

## ATTACHMENT B

### **PROFESSIONAL SERVICES AGREEMENT WITH BURNS & MCDONNELL ENGINEERING COMPANY, INC. FOR ENGINEERING AND CONSTRUCTION MANAGEMENT SERVICES FOR THE NEWPORT BAY TRASH WHEEL PROJECT**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into as of this 24th day of March, 2020 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and BURNS & MCDONNELL ENGINEERING COMPANY, INC., a Missouri Corporation ("Consultant"), whose address is 140 S. State College Boulevard, Suite 100, Brea, California 92821, 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 provide professional engineering, design and construction management services for the City's proposed trash wheel project ("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, has 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, 2023, 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 **Four Hundred Sixty Four Thousand Nine Hundred Twenty Five Dollars and 00/100 (\$464,925.00)**, 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 David Pohl 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 Public Works Director 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, 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 and subconsultants 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 subcontractors or subconsultants. Nothing in this Agreement shall create any contractual relationship between City and any subcontractors or subconsultants 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 subcontractors or subconsultants other than as otherwise required by law. City is an intended beneficiary of any Work performed by the subcontractors and subconsultants for purposes of establishing a duty of care between the subcontractors, subconsultants, 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, subcontractors and subconsultants, 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, subcontractors and subconsultants, 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 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; (b) the decline of accuracy or readability of CADD data due to inappropriate storage conditions or duration; or (c) 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, on a CD, and should comply with the City's digital submission requirements for improvement plans available from the City's Public Works Department. The City will provide Consultant with City title sheets as AutoCAD file(s) in .dwg file format. All written documents shall be transmitted to City in formats compatible with Microsoft Office and/or viewable with Adobe Acrobat.

17.4 All improvement and/or construction plans shall be prepared with indelible waterproof ink or electrostatically plotted on standard twenty-four inch (24") by thirty-six inch (36") Mylar with a minimum thickness of three (3) mils. Consultant shall provide to City 'As-Built' drawings and a copy of digital Computer Aided Design and Drafting ("CADD") and Tagged Image File Format (.tiff) files of all final sheets within ninety (90) days after finalization of the Project. For more detailed requirements, a copy of the City of Newport Beach Standard Design Requirements is available from the City's Public Works Department.

## **18. OPINION OF COST**

Any opinion of the construction cost prepared by Consultant represents the Consultant's judgment as a design professional and is supplied for the general guidance of City. Since Consultant has no control over the cost of labor and material, or over competitive bidding or market conditions, Consultant does not guarantee the accuracy of such opinions as compared to Consultant or contractor bids or actual cost to City.

## **19. 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.

## **20. 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.

## **21. 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.

## **22. 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.

## **23. 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.

## **24. CITY'S RIGHT TO EMPLOY OTHER CONSULTANTS**

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

## **25. CONFLICTS OF INTEREST**

25.1 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.

25.2 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.



## **26. NOTICES**

26.1 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.

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

Attn: Public Works Director  
Public Works Department  
City of Newport Beach  
100 Civic Center Drive  
PO Box 1768  
Newport Beach, CA 92658

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

Attn: David Pohl  
Burns & McDonnell Engineering Company, Inc.  
140 S. State College Boulevard, Suite 100  
Brea, CA 92821

## **27. CLAIMS**

27.1 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.).

27.2 To the extent that Consultant's claim is a "Claim" as defined in Public Contract Code section 9204 or any successor statute thereto, the Parties agree to follow the dispute resolution process set forth therein. Any part of such "Claim" remaining in dispute after completion of the dispute resolution process provided for in Public Contract Code section 9204 or any successor statute thereto shall be subject to the Government Claims Act requirements requiring Consultant to file a claim in strict conformance with the Government Claims Act. To the extent that Contractor/Consultant's claim is not a "Claim" as defined in Public Contract Code section 9204 or any successor statute thereto,

Consultant shall be required to file such claim with the City in strict conformance with the Government Claims Act (Government Code sections 900 et seq.).

## **28. TERMINATION**

28.1 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 two (2) calendar days, or if more than two (2) calendar days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within two (2) 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.

28.2 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.

## **29. PREVAILING WAGES**

29.1 Pursuant to the applicable provisions of the Labor Code of the State of California, not less than the general prevailing rate of per diem wages including legal holidays and overtime Work for each craft or type of workman needed to execute the Work contemplated under the Agreement shall be paid to all workmen employed on the Work to be done according to the Agreement by the Consultant and any subcontractor or subconsultant. In accordance with the California Labor Code (Sections 1770 et seq.), the Director of Industrial Relations has ascertained the general prevailing rate of per diem wages in the locality in which the Work is to be performed for each craft, classification, or type of workman or mechanic needed to execute the Agreement. A copy of said determination is available by calling the prevailing wage hotline number (415) 703-4774, and requesting one from the Department of Industrial Relations. The Consultant is required to obtain the wage determinations from the Department of Industrial Relations and post at the job site the prevailing rate or per diem wages. It shall be the obligation of the Consultant or any subcontractor or subconsultant under him/her to comply with all State of California labor laws, rules and regulations and the parties agree that the City shall not be liable for any violation thereof.

29.2 Unless otherwise exempt by law, Consultant warrants that no contractor, subcontractor or subconsultant was listed on the bid proposal for the Services that it is not currently registered and qualified to perform public work. Consultant further warrants that it is currently registered and qualified to perform "public work" pursuant to California

Labor Code section 1725.5 or any successor statute thereto and that no contractor, subcontractor or subconsultant will engage in the performance of the Services unless currently registered and qualified to perform public work.

### **30. STANDARD PROVISIONS**

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

30.2 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.

30.3 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.

30.4 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.

30.5 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.

30.6 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.

30.7 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.

30.8 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.

30.9 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.

30.10 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, subconsultant, 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.

30.11 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.

30.12 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: 03.17.20

By:   
Aaron C. Harp  
City Attorney

**ATTEST:**

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

By: \_\_\_\_\_  
Leilani I. Brown  
City Clerk

**CITY OF NEWPORT BEACH,**  
a California municipal corporation

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

By: \_\_\_\_\_  
Will O'Neill  
Mayor

**CONSULTANT:** Burns & McDonnell  
Engineering Company, Inc., a Missouri  
Corporation

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

By: \_\_\_\_\_  
Renita M. Mollman  
Vice President

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

By: \_\_\_\_\_  
Stephen Kane  
Vice President

**[END OF SIGNATURES]**

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

## **EXHIBIT A SCOPE OF SERVICES**

### **ENGINEERING AND CONSTRUCTION MANAGEMENT SERVICES FOR NEWPORT BAY TRASH WHEEL PROJECT**

The Consultant shall complete the following the tasks:

**1. REVIEW TECHNICAL REPORT & SITE VISIT**

The Consultant shall review the Technical Report (Attachment A to the RFP) and conduct a site visit to assess the site conditions at the location proposed for the Trash Wheel. The Consultant's project manager, civil design engineer, structural engineer, and permit lead shall attend the site visit.

**2. MEET WITH CLEARWATER MILLS**

The Consultant shall coordinate and meet with the Clearwater Mills Trash Wheel designers ("Clearwater Mills") on the same day as the scheduled site visit to review the preliminary design and collaborate on the conceptual design (Task 3) of the pilings, trash conveyance, off-haul, power, monitoring and security systems. The collaboration with Clearwater Mills shall include detailed discussions of operational experience, best practices and lessons learned from the existing installations in Baltimore. It is assumed Clearwater Mills shall attend the site visit and provide the design and operation information at that time.

**3. PREPARE CONCEPT PLAN**

The Consultant shall prepare a concept plan of the trash wheel and railway system based on the concept prepared for the Mitigated Negative Declaration (MND) and Technical Memorandum as described in the RFP and its attachments. The concept shall focus on critical issues that include: site layout, site access, truck movement, rail and winch system, roll-off container movement, tidal impacts to the trash wheel, site grading and retaining walls, site security, meeting power requirements, irrigation water source, control and monitoring instrumentation, and screening/aesthetics. The Consultant shall develop the concept plan to include the design for a pivoting and telescoping gangway, and for a hopper to positively convey trash from the conveyor into the dumpster considering expected windy and raining conditions. Clearwater Mills shall provide the concept plan drawings for the Trash Wheel (floating portion) for inclusion in the concept design plan set which shall include a plan sheet, elevation/sections, and detail sheets equivalent to a 20% design level. Clearwater Mills shall provide input on the rail and winch system, hopper, roll-off container movement, trash wheel, site security, power requirements, control and monitoring instrumentation to the Consultant. During this phase, The Consultant shall consult with the City on related issues such as control of free liquid and waste collection logistics.

#### 4. ASSIST STAFF WITH STAKEHOLDER MEETINGS

The Consultant shall assist the City staff at meetings with Orange County Flood Control District ("OCFCD") and the Irvine Company to discuss the concept plan. With the help of the Consultant's team member, Clearwater Mills, shall prepare meeting materials (presentation exhibits and PowerPoint Slides) that include the concept plans showing the footprint of the project, pilings within the floodway, proposed waste collection, conveyance and transport. The Consultant shall also provide presentation materials that address likely permit issues and concerns raised during the MND process. The Consultant shall provide the City with the meeting presentation materials prior to this meeting for review and input.

The OCFCD (or other agencies) will not require HEC-RAS modeling, or any other detailed channel modeling.

#### 5. ASSIST STAFF PRESENTATIONS

The Consultant shall attend up to five (5) meetings. The Consultant's project manager and design engineer shall attend the meetings. Clearwater Mills shall participate in up to two (2) meetings in Newport Beach and the remaining by conference call with the City to provide updates on design progress, issues and coordination with the design team.

#### 6. PERFORM SITE TOPOGRAPHIC SURVEYS

The Consultant shall perform site topographic surveys to represent field conditions and provide horizontal and vertical controls for the project. The Consultant shall contact Orange County Watersheds to obtain the latest bathymetric information. A licensed professional land surveyor ("PLS") shall be subcontracted to survey the site, provide topographic contours and survey shots on key features, and to provide boundary survey information, benchmarks and project control points. The PLS shall tie in the provided bathymetry data into a survey base file (AutoCAD 2019) for use in the design.

#### 7. REVIEW GEOTECHNICAL REPORT

The geotechnical report will be prepared by others and is not part of this scope of work. The Consultant shall review the geotechnical report provided by the City. The geotechnical consultant will provide a report on the liquefaction loading subject and parameters for the 30% design and the final geotechnical report based on the geotechnical field investigation for the 60% design.

#### 8. PREPARE A DETAILED DRAINAGE ANALYSIS

The Consultant shall prepare a drainage analysis for the site with recommendations for preventing pollutants from entering San Diego Creek. The Consultant shall consider the water quality storm and larger design storms when evaluating how fugitive waste or other pollutants may escape the system and wash back into San Diego Creek. From this evaluation, the Consultant shall design controls in accordance with the City's drainage standards to minimize or prevent any such pollution that could result from the project.

## 9. PREPARE DETAILED PILE DESIGN ANALYSES

The Consultant shall prepare a pile design analyses for the Trash Wheel assembly and associated rail system. The system shall consider short duration, high intensity storms that coincide with tides at Median Higher High Water ("MHHW") and Median Lower Low Water ("MLLW"). The Consultant shall provide the structural engineering calculations for the Trash Wheel guide piles; trash container piles and frame; anchoring system for trash boom; and retaining walls to support fill and pavement for truck "turn-out." The Consultant shall design the piles in the slope that supports the stairway access system. The steel stringers, steps, landings or mid-platforms and railing shall be provided in design/build format. Clearwater Mills shall coordinate with the Consultant regarding the design requirements for the trash wheel (floating portion) and regarding the pile design for the Trash Wheel assembly.

## 10. PREPARE CONSTRUCTION DOCUMENTS

Based on the approved concept design, the Consultant shall prepare construction documents (drawings, special provisions and engineer's estimate) and periodically submit documents to City staff for review and comments (50%, 75%, 95% and Final). Major project components shall include:

- Site grading and creating a new, paved 14-foot wide access road, including a concrete pad for pickup and drop-off of roll-off trash containers and proposed trail improvements.
- Shore-side unloading facilities including railway and winch system, stairwell and gangway.
- Clearwater Mills shall provide the design performance requirements of a Trash Wheel (floating portion of a Trash Wheel equipment) including the floating platform, water wheel, conveyor belt hopper, and floating booms. Clearwater Mills shall provide recommendations regarding roll-off container with sled, system controls, solar panels and battery banks to the Consultant for the design and construction documents. The interfaces between the Consultant and Clearwater Mills shall be between the fixed container and the trash wheel conveyor system, the piles designed by the Consultant (the piles shall have a field-constructed location tolerance that the Trash Wheel design shall need to allow for), and the landing of the gangway on the floating deck of the Trash Wheel. The Consultant shall work with the City to meet standard City contracting requirements that may include not specifying a specific brand of trash wheel and providing performance requirements that meet the objectives of a trash wheel device without requiring a specific type.
- The Consultant shall assume the use of locally available water and the use of a water truck and operator to provide temporary irrigation. This approach would accommodate the small footprint of the area of revegetation (estimated to be less than half an acre) and utilize the newly installed access road and truck turnaround. The project schedule anticipates construction to be completed in November



timeframe right before the raining season. This approach shall be presented in the permit documents. Should permit negotiation result in a requirement of a designed temporary irrigation system, upon approval of an amendment to this Agreement, the Consultant shall complete a design of a temporary irrigation system including installation of an irrigation line on site with backflow preventer, master irrigation valve, and flow sensor with telemetry cable.

- The Consultant shall prepare construction documents that include a landscape plan using native plants that is prepared by a California registered landscape architect. The native plant palette shall use the biological survey data completed for the MND (Stantec, 2018) and the Consultant's expertise in re-establishing coastal sage environments. If required and approved by an amendment to this Agreement, a Habitat Mitigation and Monitoring Plan ("HMMP"), shall be provided. This plan may be a permit condition that can also be prepared prior to construction and therefore not required for the permit application. No off-site mitigation will be required and the mitigation for the temporary disturbance of the defined habitat types in the MND shall be addressed through re-vegetation with native vegetation of all distributed areas on-site (approximately less than half an acre).
- The Consultant shall include design features to secure the site including fencing and security cameras. The scope includes the availability of adequate electrical service on-site for the security system, lighting, and potentially winch system (if not solar powered by Trash Wheel battery bank). In addition, the Consultant shall provide the design for the basic security system that includes two cameras basic remote integration via cellular service provider, fencing, a manually operated gate, and lighting.
- The Consultant shall evaluate the removal of existing pile remnants at the project site.
- The Consultant shall work with the City to provide the design interpretive signage.

## 11. IDENTIFY, PREPARE, AND PROCESS PERMITS

The Consultant shall provide the technical reports and materials to the City's Community Development Department for preparation and submittal of the permit applications. The City will prepare the permit applications and submit the applications for review by the resource and regulatory agencies. Application filing fees and public noticing fees, such as printing, mailing, and newspaper ad costs, will be paid directly by the City. The Consultant shall provide technical support to the City as needed to respond to comments from agency staff. The Consultant shall provide the technical reports and materials to the City to prepare the applications and process the following permits:

- US Army Corps of Engineers ("USACE") Section 404 of Clean Water Act, Letter of Permission, and Section 106 (Cultural)
- Regional Water Quality Control Board (Santa Ana Region) 401 Certification

- California Department of Fish and Wildlife (CDFW")

The Consultant shall provide the technical reports and materials for the City to prepare the California Coastal Commission ("CCC") Coastal Development Permit ("CDP") package for submittal. The Consultant shall provide technical support to the City who will prepare the public notice, and draft responses to additional information requests from CCC staff, and draft sections of the CCC Staff Report.

The proposed project is located within submerged tidelands granted by the California State Lands Commission ("CSLC") to the City of Newport Beach; however, the CSLC does not have leasing authority for surface structures on lands granted to the City so it is assumed that no lease with the CSLC shall be required. Preparation of plans or submittals to comply with "Prior to Issuance Conditions" from the CCC CDP is not included in this scope of work. The extent of documentation or reporting required shall depend on regulatory agency discretion. The City prepared a Mitigated Negative Declaration to comply with the California Environmental Quality Act ("CEQA") so it is assumed that no additional CEQA analysis shall be required. This scope assumes that all previous survey reports shall be provided and that no additional focused surveys shall be necessary. Additionally, implementation of any mitigation requirements are not included in this scope of work or cost estimate. Development of any building permit applications or coordination with local agencies regarding building or other ministerial permits is not included in this scope of work. A Coastal Hazards and Sea Level Rise Analysis shall not be required. Development of special and additional environmental studies, mitigation, construction water quality monitoring, or acoustical noise monitoring plans, if ultimately needed, are not included in this scope of work.

## **12. PREPARE AND PROCESS TEMPORARY AND PERMANENT EASEMENT DOCUMENTS**

The Consultant shall prepare and process temporary and permanent easement documents with the Irvine Company, owner of the property containing the creek and creek bank. This task shall be executed together with our subcontracted PLS.

## **13. PREPARE AND PROCESS ENCROACHMENT AND EASEMENT DOCUMENTS FOR THE COUNTY OF ORANGE**

The Orange County Flood Control District has an easement from The Irvine Company to convey flood flows in San Diego Creek. The Consultant shall prepare and process encroachment and easement documents with the County of Orange for access along the access road to the construction site, access onto the project site, and access to the Trash Wheel location in the creek.

## **14. PREPARE OPERATIONS AND MAINTENANCE PLAN**

The Consultant shall prepare an Operation and Maintenance manual for the City's use in operating the site. Clearwater Mills shall provide operations and maintenance recommendations specific to the Trash Wheel floating portion for incorporation into an overall site Operations and Maintenance Manual.

# **EXHIBIT B** **SCHEDULE OF BILLING RATES**

## **ENGINEERING AND CONSTRUCTION MANAGEMENT SERVICES FOR NEWPORT BAY TRASH WHEEL PROJECT**

Project Tasks	Total Hours	BMCD Labor	BMCD Expenses	Total Cost
<b>Design Development Tasks</b>	<b>1107</b>	<b>\$ 214,655</b>	<b>\$ 3,600</b>	<b>\$ 218,255</b>
Task 1 Review Reports/Site Visit	24	\$ 5,436	\$ 1,800	\$ 7,236
Task 2 Coordination Clearwater Mills	14	\$ 3,048	\$ -	\$ 3,048
Task 3 Concept Design	156	\$ 30,584	\$ -	\$ 30,584
Task 4 Stakeholder Meetings	40	\$ 9,768	\$ -	\$ 9,768
Task 5 Progress Meetings	38	\$ 8,756	\$ 1,800	\$ 10,556
Task 6 Topo Survey Coordination	4	\$ 778	\$ -	\$ 778
Task 7 Geotechnical Invest./Rpt. Coord	4	\$ 778	\$ -	\$ 778
Task 8 Drainage Analysis	48	\$ 8,656	\$ -	\$ 8,656
Task 9 Pile Design Coord	8	\$ 1,556	\$ -	\$ 1,556
Task 10 Construction Documents	771	\$ 145,295	\$ -	\$ 145,295
<b>Permits</b>	<b>172</b>	<b>\$ 30,304</b>	<b>\$ -</b>	<b>\$ 30,304</b>
Task 11 USACE 404 and Section 106	54	\$ 9,468	\$ -	\$ 9,468
401 Certification	44	\$ 7,644	\$ -	\$ 7,644
Coastal Development Permit	74	\$ 13,192	\$ -	\$ 13,192
<b>Easements</b>	<b>10</b>	<b>\$ 2,424</b>	<b>\$ -</b>	<b>\$ 2,424</b>
Task 12 Irvine Company Permanent Easement	6	\$ 1,458	\$ -	\$ 1,458
Task 13 OC Flood Control District Easement	4	\$ 966	\$ -	\$ 966
<b>Const. / O&amp;M</b>	<b>44</b>	<b>\$ 8,484</b>	<b>\$ -</b>	<b>\$ 8,484</b>
Task 14 Operation and Maintenance Manual	44	\$ 8,484	\$ -	\$ 8,484
<b>Optional</b>	<b>16</b>	<b>\$ 3,376</b>	<b>\$ -</b>	<b>\$ 3,376</b>
O1 Upgraded Temporary Irrigation Design (Lynn Capouya)	8	\$ 1,744	\$ -	\$ 1,744
O2 Habitat Mitig. & Mon. Plan (HMMP for mitigation) (RECON)	8	\$ 1,632	\$ -	\$ 1,632
<b>TOTAL BMCD HOURS</b>				<b>1,333</b>
<b>TOTAL BMCD LABOR COST</b>				<b>\$255,867</b>
<b>TOTAL BMCD EXPENSES</b>				<b>\$3,600</b>
<b>Achor QEA Cost (Subcontractor)</b>				<b>\$118,458</b>
<b>Clearwater Mills Cost (Subcontractor)</b>				<b>\$65,000</b>
<b>Bill Carr Surveys, Inc. (Subcontractor)</b>				<b>\$22,000</b>
<b>Lynn Capouya (Optional Task -O1- Upgraded Temp. Irrigation)</b>				<b>\$ N/A</b>
<b>RECON (Optional Task - O2 - HMMP- habitat mitigation)</b>				<b>\$ N/A</b>
<b>TOTAL COST*</b>				<b>\$464,925</b>
*Total Cost does not include Optional Task Items				

## 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, Section 3700 of the Labor Code.

Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its City Council, boards and commissions, officers, agents, volunteers and employees.
  - B. General Liability Insurance. Consultant shall maintain commercial general liability insurance, and if necessary 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 premises, operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
  - 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.

- 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.
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, 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 liability, pollution liability, and automobile liability, if required, but not including professional liability, shall provide or be endorsed to provide that City, 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.
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. 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.
- D. 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.
- E. 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.
- F. 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.

- G. 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.
- H. 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.