

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To: Matthew J. Fertal  
From: William E. Murray  
Dept: City Manager  
Dept: Public Works  
Subject: AWARD OF CONTRACT TO SIMON WONG ENGINEERING TO PROVIDE ENGINEERING SERVICES FOR A CONDITION ASSESSMENT OF EIGHT CONCRETE WATER RESERVOIRS  
Date: March 12, 2013

OBJECTIVE

To recommend that the City Council award a contract to Simon Wong Engineering to provide professional engineering services for a condition assessment of eight concrete water reservoirs.

BACKGROUND

The City has eight potable water reservoirs located at five different sites (Attachment 1). The City's water distribution system relies on these storage facilities to help equalize fluctuations between supply and demand, to supply sufficient water for firefighting, and to meet demands during an emergency or an unplanned outage of a major source of supply. The reservoirs range in storage capacity from four to ten million gallons. All the reservoirs are constructed of reinforced or pre-stressed concrete and are approximately 12 to 42 years old. Underwater visual inspections have been conducted periodically for each reservoir. Engineering evaluations or condition assessments should be conducted as a "wellness check-up" for these reservoirs. The results of these inspections will provide information for prioritizing and scheduling required reservoir remedial work.

DISCUSSION

Proposals were requested from five firms to provide these professional engineering services. Out of those five, two firms submitted proposals. Based on evaluation results, Simon Wong Engineering rated highest in qualifications and its ability to provide professional engineering services for this project. The following is a summary of the ratings with the highest total being the most qualified:

AWARD OF CONTRACT TO SIMON WONG ENGINEERING TO PROVIDE  
ENGINEERING SERVICES FOR A CONDITION ASSESSMENT OF EIGHT CONCRETE  
WATER RESERVOIRS March 12, 2013

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	<b>Brady</b> Irvine, CA	<b>Simon Wong Engineering</b> San Diego, CA
<i>Rater A</i>	<i>145.0</i>	<i>160.0</i>
<i>Rater B</i>	<i>105.0</i>	<i>153.5</i>
<i>Rater C</i>	<i>149.5</i>	<i>160.0</i>
<b>Totals</b>	<b>399.5</b>	<b>473.5</b>

Upon being identified as the most qualified firm, staff negotiated an agreement for services with Simon Wong Engineering.

FINANCIAL IMPACT


The cost of this project is \$230,940 and will be financed with Water Funds. There is no impact to the General Fund.

RECOMMENDATION

It is recommended that the City Council:

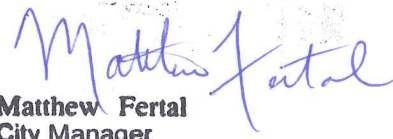
- Award a contract to Simon Wong Engineering for professional engineering services for a condition assessment of eight concrete water reservoirs; and
- Authorize the City Manager to execute the agreement on behalf of the City, and make minor modifications as appropriate thereto.

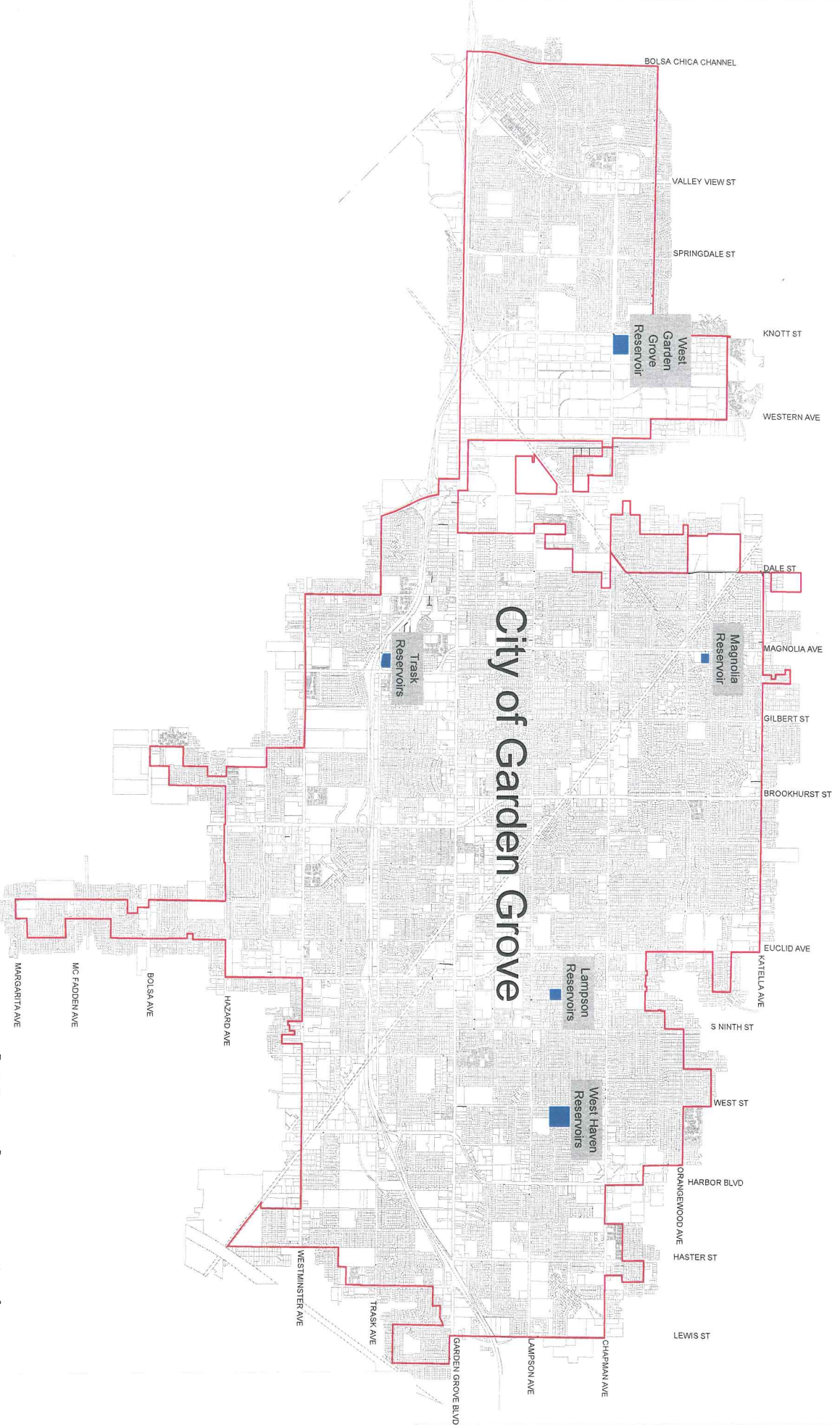
  
WILLIAM E. MURRAY, P.E.  
Public Works Director/City Engineer

  
By: Rebecca Li, P.E.  
Associate Engineer

Attachments: 1) Location Map  
2) Agreement

**Recommended for Approval**

  
Matthew Ferial  
City Manager



Reservoir Location

# Attachment 1: Location Map

## PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT is made and entered into, to be effective the 12<sup>th</sup> day of March, 2013, by and between the CITY OF GARDEN GROVE, a municipal corporation, hereinafter referred to as "City," and Simon Wong Engineering, a San Diego Corporation, hereinafter referred to as "Consultant." City and Consultant are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties."

### RECITALS

WHEREAS, City has determined that there is a need for engineering services for engineering evaluation and condition assessment for eight potable water concrete storage reservoirs for Project No. 7388 (the "Project");

WHEREAS, City desires to retain Consultant to provide such services; and

WHEREAS, Consultant is qualified by virtue of experience, training, education, and expertise to perform the professional services required by this Agreement and has agreed to provide such services.

NOW, THEREFORE, in consideration of the promises and mutual benefits which will result to the Parties in carrying out the terms of this Agreement, it is mutually agreed as follows:

### AGREEMENT

#### I. SCOPE OF WORK

City agrees to retain Consultant, and Consultant agrees to perform the services set forth in the Scope of Services described in Exhibit "A", attached hereto and by reference made a part of this Agreement (hereinafter the "Services"). Consultant agrees that its provision of Services under this Agreement shall be within accepted standards within the profession, and its specialized services shall be in accordance with customary and usual practices in Consultant's profession. By executing this Agreement, Consultant warrants that it has carefully considered how the work should be performed and fully understands the facilities, difficulties, and restrictions attending performance of the work under this Agreement.

## II. TERM

This Agreement shall be effective as of the date first set forth above. This Agreement shall commence upon the effective date of this Agreement, and shall remain and continue in effect until tasks described herein are completed unless otherwise terminated prior to this date pursuant to the provisions of this Agreement.

## III. FEES

### A. Accounting Records

Consultant shall keep complete, accurate, and detailed accounts of all time, costs, expenses, and expenditures pertaining in any way to this Agreement. Upon request of City, Consultant shall provide City with all records pertaining to this Agreement.

### B. Total Payment

The Parties agree that Consultant shall bill for the Services provided by Consultant to City on an hourly basis and in accordance with the charges and fee schedule attached as Exhibit "B," except as otherwise set forth herein, provided compensation under this Agreement shall not exceed \$230,940.

### C. Monthly Payment

1. City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment, as set forth in Exhibit "B," attached hereto based upon actual time spent providing the services outlined in this Agreement. Consultant shall submit to City monthly or periodic statements requesting payment. Such requests shall be based upon the amount and value of the Services performed by Consultant under this Agreement and shall be prepared by Consultant and accompanied by such reporting data including a detailed breakdown of all costs incurred and tasks performed during the period covered by the statement, as may be required by City. Invoices shall be submitted on or about the first business day of each month, for Services provided the prior month. City shall use reasonable efforts to make payment to Consultant within forty-five (45) days after the date of the invoice or as soon thereafter as reasonably practicable. If City determines that the approved written Scope of Work under this Agreement or any specified task hereunder is incomplete, the City Manager, or his or her designee, shall notify Consultant and may withhold the payment amount for the unfinished work accordingly.

2. Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement, which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager.

#### **IV. TERMINATION**

City may terminate this Agreement for its convenience at any time, with or without cause, in whole or in part, upon giving Consultant thirty (30) days written notice. Upon said notice, City shall pay Consultant its allowable costs incurred to date of termination and those allowable costs determined by City to be reasonably necessary to effect such termination. Upon receipt of said notice, Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If City terminates a portion of this Agreement, such termination shall not make void or invalidate the remainder of this Agreement. Thereafter, Consultant shall have no further claims against City under this Agreement. Upon termination of the Agreement pursuant to this Section, Consultant will submit an invoice to City pursuant to Section III. Consultant may terminate this Agreement, with or without cause, upon thirty (30) days written notice to City.

#### **V. DEFAULT OF CONSULTANT**

A. Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event Consultant is in default, except as provided for in Section XXI, City shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default and can terminate the Agreement immediately upon written notice to Consultant.

B. If the City Manager, or his/her designee, determines that Consultant is in default in the performance of any of the terms or conditions of this Agreement, it shall notify Consultant in writing of such default. Consultant shall have ten (10) days to cure the default by rendering a satisfactory performance. In the event Consultant fails to cure its default within such period of time, City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice of any remedy to which City may be entitled at law, in equity or under this Agreement. Consultant shall be liable for any and all reasonable costs incurred by City as a result of such default including, but not limited to, reprocurement costs of the same or similar services defaulted by Consultant under this Agreement.

#### **VI. LEGAL RELATIONSHIP BETWEEN THE PARTIES**

A. The legal relationship between the Parties hereto is that of an independent contractor, and nothing herein shall be deemed to make Consultant a City employee. During the performance of this Agreement, Consultant and its officers, employees, and agents shall act in an independent capacity and shall not act as City officers, employees, or agents. The personnel performing the Services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of its officers, employees, or agents, except as set

forth in this Agreement. Consultant, its officers, employees, or agents shall not maintain an office or any other type of fixed business location at City's offices.

B. Consultant shall not incur or have the power to incur any debt, obligation, or liability against City, or bind City in any manner.

C. No City benefits shall be available to Consultant, its officers, employees, or agents in connection with any performance under this Agreement. Except for fees paid to Consultant as provided for in this Agreement, City shall not pay salaries, wages, or other compensation to Consultant for the performance of Services under this Agreement. City shall not be liable for compensation or indemnification to Consultant, its officers, employees, or agents for injury or sickness arising out of performing Services hereunder. If for any reason, any court or governmental agency determines that City has financial obligations, other than pursuant to Section III herein, of any nature related to salary, taxes, or benefits of Consultant's officers, employees, servants, representatives, subcontractors, or agents, Consultant shall indemnify City for all such financial obligations.

## **VII. MODIFICATIONS AND AMENDMENTS TO AGREEMENT**

No modification or amendment of this Agreement or any of the provisions hereof shall be effective for any purpose unless set forth in writing signed by duly authorized representatives of both Parties.

## **VIII. ASSIGNMENTS AND SUBCONTRACTING**

The experience, knowledge, capability, and reputation of Consultant, its principals and employees were a substantial inducement for City to enter into this Agreement. Consultant may not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, voluntarily or by operation of law, without the prior written approval of City. Except as otherwise expressly provided in the Scope of Services (Exhibit "A"), Consultant shall not contract with any other person or entity to perform the Services required without written approval of City. If Consultant is permitted to subcontract any part of this Agreement by City, Consultant shall be responsible to City for the acts and omissions of its subcontractor as it is for persons directly employed. Nothing contained in this Agreement shall create any contractual relationships between any subcontractor and City. All persons engaged in the work will be considered employees of Consultant. City will deal directly with and will make all payments to Consultant as provided for in Section III.

## **IX. SUCCESSORS IN INTEREST**

This Agreement shall be binding upon and inure to the benefit of the Parties' successors and assignees.

## **X. THIRD PARTY BENEFICIARY**

Except as may be specifically provided for herein, nothing contained in this Agreement is intended to confer, nor shall this Agreement be construed as conferring, any rights, including, without limitation, any rights as third-party beneficiary or otherwise, upon any entity or person not a party hereto.

## **XI. INSURANCE**

### **A. Insurance Required**

Consultant shall procure and maintain the insurance described herein for the duration of this Agreement, or as otherwise specified herein, against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Consultant, its agents, representatives, or employees. Insurance required herein shall be provided by a reputable insurance company in good standing with the State of California and having a minimum A.M. Best's Guide Rating of A-, Class VII or better. City will require Consultant to substitute any insurer whose rating drops below the levels specified herein. Such substitution shall occur within twenty (20) days of written notice to Consultant by City.

Consultant shall provide to City certificates of insurance in a form acceptable to City indicating the deductible or self-retention amounts and the expiration date of the policy, and shall provide renewal certificates not less than ten (10) days prior to the expiration of each policy term. The certificates of insurance shall specifically identify this Agreement and shall contain express conditions that City is to be given at least thirty (30) days advance written notice of any material modification in or termination of insurance. Such insurance shall be primary to and not contributing with any other insurance maintained by City and shall name the City of Garden Grove and its officers, councilmembers, officials, employees, agents and volunteers as additional insureds by endorsement to the insurance policies. Except as expressly authorized herein, all insurance shall be on an occurrence basis.

#### **1. Errors and Omissions Insurance**

Consultant shall maintain in full force and effect throughout the term of this Agreement, standard industry form professional negligence errors and omissions insurance coverage in an amount of not less than One Million Dollars (\$1,000,000.00) per claim or occurrence, in accordance with the provisions of this Section. If the policy of insurance is written on a "claims made" basis, the policy shall be continued in full force and effect at all times during the term of this Agreement, and for a period of three (3) years from the date of the completion of the Services provided hereunder. In the event of termination of the policy during this period, Consultant shall obtain continuing insurance coverage for the prior acts or omissions of Consultant during the course of performing Services under the terms of this Agreement. The coverage shall be



evidenced by either a new policy evidencing no gap in coverage, or by obtaining separate extended "tail" coverage with the present or new carrier.

In the event the policy of insurance is written on an "occurrence" basis, the policy shall be continued in full force and effect during the term of this Agreement, or until completion of the Services provided for in this Agreement, whichever is later. In the event of termination of the policy during this period, new coverage shall be obtained for the required period to ensure coverage for the prior acts of Consultant during the course of performing the Services under the terms of this Agreement.

2. Workers' Compensation

Consultant shall obtain and maintain, during the term of this Agreement, Workers' Compensation Employer's Liability Insurance in the statutory amount as required by state law. Such worker's compensation insurance shall be endorsed to provide for a waiver of subrogation against City.

**B. Minimum Limits of Insurance**

Consultant shall maintain limits no less than:

1. General Liability:

\$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2. Automobile Liability:

\$1,000,000 per accident for bodily injury and property damage.

3. Employer Liability:

\$1,000,000 per accident for bodily injury or disease.

**C. Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to and approved by the City Manager. At the option of the City Manager, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City and its councilmembers, officials, officers, employees, agents or volunteers, or Consultant shall procure a bond guaranteeing payment of losses and related

investigations, claim administration and defense expenses, or Consultant shall otherwise provide an alternative satisfactory to the City Manager.

**D. Other Insurance Provisions**

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City of Garden Grove and its councilmembers, officers, officials, employees, agents and volunteers are to be covered as insureds with respect to: liability arising out of activities performed by or on behalf of Consultant; products and completed operations of Consultant; premises owned occupied or used by Consultant; or automobiles owned, leased, hired, or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the Garden Grove Sanitary District, the City of Garden Grove, the Garden Grove Agency for Community Development and their respective councilmembers, board members, officers, officials, employees, agents, or volunteers.

2. For any claims related to this Agreement, Consultant's coverage shall be primary insurance as respects the City and its councilmembers, officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by Garden Grove Sanitary District, the City of Garden Grove, the Garden Grove Agency for Community Development and their respective councilmembers, board members, officers, officials, employees, agents, and volunteers shall be in excess of Consultant's insurance and shall not contribute with it.

3. Any failure to comply with reporting or other provisions of the policies, including breaches of warranties shall not affect coverage provided to the City and its respective councilmembers, board members, officers, officials, employees, agents, and volunteers.

4. Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the insurer's liability.

5. Each insurance policy required by this Section shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been provided to City.

6. Consultant agrees to ensure that subcontractors, and any other parties involved with the project who are brought onto or involved in the project by Consultant, provide the same minimum insurance coverage required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Section. Consultant agrees that upon request, all agreements with subcontractors and others engaged in the project will be submitted to City for review.

**E. Verification of Coverage**

Consultant shall furnish City with original endorsements effecting coverage required by this Agreement. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by City before work commences.

**XII. INDEMNITY**

**A. Indemnification**

To the fullest extent permitted by law, Consultant shall indemnify, defend (at Consultant's sole cost and expense), protect and hold harmless the City of Garden Grove and its councilmembers, officers, officials, employees, agents, and volunteers, (individually "Indemnified Party"; collectively "Indemnified Parties") against any and all liability, claims, judgments, costs, and demands (collectively, "Claims"), including Claims arising from injuries or death of persons (Consultant's employees included) and damage to property, which Claims arise out of, pertain to, or are related to the negligence, recklessness or willful misconduct of Consultant, its agents, employees, or subcontractors, or arise from Consultant's negligent, reckless or willful performance of or failure to perform any term, provision, covenant or condition of this Agreement ("Indemnified Claims"), but Consultant's liability for Indemnified Claims shall be reduced to the extent such Claims arise from the negligence, recklessness or willful misconduct of the City of Garden Grove and its councilmembers, officers, directors, officials, employees, or agents.

Consultant shall reimburse the Indemnified Parties for any reasonable expenditures, including reasonable attorneys' fees, expert fees, litigation costs and expenses that each Indemnified Party may incur by reason of Indemnified Claims. Upon request by an Indemnified Party, Consultant will defend with legal counsel reasonably acceptable to the Indemnified Party all Claims against the Indemnified Party that may arise out of, pertain to, or relate to Indemnified Claims, whether or not Consultant is named as a party to the Claim proceeding. The determination whether a Claim may "arise out of, pertain to, or relate to" Indemnified Claims shall be based on the allegations made in the Claim and the facts known or subsequently discovered by the parties. In the event a final judgment, arbitration award, order, settlement, or other final resolution expressly determines that Claims did not arise out of, pertain to, nor relate to the negligence, recklessness or willful misconduct of Consultant to any extent, then City will reimburse Consultant for the reasonable costs of defending the Indemnified Parties against such Claims, except City shall not reimburse Consultant for attorneys' fees, expert fees, litigation costs and expenses as were incurred defending Consultant or any parties other than Indemnified Parties against such Claims.

Consultant's liability for indemnification hereunder is in addition to any liability Consultant may have to City for a breach by Consultant of any of the provisions of this Agreement. Under no circumstances shall the insurance requirements and limits

set forth in this Agreement be construed to limit Consultant's indemnification obligation or other liability hereunder. The terms of this Agreement are contractual and the result of negotiation between the parties hereto. Accordingly, any rule of construction of contracts (including, without limitation, California Civil Code Section 1654) that ambiguities are to be construed against the drafting party, shall not be employed in the interpretation of this Agreement.

Consultant's indemnification obligation hereunder shall survive the expiration or earlier termination of this Agreement until all actions against the Indemnified Parties for such matters indemnified hereunder are fully and finally barred by the applicable statute of limitations or, if an action is timely filed, until such action is final. This provision is intended for the benefit of third party Indemnified Parties not otherwise a party to this Agreement.

### **XIII. COMPLIANCE WITH LAW**

A. Consultant certifies by the execution of this Agreement the following: that it pays employees not less than the minimum wage as defined by law and that it does not discriminate in its employment with regard to race, color, religion, sex, age, marital status, ancestry, or national origin; that Consultant is in compliance with all federal and state laws, local directives, and executive orders regarding non-discrimination in employment; and that Consultant agrees to demonstrate positively and aggressively the principle of equal opportunity in employment.

B. Consultant shall keep itself informed of State and Federal laws and regulations, which in any manner affect those employed by it or in any way affect the performance of its Services pursuant to this Agreement. Consultant shall at all times observe and comply with all such laws and regulations. The City of Garden Grove and its councilmembers, officers, employees, and agents shall not be liable at law or in equity for Consultant's failure to comply with such laws and regulations.

### **XIV. LICENSES AND QUALIFICATIONS**

Consultant represents and warrants to City that it has obtained all licenses, permits, qualifications, and approvals of whatever nature that is legally required to practice its profession. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any license, permit, or approval, which is legally required for Consultant to perform Services under this Agreement.

### **XV. CONFIDENTIALITY AND OWNERSHIP OF DOCUMENTS**

A. All information gained by Consultant in the performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization. Consultant, its officers, employees, agents or subcontractors

shall not without written authorization from the City Manager or unless requested by City's Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the Services performed under this Agreement or relating to any project or property location within City. Response to a subpoena or court order shall not be considered "voluntary" for the purposes of this Section, provided Consultant gives City proper notice of such subpoena or court order. Consultant shall properly notify City of any summons, complaints, subpoenas, notice of deposition, request for documents, interrogatories, requests for admissions or other discovery requests received by Consultant, its officers, employees, agents or subcontractors, related to Services performed pursuant to this Agreement. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding, the cost of which shall be borne by City. Consultant agrees to cooperate fully with City and to provide City with an opportunity to review and respond to discovery requests provided by Consultant, arising out of Services performed pursuant to this Agreement. However, City's right to review any such request or response does not imply or mean City has the right to control, direct, write or rewrite said response.

B. The documents and study materials for this project shall become the property of City upon the termination or completion of the work. Consultant agrees to furnish to City copies of all memoranda, correspondence, computation, and study materials in its files pertaining to the work described in this Agreement, which is requested in writing by City.

#### **XVI. INTERPRETED UNDER LAWS OF THE STATE OF CALIFORNIA**

This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof. Venue for any litigation concerning this Agreement shall be in the Superior Court for the County of Orange, California.

#### **XVII. ATTORNEYS' FEES**

If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees, costs, and necessary disbursements in addition to any other relief to which they may be entitled.

**XVIII. WAIVER**

No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought. Any waiver by the Parties of any default or breach of any covenant, condition, or term contained in this Agreement, shall not be construed to be a waiver of any subsequent or other default or breach, nor shall failure by the Parties to require exact, full, and complete compliance with any of the covenants, conditions, or terms contained in this Agreement be construed as changing the terms of this Agreement in any manner or preventing the Parties from enforcing the full provisions hereof.

**XIX. NOTICES**

All notices or other communications required or permitted hereunder shall be in writing and shall be personally delivered, sent by registered or certified mail, postage prepaid, return receipt requested, or delivered or sent by electronic transmission, and shall be deemed received upon the earlier of: (i) the date of delivery to the address of the person to receive such notice if delivered personally or by messenger or overnight courier; (ii) three (3) business days after the date of posting by the United States Post Office if by mail; or (iii) when sent if given by electronic transmission. Any notice, request, demand, direction, or other communication sent by electronic transmission must be confirmed within forty-eight (48) hours by letter mailed or delivered. Notices or other communications shall be addressed as follows:

To City: City of Garden Grove  
13802 Newhope Street  
Garden Grove, CA 92843  
Attention: Project Engineer

To Consultant: Simon Wong Engineering  
9968 Hibert Street, 2<sup>nd</sup> Floor  
San Diego, CA 92131  
Attention: Simon Wong, SE

Either Party may, by written notice to the other, designate a different address, which shall be substituted for that specified above.

**XX. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, arrangements, representations, and understandings, if any, made by or among the parties with respect to the subject matter hereof. No amendments or other modifications of this Agreement shall be binding unless executed in writing by both parties hereto, or their respective successors, assigns, or grantees.

## **XXI. FORCE MAJEURE**

If either party shall be delayed or prevented from the performance of any service under this Agreement by reason of acts of God, strikes, lockouts, labor troubles, restrictive governmental laws or regulations or other cause, without fault and beyond the reasonable control of the party obligated (financial inability excepted), performance of such act shall be excused for the period of delay, and the period for performance of any such act shall be extended for a period equivalent to the period of such delay.

## **XXII. TIME IS OF THE ESSENCE**

The Parties agree that time is of the essence of this Agreement with respect to the deadlines set forth herein.

## **XXIII. SEVERABILITY**

Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be invalid under the applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of that provision, or the remaining provisions of this Agreement.

## **XXIV. PROHIBITED INTERESTS**

Consultant covenants that, for the term of this Agreement, no Board Member, official, officer or employee of City during his/her tenure in office/employment, or for one (1) year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. Consultant warrants that it has not given or paid and will not give or pay any third party money or other consideration for obtaining this Agreement.

## **XXV. SCOPE CHANGES**

In the event of a change in the scope of the proposed project, as requested by City, the Parties hereto shall execute an addendum to this Agreement, setting forth, with particularity, all terms of the new Agreement, including but not limited to any additional Consultant's fees.

## **XXVI. NON-LIABILITY OF CITY OFFICERS AND EMPLOYEES**

No officer or employee of the City shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Consultant or its successor, or for breach of any obligation of the terms of this Agreement.

**XXVII. AGREEMENT EXECUTION AUTHORIZATION**

Each of the undersigned represents and warrants that he or she is duly authorized to execute and deliver this Agreement and that such execution is binding upon the entity for which he or she is executing this Agreement.

**XXVIII. RECITALS**

The Recitals above are hereby incorporated into this section as though fully set forth herein and each party acknowledges and agrees that such Party is bound, for purposes of this Agreement, by the same.

IN WITNESS WHEREOF, this Agreement has been executed in the name of City, by its officers thereunto duly authorized, and Consultant as of the day and year first above written.

CITY OF GARDEN GROVE

By: \_\_\_\_\_  
Matthew J. Fertal  
City Manager

ATTEST:

By: \_\_\_\_\_  
Kathy Bailor  
City Clerk

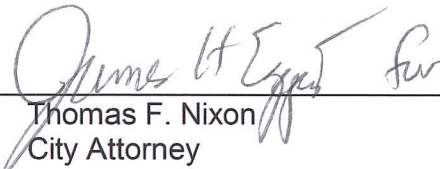
Simon Wong Engineering  
By: \_\_\_\_\_  
Simon Wong, SE  
Vice President

If CONTRACTOR is a corporation, a Corporate Resolution and/or Corporate Seal is required. If a Partnership, Statement of Partnership must be submitted to CITY.



APPROVED AS TO FORM:

Woodruff, Spradlin & Smart

By:  \_\_\_\_\_  
Thomas F. Nixon  
City Attorney

**EXHIBIT A**

**SCOPE OF SERVICES**

## Scope

SWE will follow the City's RFP scope except as modified herein. The Scope of services shall include the following tasks:

1. **Project Management:** The Consultant shall submit an initial schedule with pertinent milestones for the major tasks involved in the Project. The schedule shall be updated monthly, or more often, as required. The duration of this project is anticipated to be five months (March, 2013 through July, 2013).

Deliverables for this task shall include:

- A. A monthly update of the project schedule submitted in hard copy form.
- B. A monthly status report submitted in hard copy and digital (PDF) form. The status report shall be submitted with the Consultant's monthly billings. Invoices will not be processed if the project schedule and the status report are not attached.

2. **Meetings:** The Consultant's representative(s) and Water Services shall meet not less than once a month during the Project. Meetings shall include an initial kickoff meeting to discuss project objectives and a meeting to review the draft report. The Consultant shall assign appropriate engineering specialty staff or principals, or arrange for appropriate subcontractors to accompany the Project Manager, to attend meetings with Water Services.

Deliverables for this task shall include:

- A. A draft meeting agenda sent for review via email in PDF format two day before the meeting.
- B. Draft meeting minutes sent for review via email in PDF or MS Word format within five working days after the meeting.
- C. Final meeting minutes submitted via email in PDF format for distribution to City staff within two working days following receipt of final City comments.

3. **Data Collection and Review:** Review all records made available by City staff, including, but not limited to the previously referenced "as-built" drawings and the most recent Dive/Corr reports. The Consultant shall also conduct interviews with appropriate Water Services engineering and operations staff. Data related to the Project is kept in Water Services Division records. The Consultant shall contact Water Services and secure necessary information and/or requirements for the Project. All data collected verbally shall be confirmed in writing which includes all e-mail, correspondence, and meeting notes being copied to Water Service's project manager. All original data from Water Services records shall be returned immediately after Consultant has reproduced them for its use.

4. **Preparation of the Condition Assessment:** The Consultant shall prepare a seismic, structural, corrosion and security assessment of the reservoirs in sufficient detail to address the following:

### A. Structural and Seismic Assessment

Determine whether the reservoir meets current civil, structural and seismic design standards including AWWA D110 (Wire and Strand-Wound Circular Pre-stressed Concrete Water Tanks), ASCE 7 (Minimum Design Loads for Buildings and Other Structures), ACI 318 (Building Code Requirements for Structural Concrete) and the CBC (California Building Code) as applicable to the design and/or retrofit of potable water storage reservoirs. The Consultant's analysis shall take into account all structural components including floors, walls, columns, roofs and the entire tank lid including all entry portals. The analysis shall evaluate the ability of all entry portals to withstand traffic loads (where they are located in parks above buried reservoirs). To prepare this analysis, the Consultant shall:

- i. Conduct reservoir observations of each reservoir when drained by the City, as well as a separate inspection while the reservoir is in operation with water up to the maximum operational level present in the tank. The Consultant shall provide its own small boat or inflatable raft for use in entering all tanks where water is

present. When entering confined spaces, the Consultant shall meet all safety requirements in accordance with Cal-OSHA, Title 8, General Industry Safety Orders, Group 16, Article 108 (Confined Space Entry), Group 26 (Diving Operations), Article 152, 153 and other applicable sections. All Consultant staff entering the reservoirs must be certified in Confined Space Entry and follow any California Department of Public Health (DPH) requirements and American Water Works Association (AWWA) standards pertaining to disinfection of personnel entering potable water reservoirs. Consultant shall provide confined space entry/equipment and costs.

ii. The four fully buried tanks have under-drains present, with sump pumps that operate intermittently or round the clock. Prior to draining these tanks, the Consultant shall conduct an analysis to determine if the reservoir structure will be negatively impacted by groundwater pressures pushing on the outside of the walls with no opposing hydrostatic pressures from inside the tank. If such a finding is reached, it will not be possible to drain these tanks. In that instance, the Consultant will so advise City staff and all assessment work will have to be done by divers without draining the reservoir. Where diving is required, the Consultant shall meet all applicable safety requirements and DPH and AWWA standards referenced in the RFP.

iii. See corrosion engineer's scope for a more meaningful and cost effective corrosion scope. The spalled concrete evidently should have sustained pH change so it may not be as effective to spend money to test them.

iv. Evaluate the condition of any observed concrete cracking or spalling, particularly in areas where there may be exposed rebar. Mark and photograph non-hairline cracks. Record such cracks.

v. Report on the condition of expansion joints and sealants.

vi. Report on the condition of all appurtenances including floats, overflow piping, inlet and outlet piping, drains, ladders, etc.

vii. In conjunction with the structural and seismic assessment, Consultant shall perform a reservoir freeboard evaluation using both the current ASCE 7 requirements (which form the basis for AWWA 0100-05) and the less conservative requirements of AWWA D110-04. Compute and recommend safe water level recommendations based both on freeboard equations and the structural conditions of the tank walls.

If Consultant find the reservoirs do not meet current structural and seismic codes following completion of Task 3 (data collection and review of all available records described in the first three paragraphs of the Project Background Section of this RFP) and Task 4A (Structural and Seismic Assessment), the following recommendations shall be provided:

1. Appropriate upgrades to bring the reservoirs into compliance including coating and patching recommendations as well as repairs to tensile sections and externally bonded FRP strengthening systems (such as Fife); and
2. Appropriate safe water levels and roof loads in current condition before repairs can be accomplished.

#### B. Corrosion Assessment

Note areas in each reservoir where corrosion is evident, especially where exposed rebar is present. Determine whether existing sacrificial cathodic protection anodes in those areas are sufficient to deter corrosion. If not, make appropriate recommendations for additional cathodic protection, if warranted.

As part of this investigation, the Consultant shall conduct an initial assessment of visually observable corrosion, and if warranted, perform the following tests to better define the extent of the problem and make appropriate mitigation recommendations:

##### *Concrete Trapezoidal Tank Assessment*

1. Review existing dive studies to help determine the general condition of the internal concrete, particularly on the submerged tank walls and floor.
2. Conduct visual inspection of each reservoir interior after the reservoir has been taken out of service, drained, and made accessible for inspection. The results of this inspection will include: a map of obviously distressed areas on each concrete reservoir; characterization of each crack, flaw, spall or rust bleed in terms of minor, moderate and significant.
3. Conduct coating inspection/testing of internal metallic appurtenances such as inlet/outlet piping, overflow piping, etc. Additionally, a visual inspection of the metal surfaces will be conducted and pit depth measurements and UT measurements will be taken (where required).
4. Where warranted, conduct additional non-destructive internal inspections These inspection may include:
  - A. Concrete rebound/sounding test by way of a steel rod or ball peen hammer. Where dull sounds are found, the area will be marked out for further investigation and/or repair.
  - B. Concrete to rebar cover testing using a Rebar Detection System (Preceq Profometer or similar). This will help to determine how much of the concrete has been degraded and may need future repairs.
  - C. Isolated half-cell potential testing at visibly distressed areas to determine areas of active embedded reinforcement corrosion. Note that this testing will require access to two or more areas of exposed rebar (to be provided by others) in order to confirm that the embedded rebar is electrically continuous.
5. Provide a Corrosion Assessment Report for each Trapezoidal concrete reservoir (or an appendix to the Prime Engineering Companies Assessment Report) with observations, conclusions, and recommendations with respect to remaining service life, maintenance/inspection intervals, and for repairs/improvements. The report will also include a map of distressed areas on all reservoirs and photographic documentation of all pertinent observations.

#### *Concrete Pre-stressed Tank Assessment*

1. The corrosion assessment of the pre-stressed wire/strands concrete tanks will be conducted by DN Tanks if required and accessible. RFY will be available to conduct similar tests for the concrete portion of the prestressed tanks as described above for concrete trapezoidal tanks (rebound/sounding tests, concrete cover over rebar tests, visual inspections for cracking, spalling, and rust bleed through, etc.).

The above inspection and testing required for the concrete trapezoidal tanks and pre-stressed tanks assumes that the tanks will be taken out of service and cleaned for the inspection and testing.

Once the initial corrosion assessment has been completed and appropriate additional testing, where warranted, has been performed, the Consultant shall prepare a "repair strategy" with budget-level construction costs for mitigating existing and anticipated corrosion problems in the reservoir, which shall include a report on the conditions of the coatings protecting all steel appurtenances (e.g., inlet/outlet, overflow and drain piping, etc.). That strategy shall include appropriate recommendations for replacing coatings, replacing corroded metal appurtenances with fiberglass, polyethylene, PVC, polypropylene or FRP appurtenances, and/or adding cathodic protection as needed.

#### **C. Reservoir Tank Security Assessment**

Prepare an overview assessment of reservoir tank security. This assessment shall include an overview of the adequacy of existing tank security measures including padlocks, fencing, gates, tank vents, access points, hatches, cages and cameras and shall include recommendations to upgrade due to age or foreseen failure. This assessment is not intended to provide an exhaustive and detailed evaluation of other security apparatus. It should be noted that City staff wishes to continue using the existing alarm systems at each of the reservoir sites.

#### D. Others

i. None of the eight reservoirs currently have lining systems in place. The Consultant shall provide an opinion whether lining systems should be added to deter leakage or seepage or to address other issues. Consultant shall also provide budget level construction costs for lining reservoirs.

ii. Water Services staff has some concern over past lawn seeding and fertilizing operations over the Westhaven Reservoir (and to a lesser extent, Magnolia and West Garden Grove Reservoirs). The Consultant will address future measures that can be taken to protect the reservoir water supply from such operations.

iii. In those instances where it is not economically practical to upgrade a reservoir to meet the previously referenced codes and standards, the Consultant shall prepare:

- a. A preliminary level cost opinion for replacing the storage facility.
- b. A narrative on the constructability issues associated with any newly proposed storage facilities.
- c. A preliminary estimated time of construction for each newly proposed storage facility.

#### Deliverables for Task 4 shall include:

- A. Seven (7) hard-bound copies of the draft assessment report
- B. Seven (7) hard-bound copies of the final assessment report.
- C. The work performed in Task 4 shall be assembled into a single comprehensive report covering all storage facilities. The report should be prepared in an easy-to-read format and shall include the following elements:
  - D. An Executive Summary, not to exceed four pages.
  - E. An Introduction
  - F. A detailed summary of the work performed and recommendations for improvements and/or other required remedial work (organize by reservoir location)
  - G. Findings and conclusions reached during the investigation including a ten- year prioritized Capital Improvement Program with detailed project cost opinions.
  - H. An appendix containing two sets of hard copy photos, two sets of photos on DVDs, and two sets of narrated color videos on DVD for each reservoir. Other pertinent materials may also be included as deemed applicable by the Consultant.

**EXHIBIT B**

**SCHEDULE OF PAYMENT**



February 28, 2013

Rebecca Li, P.E.  
Associate Engineer  
Water Services Division  
City of Garden Grove  
13802 Newhope Street  
Garden Grove, CA 92842

Re: City of Garden Grove / Condition Assessment for 8 Concrete Reservoirs (Proj. #7388)  
SWE Project #0404-00001

Dear Ms. Li:

Per your request, the following is our Schedule of Fees for the above referenced project:

**2013 SCHEDULE OF FEES  
HOURLY CHARGES**

Principal Engineer (PE)	\$250.00
Senior Project Engineer (PE)	\$195.00
Associate Engineer (PE)	\$150.00
Engineer	\$135.00

Should you have any questions, please do not hesitate to call.

Sincerely,

SIMON WONG ENGINEERING

Simon Wong, S.E.  
Vice President



CITY OF GARDEN GROVE  
WATER SERVICES DIVISION  
CONDITION ASSESSMENT FOR EIGHT CONCRETE RESERVOIRS ( By Reservoir )

RESERVOIR	CONSULTANT / RATES														TOTAL HOURS	TOTAL FEE		
	GHD							RICK YEAGER									DN TANKS	
	Principal \$250	Project Manager \$180	Project Engineer \$165	Staff \$150	CADD Designer \$110	Total Hours	Total Fee	Project Manager \$120	Project Engineer \$75	Admin Asst \$65	Total Hours	Total Fee	Field Engineer \$120	Total Hours			Total Fee	
1 West Haven West	8	16	60	144	\$22,220	0	\$0	24	2	26	16	\$3,010	16	16	\$1,920	186	\$27,150	
2 West Haven East	8	16	25	74	\$12,245	0	\$0	24	2	26	0	\$3,010	0	0	\$0	100	\$15,255	
3 Lampson West	8	16	60	144	\$22,220	0	\$0	26	2	28	16	\$3,250	16	16	\$1,920	188	\$27,390	
4 Lampson East	8	16	25	74	\$12,245	0	\$0	26	2	28	0	\$3,250	0	0	\$0	102	\$15,495	
5 Trask West	8	16	60	144	\$22,220	0	\$0	24	2	26	16	\$3,010	16	16	\$1,920	186	\$27,150	
6 Trask East	8	16	30	84	\$13,670	0	\$0	24	2	26	0	\$3,010	0	0	\$0	110	\$16,680	
7 Magnolia	16	16	54	54	\$22,510	0	\$0	24	2	26	16	\$3,010	16	16	\$1,920	182	\$27,440	
8 West Garden Grove	16	16	54	54	\$22,510	0	\$0	24	2	26	16	\$3,010	16	16	\$1,920	182	\$27,440	
9 Reimbursable / Direct Cost					\$5,000		\$1,000					\$1,000			\$1,000		\$8,000	
<b>Total Hours</b>	80	128	368	368	944	244	\$39,940	196	0	16	212	\$25,560	80	80	\$10,600	1480	\$230,940	
<b>Total Fee</b>					\$154,840		\$39,940					\$25,560			\$10,600		\$230,940	

CITY OF GARDEN GROVE  
WATER SERVICES DIVISION  
CONDITION ASSESSMENT FOR EIGHT CONCRETE RESERVOIRS ( By Task )

RESERVOIR	CONSULTANT / RATES														TOTAL HOURS	TOTAL FEE		
	GHD							RICK YEAGER									DN TANKS	
	Principal \$250	Project Manager \$180	Project Engineer \$165	Staff \$150	CADD Designer \$110	Total Hours	Total Fee	Project Manager \$120	Project Engineer \$75	Admin Asst \$65	Total Hours	Total Fee	Field Engineer \$120	Total Hours			Total Fee	
1 Project Management	16	40	0	0	56	\$11,800	0	\$0	4	0	0	\$0	16	16	\$1,920	72	\$13,720	
2 Meetings	8	8	8	32	\$5,840	12	\$2,380	4	4	4	4	\$480	0	0	\$0	48	\$8,700	
3 Data Collection	32	40	40	152	\$27,200	12	\$2,380	40	40	40	40	\$4,800	16	16	\$1,920	220	\$36,300	
4 Condition Assessment					\$0	0	\$0				0	\$0			\$0	0	\$0	
a Structural	16	32	296	640	\$94,600	0	\$0	128	16	144	16	\$16,400	16	16	\$1,920	656	\$96,520	
b Corrosion					\$0	0	\$0				0	\$0			\$0	144	\$16,400	
c Site Security	8	8	24	64	\$10,400	196	\$30,340	24	12	92	72	\$0	16	16	\$1,920	212	\$32,260	
d Others	8	8	24	64	\$10,400	24	\$3,840	24	16	24	8	\$2,880	16	16	\$1,920	128	\$19,040	
9 Reimbursable / Direct Cost					\$5,000		\$1,000					\$1,000			\$1,000		\$8,000	
<b>Total Hours</b>	80	128	368	368	944	244	\$39,940	196	0	16	212	\$25,560	80	80	\$10,600	1480	\$230,940	
<b>Total Fee</b>					\$154,840		\$39,940					\$25,560			\$10,600		\$230,940	

\* Principal Engineer (PE) - Simon Wong, S.E.  
Sr. Project Engineer (PE) - Eric Ng, S.E.  
Associate Engineer (PE) - Christina Nishimoto, P.E. / Guy Kelsey, P.E.  
Engineer - Dan Isaacs, P.E. / Matt Stone, P.E.