

Attachment A

Professional Services Agreement

**PROFESSIONAL SERVICES AGREEMENT
WITH MARINE TAXONOMIC SERVICES, LTD. FOR THE
2026 NEWPORT HARBOR SHALLOW-WATER EELGRASS SURVEY**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into as of this 14th day of July, 2026 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and MARINE TAXONOMIC SERVICES, LTD., an Oregon Corporation ("Consultant"), whose address is 920 Rancheros Drive, Suite F-1, San Marcos, CA 92069, and is made with reference to the following:

RECITALS

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.
- B. City desires to engage Consultant to survey and provide a depiction and quantification of shallow-water eelgrass within the Harbor and to monitor and remove invasive *Caulerpa taxifolia* green algae. ("Project").
- C. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the professional services described in this Agreement.
- D. City has solicited and received a proposal from Consultant, reviewed the previous experience and evaluated the expertise of Consultant, and desires to retain Consultant to render professional services under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM

The term of this Agreement shall commence on the Effective Date, and shall terminate on December 31, 2027, unless terminated earlier as set forth herein.

2. SERVICES TO BE PERFORMED

Consultant shall diligently perform all the services described in the Scope of Services attached hereto as Exhibit A and incorporated herein by reference ("Services" or "Work"). City may elect to delete certain Services within the Scope of Services at its sole discretion.

3. TIME OF PERFORMANCE

3.1 Time is of the essence in the performance of Services under this Agreement and Consultant shall perform the Services in accordance with the schedule included in

Exhibit A. In the absence of a specific schedule, the Services shall be performed to completion in a diligent and timely manner. The failure by Consultant to strictly adhere to the schedule set forth in Exhibit A, if any, or perform the Services in a diligent and timely manner may result in termination of this Agreement by City.

3.2 Notwithstanding the foregoing, Consultant shall not be responsible for delays due to causes beyond Consultant's reasonable control. However, in the case of any such delay in the Services to be provided for the Project, each party hereby agrees to provide notice within two (2) calendar days of the occurrence causing the delay to the other party so that all delays can be addressed.

3.3 Consultant shall submit all requests for extensions of time for performance in writing to the Project Administrator as defined herein not later than ten (10) calendar days after the start of the condition that purportedly causes a delay. The Project Administrator shall review all such requests and may grant reasonable time extensions for unforeseeable delays that are beyond Consultant's control.

3.4 For all time periods not specifically set forth herein, Consultant shall respond in the most expedient and appropriate manner under the circumstances, by hand-delivery or mail.

4. COMPENSATION TO CONSULTANT

4.1 City shall pay Consultant for the Services on a time and expense not-to-exceed basis in accordance with the provisions of this Section and the Schedule of Billing Rates attached hereto as Exhibit B and incorporated herein by reference. Consultant's compensation for all Work performed in accordance with this Agreement, including all reimbursable items and subconsultant fees, shall not exceed **One Hundred Seventy Four Thousand Two Hundred Eight Dollars and 00/100 (\$174,208.62)**, without prior written authorization from City. No billing rate changes shall be made during the term of this Agreement without the prior written approval of City.

4.2 Consultant shall submit monthly invoices to City describing the Work performed the preceding month. Consultant's bills shall include the name of the person who performed the Work, a brief description of the Services performed and/or the specific task in the Scope of Services to which it relates, the date the Services were performed, the number of hours spent on all Work billed on an hourly basis, and a description of any reimbursable expenditures. City shall pay Consultant no later than thirty (30) calendar days after approval of the monthly invoice by City staff.

4.3 City shall reimburse Consultant only for those costs or expenses specifically identified in Exhibit B to this Agreement or specifically approved in writing in advance by City.

4.4 Consultant shall not receive any compensation for Extra Work performed without the prior written authorization of City. As used herein, "Extra Work" means any Work that is determined by City to be necessary for the proper completion of the Project, but which is not included within the Scope of Services and which the parties did not

reasonably anticipate would be necessary at the execution of this Agreement. Compensation for any authorized Extra Work shall be paid in accordance with the Schedule of Billing Rates as set forth in Exhibit B.

5. PROJECT MANAGER

5.1 Consultant shall designate a Project Manager, who shall coordinate all phases of the Project. This Project Manager shall be available to City at all reasonable times during the Agreement term. Consultant has designated Robert Mooney to be its Project Manager. Consultant shall not remove or reassign the Project Manager or any personnel listed in Exhibit A or assign any new or replacement personnel to the Project without the prior written consent of City. City's approval shall not be unreasonably withheld with respect to the removal or assignment of non-key personnel.

5.2 Consultant, at the sole discretion of City, shall remove from the Project any of its personnel assigned to the performance of Services upon written request of City. Consultant warrants that it will continuously furnish the necessary personnel to complete the Project on a timely basis as contemplated by this Agreement.

5.3 If Consultant is performing inspection services for City, the Project Manager and any other assigned staff shall be equipped with a cellular phone to communicate with City staff. The Project Manager's cellular phone number shall be provided to City.

6. ADMINISTRATION

This Agreement will be administered by the Public Works Department. City's Director of Public Works or designee shall be the Project Administrator and shall have the authority to act for City under this Agreement. The Project Administrator shall represent City in all matters pertaining to the Services to be rendered pursuant to this Agreement.

7. CITY'S RESPONSIBILITIES

To assist Consultant in the execution of its responsibilities under this Agreement, City agrees to provide access to and upon request of Consultant, one copy of all existing relevant information on file at City. City will provide all such materials in a timely manner so as not to cause delays in Consultant's Work schedule.

8. STANDARD OF CARE

8.1 All of the Services shall be performed by Consultant or under Consultant's supervision. Consultant represents that it possesses the professional and technical personnel required to perform the Services required by this Agreement, and that it will perform all Services in a manner commensurate with community professional standards and with the ordinary degree of skill and care that would be used by other reasonably competent practitioners of the same discipline under similar circumstances. All Services shall be performed by qualified and experienced personnel who are not employed by City. By delivery of completed Work, Consultant certifies that the Work conforms to the

requirements of this Agreement, all applicable federal, state and local laws, and legally recognized professional standards.

8.2 Consultant represents and warrants to City that it has, shall obtain, and shall keep in full force and effect during the term hereof, at its sole cost and expense, all licenses, permits, qualifications, insurance and approvals of whatsoever nature that is legally required of Consultant to practice its profession. Consultant shall maintain a City of Newport Beach business license during the term of this Agreement.

8.3 Consultant shall not be responsible for delay, nor shall Consultant be responsible for damages or be in default or deemed to be in default by reason of strikes, lockouts, accidents, acts of God, or the failure of City to furnish timely information or to approve or disapprove Consultant's Work promptly, or delay or faulty performance by City, contractors, or governmental agencies.

9. HOLD HARMLESS

9.1 To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers and employees (collectively, the "Indemnified Parties"), from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), and which relate (directly or indirectly) to the negligence, recklessness, or willful misconduct of the Consultant or its principals, officers, agents, employees, vendors, suppliers, subconsultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable, or any or all of them.

9.2 Notwithstanding the foregoing, nothing herein shall be construed to require Consultant to indemnify the Indemnified Parties from any Claim arising from the sole negligence, active negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorneys' fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the Consultant.

10. INDEPENDENT CONTRACTOR

It is understood that City retains Consultant on an independent contractor basis and Consultant is not an agent or employee of City. The manner and means of conducting the Work are under the control of Consultant, except to the extent they are limited by statute, rule or regulation and the expressed terms of this Agreement. No civil service status or other right of employment shall accrue to Consultant or its employees. Nothing in this Agreement shall be deemed to constitute approval for Consultant or any of

Consultant's employees or agents, to be the agents or employees of City. Consultant shall have the responsibility for and control over the means of performing the Work, provided that Consultant is in compliance with the terms of this Agreement. Anything in this Agreement that may appear to give City the right to direct Consultant as to the details of the performance of the Work or to exercise a measure of control over Consultant shall mean only that Consultant shall follow the desires of City with respect to the results of the Services.

11. COOPERATION

Consultant agrees to work closely and cooperate fully with City's designated Project Administrator and any other agencies that may have jurisdiction or interest in the Work to be performed. City agrees to cooperate with the Consultant on the Project.

12. CITY POLICY

Consultant shall discuss and review all matters relating to policy and Project direction with City's Project Administrator in advance of all critical decision points in order to ensure the Project proceeds in a manner consistent with City goals and policies.

13. PROGRESS

Consultant is responsible for keeping the Project Administrator informed on a regular basis regarding the status and progress of the Project, activities performed and planned, and any meetings that have been scheduled or are desired.

14. INSURANCE

Without limiting Consultant's indemnification of City, and prior to commencement of Work, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement or for other periods as specified in this Agreement, policies of insurance of the type, amounts, terms and conditions described in the Insurance Requirements attached hereto as Exhibit C, and incorporated herein by reference.

15. PROHIBITION AGAINST ASSIGNMENTS AND TRANSFERS

Except as specifically authorized under this Agreement, the Services to be provided under this Agreement shall not be assigned, transferred contracted or subcontracted out without the prior written approval of City. Any of the following shall be construed as an assignment: The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Consultant, or of the interest of any general partner or joint venturer or syndicate member or cotenant if Consultant is a partnership or joint-venture or syndicate or co-tenancy, which shall result in changing the control of Consultant. Control means fifty percent (50%) or more of the voting power or twenty-five percent (25%) or more of the assets of the corporation, partnership or joint-venture.

16. SUBCONTRACTING

The subcontractors authorized by City, if any, to perform Work on this Project are identified in Exhibit A. Consultant shall be fully responsible to City for all acts and omissions of any subcontractor. Nothing in this Agreement shall create any contractual relationship between City and any subcontractor nor shall it create any obligation on the part of City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise required by law. City is an intended beneficiary of any Work performed by the subcontractor for purposes of establishing a duty of care between the subcontractor and City. Except as specifically authorized herein, the Services to be provided under this Agreement shall not be otherwise assigned, transferred, contracted or subcontracted out without the prior written approval of City.

17. OWNERSHIP OF DOCUMENTS

17.1 Each and every report, draft, map, record, plan, document and other writing produced, including but not limited to, websites, blogs, social media accounts and applications (hereinafter “Documents”), prepared or caused to be prepared by Consultant, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Consultant or any other party. Additionally, all material posted in cyberspace by Consultant, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Consultant or any other party. Consultant shall, at Consultant’s expense, provide such Documents, including all logins and password information to City upon prior written request.

17.2 Documents, including drawings and specifications, prepared by Consultant pursuant to this Agreement are not intended or represented to be suitable for reuse by City or others on any other project. Any use of completed Documents for other projects and any use of incomplete Documents without specific written authorization from Consultant will be at City’s sole risk and without liability to Consultant. Further, any and all liability arising out of changes made to Consultant’s deliverables under this Agreement by City or persons other than Consultant is waived against Consultant, and City assumes full responsibility for such changes unless City has given Consultant prior notice and has received from Consultant written consent for such changes.

17.3 Computer Aided Design and Drafting (“CADD”) data delivered to City shall include the professional stamp of the engineer or architect in charge of or responsible for the Work. City agrees that Consultant shall not be liable for claims, liabilities or losses arising out of, or connected with (a) the modification or misuse by City, or anyone authorized by City, of CADD data; or (b) any use by City, or anyone authorized by City, of CADD data for additions to this Project, for the completion of this Project by others, or for any other Project, excepting only such use as is authorized, in writing, by Consultant. By acceptance of CADD data, City agrees to indemnify Consultant for damages and liability resulting from the modification or misuse of such CADD data. All original drawings

shall be submitted to City in the version of AutoCAD used by the City in .dwg file format, and should comply with the City's digital submission requirements for improvement plans available from the City's Public Works Department.

17.4 All improvement and/or construction plans shall be plotted on standard twenty-four inch (24") by thirty-six inch (36") paper size. Consultant shall provide to City digital 'As-Built' drawings in both AutoCAD and Adobe PDF file format within thirty (30) days after finalization of the Project.

18. CONFIDENTIALITY

All Documents, including drafts, preliminary drawings or plans, notes and communications that result from the Services in this Agreement, shall be kept confidential unless City expressly authorizes in writing the release of information.

19. INTELLECTUAL PROPERTY INDEMNITY

Consultant shall defend and indemnify City, its agents, officers, representatives and employees against any and all liability, including costs, for infringement or alleged infringement of any United States' letters patent, trademark, or copyright, including costs, contained in Consultant's Documents provided under this Agreement.

20. RECORDS

Consultant shall keep records and invoices in connection with the Services to be performed under this Agreement. Consultant shall maintain complete and accurate records with respect to the costs incurred under this Agreement and any Services, expenditures and disbursements charged to City, for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such records and invoices shall be clearly identifiable. Consultant shall allow a representative of City to examine, audit and make transcripts or copies of such records and invoices during regular business hours. Consultant shall allow inspection of all Work, data, Documents, proceedings and activities related to the Agreement for a period of three (3) years from the date of final payment to Consultant under this Agreement.

21. WITHHOLDINGS

City may withhold payment to Consultant of any disputed sums until satisfaction of the dispute with respect to such payment. Such withholding shall not be deemed to constitute a failure to pay according to the terms of this Agreement. Consultant shall not discontinue Work as a result of such withholding. Consultant shall have an immediate right to appeal to the City Manager or designee with respect to such disputed sums. Consultant shall be entitled to receive interest on any withheld sums at the rate of return that City earned on its investments during the time period, from the date of withholding of any amounts found to have been improperly withheld.

22. ERRORS AND OMISSIONS

In the event of errors or omissions that are due to the negligence or professional inexperience of Consultant which result in expense to City greater than what would have resulted if there were not errors or omissions in the Work accomplished by Consultant, the additional design, construction and/or restoration expense shall be borne by Consultant. Nothing in this Section is intended to limit City's rights under the law or any other sections of this Agreement.

23. CITY'S RIGHT TO EMPLOY OTHER CONSULTANTS

City reserves the right to employ other Consultants in connection with the Project.

24. CONFLICTS OF INTEREST

24.1 Consultant or its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "Act") and/or Government Code §§ 1090 et seq., which (1) require such persons to disclose any financial interest that may foreseeably be materially affected by the Work performed under this Agreement, and (2) prohibit such persons from making, or participating in making, decisions that will foreseeably financially affect such interest.

24.2 If subject to the Act and/or Government Code §§ 1090 et seq., Consultant shall conform to all requirements therein. Failure to do so constitutes a material breach and is grounds for immediate termination of this Agreement by City. Consultant shall indemnify and hold harmless City for any and all claims for damages resulting from Consultant's violation of this Section.

25. NOTICES

25.1 All notices, demands, requests or approvals, including any change in mailing address, to be given under the terms of this Agreement shall be given in writing, and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided.

25.2 All notices, demands, requests or approvals from Consultant to City shall be addressed to City at:

Attn: Director of Public Works
Public Works Department
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

25.3 All notices, demands, requests or approvals from City to Consultant shall be addressed to Consultant at:

Attn: Robert Mooney
Marine Taxonomic Services, LTD.
920 Rancheros Drive, Suite F-1
San Marcos, CA 92069

26. CLAIMS

Unless a shorter time is specified elsewhere in this Agreement, before making its final request for payment under this Agreement, Consultant shall submit to City, in writing, all claims for compensation under or arising out of this Agreement. Consultant's acceptance of the final payment shall constitute a waiver of all claims for compensation under or arising out of this Agreement except those previously made in writing and identified by Consultant in writing as unsettled at the time of its final request for payment. Consultant and City expressly agree that in addition to any claims filing requirements set forth in the Agreement, Consultant shall be required to file any claim Consultant may have against City in strict conformance with the Government Claims Act (Government Code sections 900 *et seq.*).

27. TERMINATION

27.1 In the event that either party fails or refuses to perform any of the provisions of this Agreement at the time and in the manner required, that party shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of five (5) calendar days, or if more than five (5) calendar days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within five (5) calendar days after receipt of written notice of default, specifying the nature of such default and the steps necessary to cure such default, and thereafter diligently take steps to cure the default, the non-defaulting party may terminate the Agreement forthwith by giving to the defaulting party written notice thereof.

27.2 Notwithstanding the above provisions, City shall have the right, at its sole and absolute discretion and without cause, of terminating this Agreement at any time by giving no less than seven (7) calendar days' prior written notice to Consultant. In the event of termination under this Section, City shall pay Consultant for Services satisfactorily performed and costs incurred up to the effective date of termination for which Consultant has not been previously paid. On the effective date of termination, Consultant shall deliver to City all reports, Documents and other information developed or accumulated in the performance of this Agreement, whether in draft or final form.

28. STANDARD PROVISIONS

28.1 Recitals. City and Consultant acknowledge that the above Recitals are true and correct and are hereby incorporated by reference into this Agreement.

28.2 Compliance with all Laws. Consultant shall, at its own cost and expense, comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted. In addition, all Work prepared by Consultant shall conform to applicable City,

county, state and federal laws, rules, regulations and permit requirements and be subject to approval of the Project Administrator and City.

28.3 Waiver. A waiver by either party of any breach, of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

28.4 Integrated Contract. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein.

28.5 Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Agreement and the Scope of Services or any other attachments attached hereto, the terms of this Agreement shall govern.

28.6 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

28.7 Amendments. This Agreement may be modified or amended only by a written document executed by both Consultant and City and approved as to form by the City Attorney.

28.8 Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

28.9 Controlling Law and Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange, State of California.

28.10 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, sexual orientation, age or any other impermissible basis under law.

28.11 No Attorneys' Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorneys' fees.

28.12 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**
Date: Jun 24, 2026 _____

CITY OF NEWPORT BEACH,
a California municipal corporation
Date: _____

By: Jose Montoya
Jose Montoya (Jun 24, 2026 17:05:19 PDT)
Aaron C. Harp
City Attorney

By: _____
Lauren Kleiman
Mayor

ATTEST:
Date: _____

**CONSULTANT: MARINE TAXONOMIC
SERVICES, LTD.,** an Oregon Corporation
Date: _____

By: _____
Lena Shumway
City Clerk

By: _____
Robert Mooney
Vice President

Date: _____

By: _____
Robin Jones
Secretary and Chief Financial Officer

[END OF SIGNATURES]

Attachments: Exhibit A – Scope of Services
 Exhibit B – Schedule of Billing Rates
 Exhibit C – Insurance Requirements

EXHIBIT A

SCOPE OF SERVICES

SCOPE OF SERVICES

The City is required to survey shallow-water eelgrass distribution in the harbor every two years, and to survey deep-water eelgrass every four years as detailed in the City's *Eelgrass Protection and Mitigation Plan for Shallow Waters in Lower Newport Bay: An Ecosystem Best Management Program*¹ (EPMP 2015). Eelgrass is surveyed within three zones (based on eelgrass presence and variation in overall abundance): (1) Stable Zone, (2) Transitional Zone, and (3) Unvegetated Zone (See Figure 2). Each zone is subject to different allowable annual temporary impacts to eelgrass that may be temporarily impacted by routine maintenance dredging activities. Every two years, a shallow-water eelgrass survey is conducted to track eelgrass distribution in relation to these established zones and to assess long-term eelgrass trends within the harbor. Detailed information on the distribution and abundance of eelgrass shall be documented in a comprehensive report that will facilitate the designation and amount of allowable impacts while also assessing the harbor's overall eelgrass health and total quantity. This current cycle does not include the focused deep-water survey.

Geographic Extents

The extent of the shallow-water eelgrass survey shall, at a minimum, reflect the extents presented on Figures 1 and 2 (attached). The eelgrass survey must also include the following areas within Lower Newport Bay:

- Areas extending north of Pacific Coast Highway (PCH) to Dover Shores and the Newport Aquatic Center.
- Shallow-water habitat fronting the Back Bay Science Center, the University of California Irvine Rowing Team Crew Base, the public launch ramp at the Newport Dunes, and docks fronting the Back Bay Bistro restaurant.
- Newport Dunes Marina and the full extent of the inner and outer De Anza Peninsula (commencing immediately north of PCH).
- Unvegetated Eelgrass Zone (please consider alternate and more cost-effective methodologies for this area).

Prior to initiating eelgrass surveys, Consultant shall work closely with the City to confirm the final geographic extents.

¹ Eelgrass Protection and Mitigation Plan for Shallow Waters in Lower Newport Bay: An Ecosystem Best Management Program (EPMP, City of Newport Beach, 2015). Accessible online at: <http://www.newportbeachca.gov/home/showdocument?id=21830>

Survey Methodology

Shallow-Water Survey

Assessing shallow-water eelgrass dynamics relies on the completion of quality and consistent surveys and mapping. Parameters that should be included in the eelgrass survey include: 1) spatial distribution, 2) areal extent, 3) percentage of vegetated cover, and 4) the turion (shoot) density. The methodology shall be explicitly as presented in the EPMP and in compliance with the California Eelgrass Mitigation Policy and Implementing Guidelines (CEMP)².

The survey shall be conducted by qualified biologists consisting of a diver and a surface support biologist in a kayak. The biologist diver would first locate the beginning of an eelgrass bed and mark it with a buoy. The surface support biologist would then initiate tracking of the biologist diver with GPS as the diver swims the perimeter of the individual eelgrass bed. Once the diver returns to the beginning point, the GPS polygon area mapping would be terminated. Eelgrass patches that are less than two square meters in size shall be referenced as a GPS “point”. Down-looking sonar can also be used to augment the shallow-water eelgrass survey where shallow-water areas are too large to be surveyed by diving or where diving conditions are too hazardous. However, the down-looking sonar technique shall be used sparingly with preference on diver-based surveys.

To assess eelgrass turion density, a minimum of 10 eelgrass turion counts shall be performed visually via SCUBA and within each of the 23 eelgrass regions as defined in Figure 1 (230 turion counts total). The diving biologist shall count the number of live, green shoots at the sediment/shoot interface within a 0.07-square-meter quadrat. Turion counts shall be conducted along an underwater transect between the shallow and deep edge of each eelgrass bed. The counting methods shall be standardized prior to conducting the surveys to ensure the accuracy of counts between different team members.

The following shall also be observed and noted during the survey: general eelgrass health, eelgrass blade lengths and widths, sedimentary conditions, water visibility, water temperature, water depths, and fauna and flora. Additionally, within the 23 areas where turion counts are conducted, the biologist diver shall survey perpendicular through the center of the eelgrass bed to assess presence/absence of *Caulerpa*.

Proposed survey technique, equipment and methodology shall be described in detail.

² National Marine Fisheries Service, 2014. California Eelgrass Mitigation Policy and Implementing Guidelines. October 2014. Accessed online at the following link:
http://www.westcoast.fisheries.noaa.gov/publications/habitat/california_eelgrass_mitigation/Final%20CEMP%20October%202014/comp_oct_2014_final.pdf

Additional Survey Requirements

Caulerpa

While completing the shallow-water eelgrass survey, Consultant shall also conduct a surveillance level *Caulerpa* survey consistent with the Caulerpa Survey Protocol (updated as of October 2021)³. This is inclusive of the more detailed survey within areas where turion counts are conducted.

The final report shall include a section describing the areas of more focused surveys or peripheral surveys, and documenting the results. A Caulerpa Survey Report shall also be included and submitted per the requirements of the Caulerpa Control Protocol.

Identified Debris

Consultant shall also survey and document any large debris found. The identification shall be limited to objects including, but not limited to, small derelict/sunken vessels, electronic equipment, dock/float debris, furniture etc. The final report shall include a table with a brief description of the debris and GPS coordinates. The intent of the debris identification effort is to support subsequent harbor clean-up efforts. Particular attention should be paid to the public pier areas.

Eelgrass Restoration Method Study

In 2019, the City retained a consultant to assess different eelgrass restoration methods and more specifically to evaluate the relative effectiveness of eelgrass transplanting efforts utilizing both new and traditional eelgrass transplanting methods. The goal was to build upon existing eelgrass transplanting information by designing a study to evaluate the relative effectiveness in performance and cost of three unique eelgrass transplanting methods: 1) traditional bare-root bundle planting; 2) transplanting eelgrass remotely with frames (TERFs); and 3) transplanting eelgrass remotely with rope (TERR). The results of the analysis were presented in a report and provided to the agencies as part of the RGP 54 annual report. Consultant shall prepare the final report to include a discussion on how the study area sites are functioning.

Reporting

Progress Updates

Consultant shall provide weekly progress updates to the City, and attend up to two in-person preparation meetings at the City's office in Newport Beach or via video conference.

Maps

In compliance with the CEMP and consistent with the EPMP, eelgrass maps shall, at a minimum, include the following:

- A graphic scale bar, north arrow, legend, and horizontal and vertical datum.
- A boundary illustrating the limits of the area surveyed.
- Bathymetric contours for the survey area, including both the action area(s) and reference site(s) in increments of not more than one foot.

³ <https://media.fisheries.noaa.gov/2021-12/caulerpa-control-protocol-v5.pdf>

- The boundary of the defined eelgrass bed including an identification of area exclusions based on physical unsuitability to support eelgrass habitat.
- The existing eelgrass cover within the defined eelgrass bed at the time of the survey.
- Electronic maps and all data files shall be submitted to the City as part of the final PDF report. Transfer of data files will be coordinated with the City's GIS Division and will be compatible with their system.

Final Report

The final report shall generally conform to previous eelgrass survey reports prepared for the City and shall provide a detailed description of the survey coverage (acreage) and any interpolation methods used in mapping. Information shall be presented relative to the established eelgrass zones presented in Figures 1, 2 and 3. Eelgrass distribution and abundance shall be summarized and compared across sampling areas. Eelgrass turion density shall be analyzed by station with a comparative analysis between station and all previous surveys. Summary statistics for each eelgrass turion density station shall be generated and shall include mean, standard deviation, number of samples, and minimum and maximum values. Eelgrass density data shall be presented in the number of turions per square meters. Other marine life, including *Caulerpa*, and large debris identification results shall also be generated and presented as part of the final report.

Schedule

Consultant shall staff accordingly so that all surveys are complete during the growth season. As survey areas are completed, the data shall be submitted to the City in batches to aid in year-over-year calculations as required in the annual report. The final report and all electronic files shall be provided to the City by **December 15, 2026**.

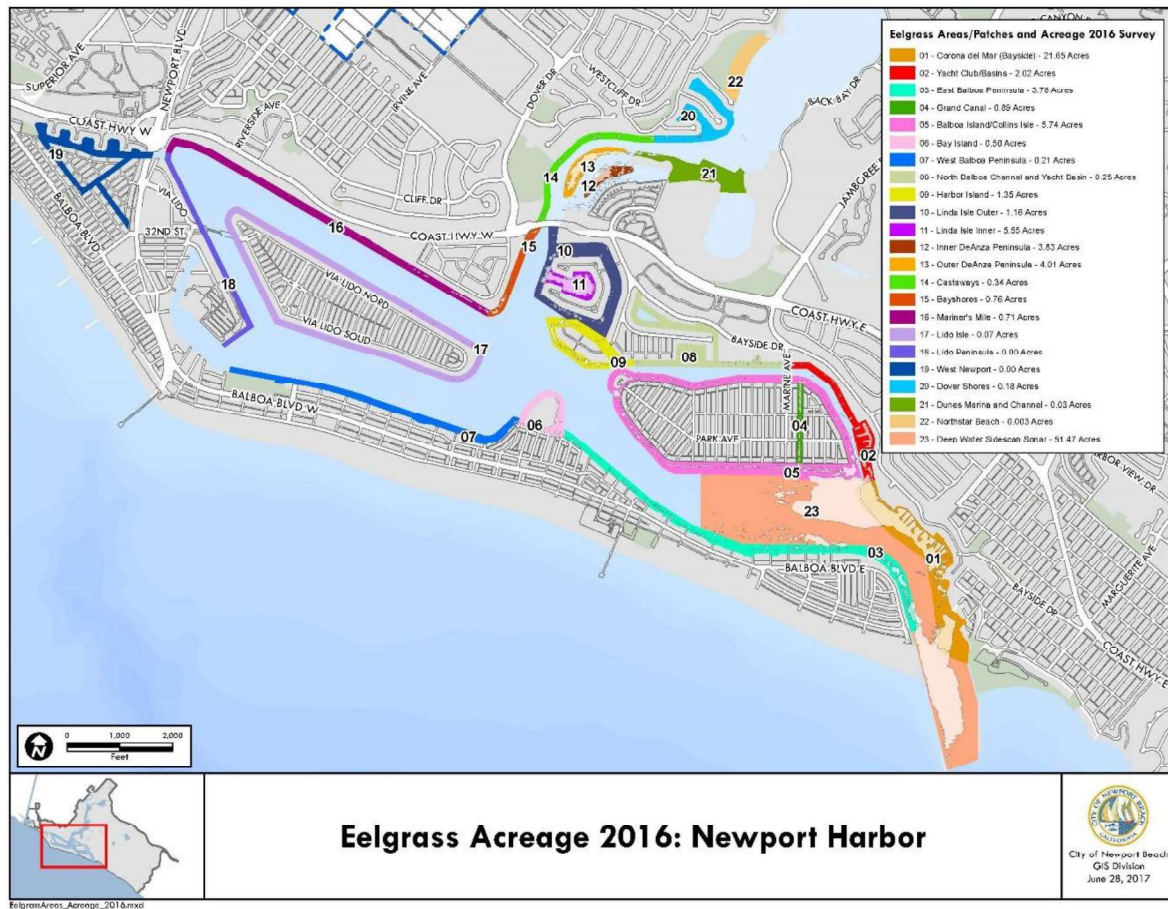


Figure 1. Eelgrass Acreage 2016: Newport Harbor



Figure 2. Location of Stable, Transitional, and unvegetated eelgrass zones based on CRM (2010).

Figure 2: Location of Stable, Transitional and Unvegetated Eelgrass Zones



Figure 3 – Map of eelgrass coverage observed during the 2024 survey.

1 Service Offerings

The below section is intended to illustrate to the City of Newport Beach our team's experience and qualifications to provide eelgrass and *Caulerpa* survey services in accordance with the Request for Proposals (RFP). In the sections below, we provide our staff experience, corporate experience, and a brief overview of our proposed work approach.

1-1 Experience of Proposed Staff

MTS is prepared to meet the unique demands of performing the shallow-water eelgrass and *Caulerpa* surveys in Newport Harbor. The work requires a team with a multitude of experiences working with eelgrass and *Caulerpa* to ensure that collected data are compatible with previous survey efforts. The MTS team understands the sampling methods, sampling design and statistics to ensure that data is appropriately collected and analyzed in ways that are consistent with data usage and past surveys. The MTS team provides these qualifications and more. MTS will ensure that its monitoring programs are conducted in a manner that generates data which provides an unbiased view of eelgrass coverage and health for proper resource management, while being sensitive to natural resources and their protection.

1-2 Marine Taxonomic Services, Ltd - Relevant Experience

MTS was founded in 1980 and incorporated in 1993. MTS has offices in Corvallis, Oregon; Lake Tahoe and San Diego, California. Though founded on their expertise in marine taxonomy, MTS has expanded its environmental services by providing a wide range of marine ecological services, including eelgrass monitoring and transplanting and *Caulerpa* surveys.

MTS built a reputation as a quality marine biological services provider when the modern fields of marine ecology and conservation were in their infancy. MTS is prepared to leverage our 40-years of field experience to provide an expert team that can lead the survey and reporting activities required by the scope of work. MTS has extensive experience using teams on field surveys and sample collections. We have worked with private clients, local agencies, and governmental agencies. MTS' experiences make it uniquely suited to support this Project. MTS has performed countless marine biological investigations in southern California and Newport Harbor. These experiences include many eelgrass investigations.

MTS has over twenty employees at offices in San Marcos, California; Lake Tahoe, California; and Corvallis, Oregon and is fully equipped with a suite of marine habitat monitoring equipment including side-scan and single-beam sonar, differential GPS, geographically registered underwater video equipment (remote and towed), benthic sampling gear and fisheries sampling gear. MTS' scientific consulting services include:

- Experimental design and sampling design for field biological studies
- Statistical data analysis
- Benthic sediment sampling
- Marine invertebrate identification
- Eelgrass mapping
- Eelgrass mitigation planning and implementation

- Sonar-based aquatic habitat mapping
- Aquatic invasive species control
- *Caulerpa* surveys
- Fisheries inventories
- Bathymetric surveys
- Salt marsh restoration
- Marine mammal surveys
- Biological monitoring of in-water construction

In addition to our qualifications, it should be noted that MTS has performed 2018, 2020, 2022, and 2024 surveys with Rick Ware of Coastal Resources Management. Rick Ware has retired such that we are not highlighting CRM in the proposal beyond this paragraph. However, we have discussed the project with Rick and intend to continue to utilize his services as a technical advisor.

1-3 Approach to the Scope of Services

1-3.1 Implementation of Shallow Water Surveys

Two methods are proposed to map eelgrass. The methods follow those of prior surveys (Coastal Resources Management (CRM) 2017) and the methods are consistent with guidelines within the California Eelgrass Mitigation Policy (CEMP) and the Eelgrass Protection and Mitigation Plan for Shallow Waters in Newport Bay (EPMP).

For shallow-water eelgrass habitat, the primary method will utilize biologist-divers using SCUBA and a surface support vessel (generally a kayak) equipped with a differential global positioning system (dGPS) to outline eelgrass bed areas. Each diver will be supported by a support vessel. The support vessel will follow their diver and maintain communication with the diver. When the diver encounters an eelgrass bed, the diver will notify the topside person via underwater communications equipment. The diver will then swim the eelgrass boundary while the topside person follows and logs positions with a dGPS.

In most regions, diver surveys will include the bayfloor from the low intertidal zone to about 30 feet past the end of docks and piers except where the pierhead lines are irregular such as along Carnation and China Cove where shallow-water eelgrass beds extend toward the navigational channel.

In general, diver methodologies will be the primary method for surveying eelgrass, however sonar may be used to supplement where appropriate. Where conditions are not safe to dive or where eelgrass beds are extensive or extend well beyond the pierhead line, remote sensing techniques (side-scan sonar and possibly down-looking sonar) will be used to survey for eelgrass. These methods are consistent with CRM (2017). Sonar data will be validated using underwater video or diver.

It is anticipated that in some areas where obstructions to sonar work are minimal, that the sonar data may provide a high-quality return of the eelgrass. In any instances where sonar data are used to delineate eelgrass boundaries within the pierhead line, divers will at a minimum still transit across the mapped eelgrass boundaries to confirm the accuracy of the digitized data. If sonar mapped polygons are accurate, divers will not need to swim the perimeter of those patches. If sonar data are

found to be inaccurate, divers will swim the perimeter and re-map the boundaries. All diver tracklines will be recorded so that the validation process is transparent.

Additionally, MTS will document any large debris items observed in sonar records or noted by divers. A table of coordinates and brief description will be provided in the report. Eelgrass density will be monitored by randomly placing quadrats in eelgrass beds and counting leaf shoots (turions) within each quadrat. Data will also be collected on eelgrass canopy height, water temperature, other species present, and other environmental variables consistent with CRM (2017).

During the surveys, divers will perform an anticipated 20% coverage *Caulerpa* survey in accordance with NMFS protocols. The primary means to survey for *Caulerpa* will be using *Caulerpa* certified divers performing the eelgrass surveys in the shallow-water areas. While searching for and surveying around eelgrass beds, divers will survey a significant amount of seafloor. Based on the current understanding of *Caulerpa* presence in Newport Harbor, MTS plans to perform some additional survey efforts specifically for *Caulerpa*. The diver tracks will be recorded regardless of whether the diver encounters eelgrass. This information along with data on other *Caulerpa* survey efforts will be reviewed. MTS will then choose areas for additional surveys to fill any gaps in the *Caulerpa* search. Divers will also survey for *Caulerpa* when swimming through eelgrass beds in those areas where eelgrass density assessments are to occur. Training and intercalibration among divers will occur prior to commencement of data collection. The MTS Team is prepared to meet all data collection requirements specified in the RFP.

MTS will prepare a report utilizing the same report template as prior efforts (refer to MTS and CRM 2020, 2022 and 2024). The report template will be updated with the information from the current shallow-water eelgrass survey using all the same parameters and methods as the prior efforts with some minor additions within the current effort. The consistency in data collection and reporting will ensure that any existing and future eelgrass mitigation surveys are completed with confidence and will protect the resource.

1-3.2 Implementation of Eelgrass Study Site Surveys

The goal of this task is to inform upon the success of the experimental eelgrass transplant effort completed in 2019. Survey of the eelgrass study sites would inform the City as to the success of various transplant methods six years after the transplant methods were deployed.

MTS will map eelgrass within the eelgrass study sites during the shallow water eelgrass surveys. MTS will follow data collection methods utilized in the year 1, 3, and 5 follow up survey of the eelgrass study sites performed in 2020, 2022 and 2024. MTS will lay transects across the study sites in the location of the experimental eelgrass transplant area and collect information related to coverage and density.

Results from the evaluation of the eelgrass study sites will be summarized and included in the report provided for the harbor-wide survey effort.

1-3.3 Geographic Extents

MTS shall work closely with the City to confirm the final geographic areas to be surveyed prior to the start of any survey work. Survey areas to include the following locations in Newport Bay:

- Areas extending north of Pacific Coast Highway (PCH) to Dover Shores and the Newport Aquatic Center
- Shallow-water habitat fronting the Back Bay Science Center, the University of California Irvine Rowing Team Crew Base, the public launch ramp at Newport Dunes, and docks fronting the Back Bay Bistro restaurant.
- Newport Dunes Marina and the full extent of the inner and outer De Anza Peninsula (commencing immediately north of PCH).
- Unvegetated Eelgrass Zone (using side scan sonar)
- Corona del Mar (bayside) 21.65 acres
- Yacht Club/basins 2.02 acres
- East Balboa Peninsula 3.78 acres
- Grand Canal 0.89 acres
- Balboa Island/Colins Isle 5.74 acres
- Bay Island 0.5 acres
- West Balboa Peninsula 0.21 acres
- North Balboa Channel and Yacht Basin 0.25 acres
- Harbor Island 1.35 acres
- Linda Isle Inner and Outer 6.71 acres
- DeAnza Peninsula Inner and Outer 7.84 acres
- Castaways 0.34 acres
- Bayshores 0.76 acres
- Mariner's Mile 0.71 acres
- Lido Isle 0.07 acres
- Dover Shores 0.18 acres
- Dunes Marina and Channel 0.03 acres
- Northstar Beach 0.003 acres

This work is consistent with the areal cover and the methods employed during previous studies and consistent with the RFP (Figure 1). The intent is to survey for eelgrass with sonar methods in expansive areas, areas where navigational channels pose a hazard for diving and within the unvegetated eelgrass zone. The use of sonar in the unvegetated eelgrass zone will allow for a means to efficiently search for any eelgrass patches. Any eelgrass found using sonar will be validated by divers. Within all of these areas diver surveys will provide eelgrass detail inside the pierhead line and will be used to validate sonar methods. During diver surveys within these shallow-water survey regions a visual search for *Caulerpa* will be performed by diver. Note that many of the areas described above are consistent with the text of the RFP that describes performance of eelgrass surveys in areas north of the PCH Bridge.

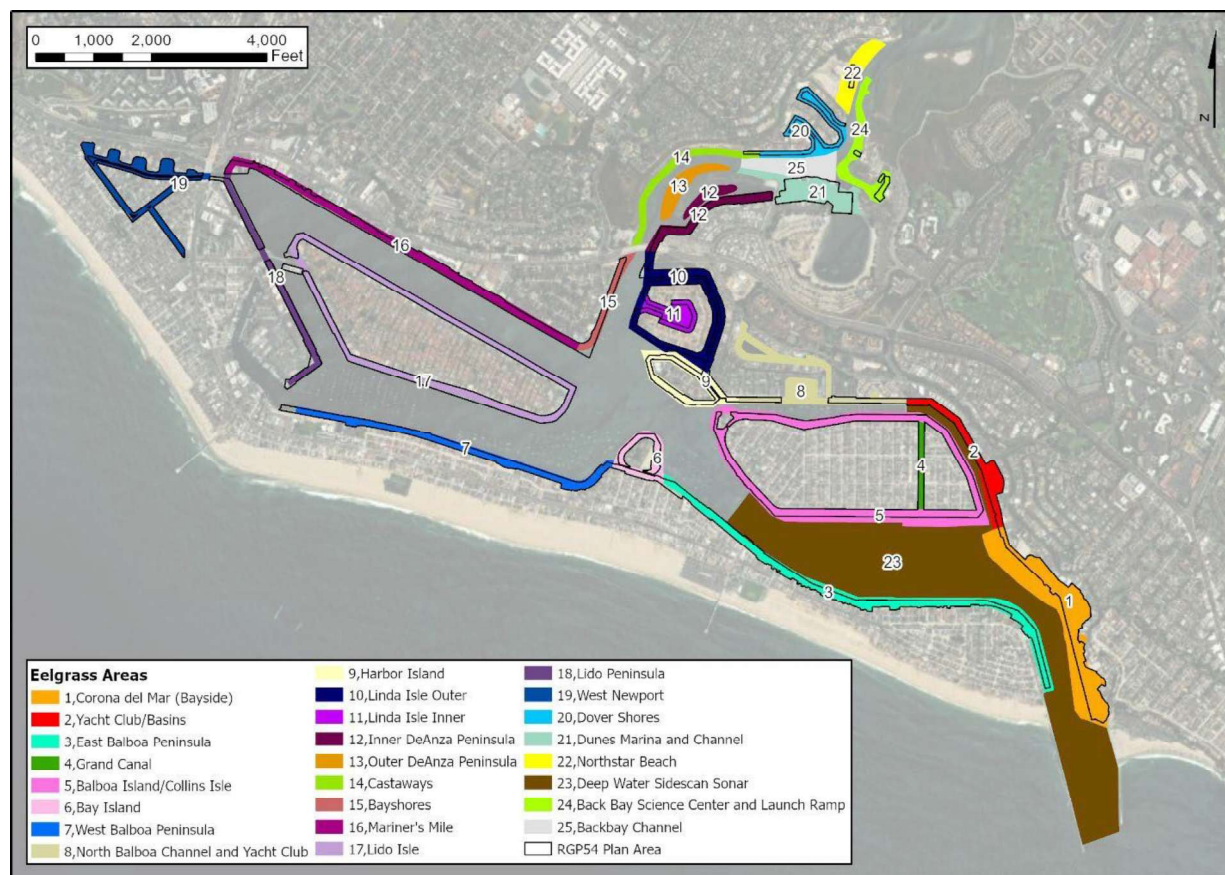


Figure 1. Map showing survey areas within Newport Harbor. Note that survey areas 23 and 25 are not included as part of the 2026 harbor wide eelgrass inventory survey effort.

MTS will incorporate side-scan sonar technology linked with high-resolution underwater video or diver verification to support diver survey methods. Methods to be employed will be the same as utilized during the 2008, 2012, 2016, 2020, 2022 and 2024 side-scan sonar surveys (CRM 2009, 2014, 2016, MTS and CRM 2020, 2022 and 2024). Sonar methodologies do not include survey areas 23 or 25 presented in Figure 1. It is extremely important to utilize consistent methodology, equipment, and data analysis techniques using remote survey methods, since the use of different instrumentation, data management systems, and personnel comparing previously collected data can result in varying results. Thus, our proposal to provide these services allows the City to make direct comparisons over time when submitting the results of the survey to the regulatory agencies.

The remote sensing methods we employ are approved techniques to map eelgrass as outlined in the California Eelgrass Mitigation Policy (National Marine Fisheries Service 2014). In addition, a proposed NOAA Southern California Eelgrass Regional-Wide Monitoring Program will include a recommendation that eelgrass habitat mapping efforts should be conducted using side-scan sonar methods and where possible, be accompanied by the collection of bathymetric data.

The project deliverable will be an eelgrass habitat map depicting eelgrass along with a calculation of eelgrass acreage. In accordance with the RFP, the MTS Team will submit preliminary acreages and electronic data files (compatible with the City of Newport Beach's GIS mapping system) associated

with the shallow-water eelgrass survey to the City. The survey results will be incorporated in the final report and all electronic files for the shallow-water eelgrass, large debris, and *Caulerpa* surveys shall be provided to the City by December 15, 2026. The *Caulerpa* survey report will be prepared in accordance with the *Caulerpa* Control Protocol.

1-3.4 Management Approach

Effective communication is critical to the successful implementation of dive and survey programs at the scale of this Project. The work effort will require teams to efficiently distribute survey efforts and implement those surveys in a safe and timely fashion. As such, clear transfer of information from Project objectives down to the daily assignment of tasks is critical to efficient, cost-effective Project management. MTS will provide weekly progress reports to the City and attend two in-person preparation meetings with at the City's office in Newport Beach or via video conference call.

The Project will require effective management to ensure team organization, task management, adherence to the project goals, and timely reporting. The MTS project manager, Robert Mooney, will be the primary point of contact with the City. This role will be established with a level of redundancy by including a senior field manager, Grace Teller, that is also capable of taking over as the project manager. If the senior field manager is not available for work, the project manager will assume both roles. In this way, the team ensures a top-down management approach whereby ensuring the City's goals are met and along with maximum continuity of MTS staff.

As the primary point of contact for the MTS Team, the project manager will be responsible for communicating project challenges, safety concerns, and management decisions to City staff in a timely manner. The MTS project manager will provide status updates on projects weekly to summarize current project status and present any challenges or concerns. The project manager will provide immediate email and telephone notification of significant safety concerns or other events that threaten the project or its efficiency. Any such significant events and corrective actions will be addressed during weekly status reports.

MTS recognizes the level of commitment required by City staff. We recognize that effective communication is necessary to allow resource managers to understand working situations and provide for adaptive management. It is also critical that the team's management structure allow for the safest and most efficient means of deploying resources. MTS brings its decades of aquatic experience to this Project. This means we can offer solutions where funds are spent efficiently and effectively. Aquatic operations can be expensive so MTS makes it our priority to coordinate and manage the resources effectively so that goals can be realized on time and within budget.

1-4 Service Offerings Summary

Our personnel experience, corporate qualifications, and project examples (below) illustrate that MTS has the expertise and equipment required to successfully perform the scope of work. MTS routinely performs surveys to map marine habitats and possess all equipment necessary to perform towed video, remotely operated vehicle, down-looking sonar, and side-scan sonar surveys. Our staff has experience performing eelgrass surveys in Newport Harbor and they understand how to safely and effectively operate within Newport Harbor. We intend to adhere to the best combination of previous survey methods to maintain a consistent dataset that the City of Newport Beach can have confidence in. This will allow for consistency in project planning within the regulatory context of Newport Harbor and prevent costly project delays associated with inadequate data collection.

MTS is qualified to satisfy the request made in the RFP. MTS will maintain regular communication with the City regarding survey progress and will be available to attend preparation meetings. MTS will provide information regarding eelgrass distribution mapping, eelgrass acreage calculations, eelgrass turion density analysis, historical trend comparisons, GIS-compatible electronic data, *Caulerpa* survey report, large debris inventory, restoration study site assessment, and a final survey report.

EXHIBIT B

SCHEDULE OF BILLING RATES



Chris Miller
Public Works Manager
City of Newport Beach, CA

June 8, 2026 (Revised June 16, 2026)

Re: Cost Proposal for RFP No. 26-48: 2026 Newport Harbor Shallow Water Eelgrass Survey

Dear Mr. Miller:

The attached cost proposal supports Marine Taxonomic Services response to the subject RFP. We have made no formal exceptions with regard to the RFP. However, we are hopeful that the City would be able to help facilitate areas where we can keep our small support vessel overnight when performing survey work. We have not included launch and dock fees in our proposal to provide you with the best possible value. Again, we take no formal exceptions and understand if no accommodation with regards to equipment storage can be made.

Please also note that in accordance with the language in the RFP, we have provided for 7 additional field survey days in our budget. Those 7 days are called out as a separate task and totals are provided with and without the additional days for your evaluation. The rates shown in Table 1 would be the same rates utilized for any additional work requested. We have additionally provided costs associated with a potential delay in contracting. Our costs assume 120 overtime hours necessary to meet the field work deadline in the event of a 2 week contracting delay.

If you have any questions about this cost proposal, do not hesitate to contact me at 760.331.7897 or via email (Robert.mooney@nv5.com). I look forward to the opportunity to work with you on this project.

Sincerely,

A handwritten signature in black ink that reads "Robert Mooney". The signature is fluid and cursive, with the first name "Robert" and last name "Mooney" clearly distinguishable.

Robert Mooney
Principal Consultant

Table 1. Base cost to perform the scope of work.

Labor Category	Rates	Project Management		Sonar Data Acquisition		Diver / Field Data Acquisition		Data Processing and Reporting		Field Contingency Days (7 days)		Total Units	Price
		Units	Costs	Units	Costs	Units	Costs	Units	Costs	Units	Costs		
Administrative Assistant	\$ 96.31	0	\$ -	0	\$ -	58	\$ 5,585.74	8	\$ 770.45	0	\$ -	66	\$ 6,356.19
Associate Analyst I	\$ 75.85	0	\$ -	40	\$ 3,033.88	50	\$ 3,792.35	0	\$ -	7	\$ 530.93	97	\$ 7,357.16
Associate Team Manager	\$ 95.38	0	\$ -	59	\$ 5,627.56	0	\$ -	0	\$ -	84	\$ 8,012.12	143	\$ 13,639.68
Associate Team Manager II	\$ 116.98	16	\$ 1,871.60	0	\$ -	51	\$ 5,965.74	20	\$ 2,339.51	0	\$ -	87	\$ 10,176.85
Principal Consultant	\$ 187.82	10	\$ 1,878.24	0	\$ -	0	\$ -	5	\$ 939.12	0	\$ -	15	\$ 2,817.35
Senior Project Manager	\$ 149.74	10	\$ 1,497.44	0	\$ -	0	\$ -	0	\$ -	0	\$ -	10	\$ 1,497.44
Senior Team Manager	\$ 149.74	10	\$ 1,497.44	0	\$ -	0	\$ -	40	\$ 5,989.74	0	\$ -	50	\$ 7,487.18
Technician II	\$ 70.14	6	\$ 420.82	0	\$ -	1067	\$ 74,835.61	0	\$ -	84	\$ 5,891.46	1157	\$ 81,147.90
Technician II (Overtime)	\$ 117.71	0	\$ -	0	\$ -	120	\$ 14,124.71	0	\$ -	0	\$ -	120	\$ 14,124.71
Rick Ware	\$ 147.06	0	\$ -	50	\$ 7,352.94	0	\$ -	0	\$ -	0	\$ -	50	\$ 7,352.94
Subtotals			\$ 7,165.53		\$ 16,014.38		\$ 104,304.15		\$ 10,038.81		\$ 14,434.51		\$ 151,957.39
ODCs													
Mileage	\$ 0.73	0	\$ -	600	\$ 435.00	8160	\$ 5,916.00	0	\$ -	1120	\$ 812.00	9880	\$ 7,163.00
Sounder, Innovation, Koffer (daily)	\$ 588.24	0	\$ -	5	\$ 2,941.18	0	\$ -	0	\$ -	0	\$ -	5	\$ 2,941.18
War Eagle, Small Vessels (daily)	\$ 147.06	0	\$ -	0	\$ -	50	\$ 7,352.94	0	\$ -	7	\$ 1,029.41	57	\$ 8,382.35
Sonar	\$ 94.12	0	\$ -	40	\$ 3,764.71	0	\$ -	0	\$ -	0	\$ -	40	\$ 3,764.71
Subtotals			\$ -		\$ 7,140.88		\$ 13,268.94		\$ -		\$ 1,841.41		\$ 22,251.24
Totals			\$ 7,165.53		\$ 23,155.26		\$ 117,573.10		\$ 10,038.81		\$ 16,275.92		\$ 174,208.62

Total Price with 7 Contingency Days and 120 hours of overtime is \$174,208.62

Total Price with 7 Contingency Days is \$160,083.92

Contingency Rate Per Day is \$2,325.13

Total Price without Contingency Days or overtime is \$143,808.00

EXHIBIT C

INSURANCE REQUIREMENTS – PROFESSIONAL SERVICES

1. Provision of Insurance. Without limiting Consultant's indemnification of City, and prior to commencement of Work, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City. Consultant agrees to provide insurance in accordance with requirements set forth here. If Consultant uses existing coverage to comply and that coverage does not meet these requirements, Consultant agrees to amend, supplement or endorse the existing coverage.
2. Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.
3. Coverage Requirements.
 - A. Workers' Compensation Insurance. Consultant shall maintain Workers' Compensation Insurance, statutory limits, and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000) each accident for bodily injury by accident and each employee for bodily injury by disease in accordance with the laws of the State of California.

Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City of Newport Beach, its City Council, boards and commissions, officers, agents, volunteers, employees.
 - B. General Liability Insurance. Consultant shall maintain commercial general liability insurance, and if necessary excess/umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) general aggregate. The policy shall cover liability arising from bodily injury, property damage, completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

Consultant shall submit to City, along with a certificate of insurance, additional coverage as stated in Section 4. Other Insurance Requirements.
 - C. Automobile Liability Insurance. Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of Consultant

arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit each accident.

Consultant shall submit to City, along with a certificate of insurance, additional coverage as stated in Section 4. Other Insurance Requirements.

- D. Professional Liability (Errors & Omissions) Insurance. Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the Effective Date of this Agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the Services required by this Agreement.

- E. Water Pollution Liability. Consultant shall provide Water Pollution Liability for both sudden and accidental and gradual and continuous pollution events with limits no less than one million dollars (\$1,000,000) each loss and in the aggregate. The policy shall not exclude any hazardous materials for which there is exposure.

Consultant shall submit to City, along with a certificate of insurance, additional coverage as stated in Section 4. Other Insurance Requirements.

- F. Excess/Umbrella Liability Insurance. If any Excess or Umbrella Liability policies are used to meet the limits of liability required by this contract, then said policies shall be "following form" of the underlying policy coverage, terms, conditions, and provisions and shall meet all of the insurance requirements stated in this contract, including, but not limited to, the additional insured and primary & non-contributory insurance requirements stated herein. No insurance policies maintained by the City, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Consultant's primary and excess/umbrella liability policies are exhausted.

Consultant shall submit to City, along with a certificate of insurance, additional coverage as stated in Section 4. Other Insurance Requirements.

4. Other Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:

- A. Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City of Newport Beach, its City Council, boards and commissions, officers,

agents, volunteers and employees or shall specifically allow Consultant or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers from each of its subconsultants.

- B. Additional Insured Status. All liability policies including general liability, excess/umbrella liability, pollution liability, and automobile liability, if required, but not including professional liability, shall provide or be endorsed to provide that City of Newport Beach, its City Council, boards and commissions, officers, agents, volunteers and employees shall be included as insureds under such policies.
 - C. Primary and Non Contributory. All liability coverage shall apply on a primary basis and shall not require contribution from any insurance or self-insurance maintained by City.
 - D. Notice of Cancellation. All policies shall provide City with thirty (30) calendar days' notice of cancellation (except for nonpayment for which ten (10) calendar days' notice is required) or nonrenewal of coverage for each required coverage.
 - E. Subcontractors. Consultant shall be responsible for causing subcontractors to purchase the same types and limits of insurance in compliance with the terms of this Agreement, including adding the City as an additional insured, providing primary and non-contributory coverage and waiver of subrogation to the subcontractor's policies. Limits of liability for General Liability in an amount not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) aggregate and Professional Liability (Errors & Omissions) in an amount not less than one million dollars (\$1,000,000) per claim, two million dollars (\$2,000,000) aggregate.
5. Additional Agreements Between the Parties. The parties hereby agree to the following:
- A. Evidence of Insurance. Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of

insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

- B. City's Right to Revise Requirements. City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving Consultant sixty (60) calendar days' advance written notice of such change. If such change results in substantial additional cost to Consultant, City and Consultant may renegotiate Consultant's compensation.
- C. Right to Review Subcontracts. Consultant agrees that upon request, all agreements with subcontractors or others with whom Consultant enters into contracts with on behalf of City will be submitted to City for review. Failure of City to request copies of such agreements will not impose any liability on City, or its employees.
- D. Enforcement of Agreement Provisions. Consultant acknowledges and agrees that any actual or alleged failure on the part of City to inform Consultant of non-compliance with any requirement imposes no additional obligations on City nor does it waive any rights hereunder.
- E. Requirements not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.
- F. Self-insured Retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these requirements unless approved by City.
- G. City Remedies for Non-Compliance. If Consultant or any subconsultant fails to provide and maintain insurance as required herein, then City shall have the right but not the obligation, to purchase such insurance, to terminate this Agreement, or to suspend Consultant's right to proceed until proper evidence of insurance is provided. Any amounts paid by City shall, at City's sole option, be deducted from amounts payable to Consultant or reimbursed by Consultant upon demand.

- H. Timely Notice of Claims. Consultant shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.
- I. Consultant's Insurance. Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.