permit".

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**Task 5 Deliverable:**

- Online virtually accessible training or one (1) interactive training session for targeted public works staff and contractors

**Task 6 Illicit Discharge Detection and Elimination Program Support**

The City's Illicit Discharge Detection and Elimination (IDDE) program includes procedures for conducting investigations to identify the source of suspected illicit discharges and procedures for eliminating the discharge. During FY2021-22 this task provides a small allocation of time to support to City staff in implementing the program, as needed.

The City's IDDE procedures manual must be updated once per permit term and it is assumed that such an update will be made during FY2022-23 in the year following adoption of the Regional MS4 Permit and is excluded from this scope of services. It is assumed that training on the requirements of the IDDE program will be included in the trainings discussed in Subtask 5.

**Cost Estimate**

McGowan Consulting will conduct the work effort described in the foregoing Scope of Services for an amount not to exceed **\$49,771** as detailed in the following Budget Table for MS4 Permit Consulting Services FY2021-22 (Budget Table) and McGowan Consulting Labor Rates for Contract Year 2021-22 (Rate Schedule). In order to provide a measure of flexibility to best meet the needs of the City and given the nature of regulatory uncertainty at this time, it is understood that reallocation of level of effort between tasks and subtasks may occur so long as the total contract amount is not exceeded. When possible, consulting time for attending meetings and performing tasks in common for clients will be distributed between two or more clients, thereby reducing individual costs to each client. Tasks and subtasks where labor effort has been reduced due to an assumption of work performed in common for more than one client are identified with an asterisk (\*) in the Budget Table. Invoices will be submitted based on actual effort expended in accordance with the Rate Schedule. Labor rates shown in the Rate Schedule include automobile mileage, parking fees, and routine printing and copying. Other direct costs chargeable to the project may include: subcontracted webpage hosting, graphic design, illustration and translation services; report reproduction and binding; courier services; and other direct project costs not specifically included in labor rates.

McGowan Consulting will inform City staff of changing requirements and emerging issues as part of regular communication. It is the nature of regulatory-driven programs to be subject to uncertainty and unpredictable events such as changes in regulatory requirements with the issuance of the Regional MS4 permit, new/emerging regulatory issues, enforcement action, or significant additional support required by City staff that was unanticipated. If such unpredictable event(s) or needs arise, we are prepared to assist the City and, if necessary and at City staff's direction, we will submit a request for an authorization for scope change to provide the City with additional consulting services to meet the need.

## EXHIBIT B APPROVED FEE SCHEDULE

<b>Budget Table</b> <b>MS4 Permit Consulting Services FY2021-22</b>			
<b>Task</b>	<b>Description</b>	<b>Labor Hours</b>	<b>Estimated Cost</b>
1.1	Coordination, Communication and Program Management	65	\$ 10,205
1.2	MS4 Permit Individual Annual Report	48	\$ 7,104
1.3	Permit-wide Planning and Coordination *	36	\$ 5,544
1.4	Safe Clean Water Municipal Program Reporting	45	\$6,795
2	Public Information & Participation Program	24	\$ 3,624
3	Commercial and Industrial Facilities Program	24	\$3,552
4	Planning & Land Development and Construction Support*	26	\$ 4,082
5	Public Agency Activities Training and Support	55	\$ 8,305
6	Support for Illicit Discharge Detection & Elimination	4	\$ 560
Total Estimated Costs			\$ 49,771
<i>* estimate assumes cost savings due to work performed in common for more than one client</i>			

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### **Labor Rates**

**Contract Year 2021-22<sup>3</sup>**

#### **Professional/Staff Rates**

<b>Principal</b>	<b>\$169 per hour</b>
<b>Sr. Scientist</b>	<b>\$139 per hour</b>
<b>Staff Scientist</b>	<b>\$60 per hour</b>

#### **Expenses**

***Labor rates include:*** automobile mileage within greater Los Angeles and Orange County area, parking, routine printing and copying

***Other direct costs chargeable to the project include:*** graphic layout and illustration, webpage design and hosting, translation services, report reproduction and binding, courier services, blueprint services, graphics services, project-specific publications, and any other direct project costs not included in the labor rates.

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<sup>3</sup> Labor rates to be adjusted annually based on increases in the Consumer Price Index for the Los Angeles area as calculated by the U.S. Department of Labor Bureau of Labor Statistics