

MEMORANDUM

TO: HONORABLE MAYOR & CITY COUNCIL MEMBERS
FROM: RAY HOLLAND, DIRECTOR OF PUBLIC WORKS
DATE: SEPTEMBER 7, 2010
**SUBJECT: AWARD CONTRACTS - CATCH BASIN SCREEN
INSTALLATION PROJECT**
REVIEWED: CAROLYN LEHR, CITY MANAGER

Ray Holland

Carolyn Lehr

Project Manager: Andy Winje, Associate Civil Engineer

RECOMMENDATIONS

1. Approve the plans and specifications for the Machado Lake Drainage Area, Catch Basin Pipe Screen Installation Project – Phase I.
2. Authorize the Mayor and City Clerk to execute a construction contract to West Coast Storm, Inc. in the amount of \$8,104. Authorize a construction contingency of \$5,400 for a total construction authorization of \$13,504.
3. Authorize the Mayor and City Clerk to execute a professional services agreement to Charles Abbott Associates in an amount not to exceed \$4,080 for inspection services.

EXECUTIVE SUMMARY

The Regional Water Quality Control Board, Los Angeles Region (“Regional Board”) has required that cities with drainage areas tributary to Machado Lake install screens in all catch basins collecting that drainage. The Regional Board’s implementation plan requires 20% of the City’s 107 contributing catch basins be retrofitted annually until full compliance is met. This project was developed to comply with the Regional Board’s implementation plan. City staff has solicited bids and identified a low bidder for the first phase of catch basin modification and is recommending award of a construction contract and a professional services agreement for construction inspection. This project has a budget of \$41,000 and is funded through the Storm Water User Fee and is included in the Five Year Storm Drain Plan approved by City Council earlier this year.

BACKGROUND

The Regional Board has established a zero Total Maximum Daily Load (TMDL) allocation specific to trash entering Lake Machado. Portions of Rancho Palos Verdes drain to Lake Machado and therefore the City is included in the Regional Board's order to minimize trash that reaches the Lake. Cities included in the Lake Machado TMDL are required to put devices in place that will minimize the amount of trash that can enter a storm drain by 2016; accordingly, 20% of the identified catch basins must be retrofitted with a trash minimizing screen over each of the next five years.

DISCUSSION

The Phase I project for retrofitting 24 catch basins was advertised, and sealed bids were received and opened at 10:00 a.m. on August 5, 2010. Four proposals were received; the lowest responsible and responsive bidder is West Coast Storm, Inc. The bid results are shown below:

CONTRACTOR	BID AMOUNT
West Coast Storm, Inc.	\$8,104.00
United Storm Water, Inc.	\$9,277.12
Ecology Control Industries	\$11,940.00
Sepulveda Construction, Inc.	\$37,680.00

The apparent low bid has been reviewed for consistency with bid requirements. West Coast Storm, Inc. has worked in neighboring cities on similar projects in the past. References provided were contacted and all reported satisfactory performance. The bid documents are in order and their contractor's license is current. West Coast Storm, Inc. manufactures the devices that will be installed in the catch basins and appears to have the skills to perform the required catch basin cleaning and retrofitting.

The unit prices quoted are very competitive and well within the project budget of \$41,000. Staff is recommending that the City Council authorize the Mayor and the City Clerk to execute a construction contract to West Coast Storm, Inc. in the amount of \$8,104 (Attachment A). Staff is also recommending approval of a \$5,400 construction contingency to address unforeseen conditions, for a total construction authorization of \$13,504.

Staff further recommends that the City Council authorize the Mayor and the City Clerk to execute a professional services agreement with Charles Abbott Associates for construction inspection in the not to exceed amount of \$4,080, unless additional services are requested pursuant to the agreement. This Professional Services Agreement is included with this report (Attachment B).

CONCLUSIONS

The City is obligated to install catch basin inserts into catch basins draining into Machado Lake according to the Regional Board's implementation plan for the Machado Lake Trash TMDL. Staff is recommending installing twenty-four catch basin inserts through this project.

FISCAL IMPACT

Funding for this project has been budgeted in the approved FY10/11 budget.

- Attachments:
- A Machado Lake Drainage Catch Basin Screen Installation Project – Phase I Construction Contract
 - B Professional Services Agreement

**MACHADO LAKE DRAINAGE CATCH BASIN PIPE SCREEN INSTALLATION PROJECT –
PHASE I**

THIS AGREEMENT (“Agreement”) is made and entered this _____ day of _____, 2010, by and between the City of Rancho Palos Verdes, hereinafter referred to as “City,” and West Coast Storm, Inc., hereinafter referred to as “Contractor.”

IN CONSIDERATION of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

1. Scope of Work. Contractor shall construct and install all of the work and provide the labor, materials, necessary tools and expendable equipment for the project identified as “Machado Lake Drainage Catch Basin Pipe Screen Installation Project – Phase 1” as described in the Plans and Specifications (including the Notice Inviting Sealed Bids, Instructions to Bidders, Proposal documents, General Provisions, Special Provisions, and Technical Provisions), attached hereto as Exhibit “A” and incorporated herein by this reference. Such work shall be performed in a good and workmanlike manner, under the terms as stated herein and in the Plans and Specifications, and in accordance with the latest edition of the Joint Cooperative Committee, Southern California Chapters of the American Public Works Association and the Associated General Contractors of America’s document entitled “Standard Specifications,” which is incorporated herein by this reference.

2. Compensation.

A. Maximum Obligation. Contractor agrees that the City’s maximum obligation for Contractor’s performance of this Agreement shall not exceed \$8,104, unless the Director of Public Works or his or her designee requests change orders in writing pursuant to Section 3 of this Agreement.

B. Progress Payments. Contractor shall be paid according to Contractor’s Bid Sheet, attached hereto as Exhibit “B” and incorporated herein by this reference. Contractor shall deliver to City itemized invoices for payment in such detail as required by City. Within thirty (30) days after receipt of an undisputed properly submitted application for payment, City shall make payment to Contractor. In connection with each progress payment, City may retain ten percent (10%) of all sums otherwise due to Contractor for work performed.

C. Substitute Security. Pursuant to Public Contract Code Section 22300, the substitution of securities for any moneys withheld by the City to ensure performance under a contract is permitted. At the request and expense of Contractor, securities equivalent to the amount withheld shall be deposited with the City, or with a state or federally chartered bank in the State of California (“State”) as the escrow agent, that shall then pay those moneys to Contractor. Upon satisfactory completion of the Agreement, the securities shall be returned to Contractor. Alternatively, Contractor may request and the City shall make payment of retentions earned directly to the escrow agent at the expense of Contractor. At the expense of Contractor, Contractor may direct the investment of the payments into securities, and Contractor shall receive the interest earned on the investments upon the same terms provided for securities deposited by Contractor. Upon satisfactory completion of the Agreement, Contractor shall receive from the escrow agent all securities, interest, and payments received by the escrow agent from the City, pursuant to the terms of this section. Securities eligible for investment shall include those listed in California Government Code Section 16430, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit, or any other security to which Contractor and the City mutually agree in writing. Contractor shall be the beneficial owner of any securities substituted for moneys withheld and shall receive any interest thereon. If Contractor elects to receive interest on moneys withheld in retention by the City, it shall, at the request of any subcontractor performing more than five percent (5%) of Contractor’s total bid, make that option available to the subcontractor regarding any

moneys withheld in retention by Contractor from the subcontractor. If Contractor elects to receive interest on any moneys withheld in retention by the City, then the subcontractor shall receive the identical rate of interest received by Contractor on any retention moneys withheld from the subcontractor by Contractor, less any actual pro rata costs associated with administering and calculating that interest. In the event that the interest rate is a fluctuating rate, the rate for the subcontractor shall be determined by calculating the interest rate paid during the time that retentions were withheld from the subcontractor. If Contractor elects to substitute securities in lieu of retention, then, by mutual consent of Contractor and its subcontractor, the subcontractor may substitute securities in exchange for the release of moneys held in retention by Contractor. No Contractor shall require any subcontractor to waive any provision of this paragraph. The escrow agreement for security deposits in lieu of retention shall be substantially similar to the form provided in Public Contract Code Section 22300(f).

D. Representations. By submitting a payment invoice, Contractor represents to City that: (i) to the best of Contractor's knowledge, information and belief, the work has progressed to the point indicated; (ii) the quality of the portion of the work covered by the invoice is in accordance with this Agreement; and (iii) Contractor is entitled to payment in the amount requested.

E. Payment of Subcontractors. Contractor shall pay each subcontractor from payments received from City, and Contractor's payments to subcontractors shall be made promptly after receipt of payment from City. City shall have no obligation to pay a subcontractor except as required by law.

F. Contractor's Warranties. Contractor warrants that: (i) the portions of the work, materials and equipment covered by a previous payment invoice are free and clear of liens, claims, security interests or encumbrances; and (ii) no portion of the work, materials or equipment covered by a payment invoice will have been acquired by Contractor, or any other person performing work or furnishing materials or equipment for the work, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by Contractor or such other person.

G. Final Payment. Neither final payment nor the retention shall become due until Contractor submits to City all of the following: (i) a release in a format satisfactory to City of all claims against the City under or arising out of this Agreement, except for those previously made in writing; (ii) a certificate that all insurance required by this Agreement was in force throughout the full term of the Agreement; (iii) a Warranty Bond as described in Section 19(B) of this Agreement; and (iv) if required by City, other data establishing payment or satisfaction of obligations such as receipts, releases and waivers of liens.

3. Change Orders. The Director of Public Works or his or her designee may request change orders in writing on behalf of the City, and Contractor shall perform those change orders. For any change order, City and Contractor shall agree to compensation in writing before commencement of work. Change orders shall otherwise adhere to the procedures, representations and warranties in Section 2 of this Agreement.

4. Corrections.

A. Correction of Work. Contractor shall promptly correct any portion of the work that is rejected by City or that is known by Contractor to be defective or failing to conform to the Agreement, whether or not fabricated, installed or completed. Additionally, Contractor shall correct any portion of the work found to be defective or nonconforming within a period of one (1) year after the date of completion, or within such longer period provided by any applicable special warranty in the Agreement.

B. No Limitation. This Article shall not be construed to establish a period of limitation with respect to other obligations of Contractor under this Agreement. Section 4(A) relates only to the specific obligation of Contractor to correct the work, and has no relationship to the time within which the obligation to comply with the Agreement may be sought to be enforced, nor to the time within which proceedings may be commenced to establish Contractor's liability with respect to its obligations other than correction of the work.

5. Unresolved Disputes. In the event that a dispute arises between the City and Contractor regarding whether the conditions materially differ, involve hazardous waste, or cause a decrease or increase in Contractor's cost of or time required for performance of any part of the work, Contractor shall not be excused from any scheduled completion date provided for by the Agreement, but shall proceed with all work to be performed under the Agreement. Contractor shall retain any and all rights provided that pertain to the resolution of disputes and protests between the parties. In the event of any dispute or controversy with the City over any matter whatsoever, Contractor shall not cause any delay or cessation in or of work, but shall proceed with the performance of the work in dispute. This includes disputed time extension requests and prices for changes. The disputed work will be categorized as an "unresolved dispute" and payment, if any, shall be as later determined by mutual agreement or a court of law. Contractor will keep accurate, detailed records of all disputed work, claims and other disputed matters. Pursuant to Public Contract Code Section 20104(b)(2), a "claim" means a separate demand by Contractor for a time extension, payment of money or damages arising from work done by or on behalf of Contractor pursuant to this Agreement which is not otherwise expressly provided for, or an amount which is disputed by the City. Public Contract Code Sections 20104 *et seq.* shall govern the procedures of the claim process, and the provisions of Public Contract Code Sections 20104 *et seq.* are incorporated herein.

6. Force Majeure. Neither City nor Contractor shall be responsible for delays in performance under this Agreement due to causes beyond its control, including but not limited to acts of God, acts of the public enemy, acts of the Government, fires, floods or other casualty, epidemics, earthquakes, labor stoppages or slowdowns, freight embargoes, unusually severe weather, and supplier delays due to such causes. Neither economic nor market conditions nor the financial condition of either party shall be considered a cause to excuse delay pursuant to this subsection. Each party shall advise the other promptly in writing in accordance with Section 39 of this Agreement of each such excusable delay, its cause and its expected delay, and shall upon request update such advice.

7. Trenching and Excavations. Pursuant to Public Contract Code Section 7104, if the work pursuant to this Agreement involves trenching more than four (4) feet deep, Contractor shall promptly and before the following conditions are disturbed notify the City in writing of any:

A. Material that Contractor believes may be material that is hazardous waste, as defined in California Health and Safety Code Section 25117, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; and/or

B. Subsurface or latent physical conditions at the site differing from those indicated; and/or

C. Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Agreement.

Contractor's notification shall be provided in accordance with Section 39 of this Agreement. The City shall promptly investigate the conditions, and if the City finds that the conditions do materially differ or do involve

hazardous waste and cause a decrease or increase in Contractor's cost of or the time required for performance of any part of the work the City shall issue a change order.

8. Location of Existing Elements. Pursuant to Government Code Sections 4216 to 4216.9, the methods used and costs involved to locate existing elements, points of connection and all construction methods are Contractor's sole responsibility. Accuracy of information furnished, as to existing conditions, is not guaranteed. Contractor, at its sole expense, must make all investigations necessary to determine locations of existing elements, which may include, without limitation, contacting U.S.A. alert and other private underground locating firm(s), and/or utilizing potholes, specialized locating equipment and/or hand trenching.

9. Utility Facilities. Pursuant to Government Code Section 4215, the City acknowledges its responsibilities with respect to locating, relocating, removing or protecting utility facilities on the site of the Project, if it entails construction and such utilities are not identified by the City in writing by the time of execution of this Agreement. The City shall compensate Contractor for the costs of relocating and repairing damage not due to Contractor's failure to exercise reasonable care, removing or relocating such utility facilities not indicated in writing with reasonable accuracy, and equipment on the Project necessarily idled during such work. The City shall not assess liquidated damages to the Contractor for delay in completion of the Project when such delay was caused by the failure of the City or the owner of the utility to provide for removal or relocation of such utility facilities.

10. Prevailing Wages. The City and Contractor acknowledge that the Project is a "public work" to which prevailing wages apply. The City Council of the City has been provided with a determination of the prevailing rates of per diem wages and the general rate for holiday and overtime work for each craft, classification, or type of worker applicable to the work pursuant to this Agreement, and that determination is on file in the Office of the City Clerk of the City, copies of which may be obtained at cost from the Department of Public Works. Contractor shall post a copy of the determination of the prevailing rate of per diem wages at each job site and shall pay the adopted prevailing wage rates as a minimum. Said rates are based on an eight (8) hour day, forty (40) hour week except as otherwise noted, and said rates are currently in effect. All parties to this Agreement shall strictly observe existing agreements between the Building Trades and Construction Industry groups related to wages, overtime, holidays and other special provisions. Contractor shall comply with the provisions of California Labor Code Sections 1773.8, 1774, 1775, 1776, 1777.5, 1777.6, 1810, 1811, 1813 and 1815. The document titled "Agreement to Comply with California Labor Law Requirements" is attached hereto and incorporated herein by this reference, and Contractor shall sign and date this document and submit it to the City.

11. Worker's Compensation. Pursuant to Labor Code Sections 1860 and 1861, Contractor agrees and files with the City the following statement:

"I am aware of the Provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Agreement."

If Contractor has employees, a copy of the certificates evidencing such insurance shall be provided to the City prior to commencement of work.

12. Licenses. Contractor is aware of California Labor Code Sections 1777.1 and 1777.7, which prohibit Contractor who has been found by the Labor Commissioner or the Director of Industrial Relations to be in violation of certain provisions of the Labor Code from bidding on, being awarded, or

performing work as a contractor on a public works project for specified periods of time. Failure of Contractor to obtain proper and adequate licensing as required by law shall constitute a failure to execute the Agreement and shall result in the forfeiture of the security of the Contractor. Contractor must comply with business license requirements of the City.

13. Nondiscriminatory Employment. Contractor shall not unlawfully discriminate against any individual based on race, color, religion, nationality, gender, sex, sexual orientation, age or condition of disability. Contractor understands and agrees that it is bound by and will comply with the nondiscrimination mandates of all statutes and local regulations and ordinances.

14. Termination. The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Contractor at least ten (10) days prior written notice. Upon receipt of said notice, the Contractor shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement, such suspension or termination shall not make void or invalidate the remainder of this Agreement. In the event this Agreement is terminated pursuant to this Section, the City shall pay to Contractor the actual value of the work satisfactorily performed up to the time of termination, provided that the work performed is of value to the City.

15. Default of Contractor.

A. The Contractor's failure to comply with any provision of this Agreement shall constitute a default. In the event that Contractor is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Contractor for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Contractor. If such failure by the Contractor to make progress in the performance of work hereunder arises out of causes beyond the Contractor's control, and without fault or negligence of the Contractor, it shall not be considered a default.

B. If the Director of Public Works or his or her designee determines that the Contractor is in default in the performance of any of the terms or conditions of this Agreement, he or she shall serve the Contractor with written notice of the default. The Contractor shall have ten (10) days after notice has been provided in which to cure the default. In the event that the Contractor fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

16. Schedule. Contractor shall complete all work in accordance with the times as specified in this Agreement or in the incorporated documents. Time is of the essence in this Agreement.

17. Indemnification. The document titled "Indemnification and Hold Harmless Agreement and Waiver of Subrogation and Contribution" is attached hereto and incorporated herein by this reference. Contractor shall sign and submit the incorporated document. The indemnification obligations of Contractor shall survive the expiration or termination of this Agreement.

18. Insurance. The documents titled "City of Rancho Palos Verdes Instructions for Execution of Instruments," "Insurance Requirements for City of Rancho Palos Verdes Public Works Contract," "Workers' Compensation Certificate of Insurance," "Additional Insured Endorsement Comprehensive General Liability," "Additional Insured Endorsement Automobile Liability," and "Additional Insured Endorsement Excess Liability" are attached hereto and incorporated herein by this reference. Contractor

shall complete, sign, submit and/or otherwise comply with the incorporated documents as explained. The insurance provided by Contractor shall be primary to any coverage available to City. The insurance policies (other than workers compensation) shall include provisions for waiver of subrogation. Failure to provide and maintain insurance is a material breach of this Agreement. The City may suspend payment to Contractor for services provided during a time when all required insurance is not in place.

19. Bonds.

A. The documents titled "Payment Bond (Labor and Materials)" and "Performance Bond" are attached hereto and incorporated herein by this reference. Contractor shall complete, sign, and submit these incorporated documents as explained prior to commencement of the work.

B. The guarantees and agreements set forth in this Agreement shall be secured by a Warranty Bond which shall be delivered by the Contractor to the City before the Notice of Completion and acceptance of the work by the Director of Public Works or his or her designee and shall remain in force for a period of three (3) years after the date of Notice of Completion and acceptance. Alternatively, the Contractor may provide for the Performance Bond furnished in Section 19(A) to remain in force and effect until the expiration of said three (3) year period.

C. All bonds furnished pursuant to this Section shall be in the form approved by the City Attorney and executed by a surety company or companies admitted in the State and satisfactory to the City, in the amount of one-hundred percent (100%) of the Agreement.

20. Audit. The City or its representative shall have the option of inspecting and/or auditing all records and other written materials used by Contractor in preparing its billings to the City as a condition precedent to any payment to Contractor. Contractor will promptly furnish documents requested by the City. Additionally, pursuant to Government Code Section 8546.7, if public funds in excess of \$10,000 are used, Contractor shall be subject to State Auditor examination and audit at the request of the City or as part of any audit of the City, for a period of three (3) years after final payment under this Agreement.

21. Antitrust Claims. Pursuant to Public Contract Code Section 7103.5, Contractor offers and agrees to assign to the City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the California Business and Professions Code) arising from purchases of goods, services, or materials pursuant to the Agreement. This assignment shall be made and become effective at the time the City tenders final payment to Contractor without further acknowledgment by the parties.

22. Taxes. Contractor shall calculate payment for all sales, unemployment, old age pension and other taxes imposed by local, State and federal law. These payments are included in the total bid amounts in the Plans and Specifications.

23. Inconsistency. If there is any inconsistency between this Agreement and any incorporated document, the terms of the Agreement shall govern.

24. Legal Action. Should either party to this Agreement bring legal action against the other, the validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the State, excluding the State's choice of law rules. Venue for any such action relating to this Agreement shall be in the Los Angeles County Superior Court.

25. Attorneys' Fees. If any legal action or other proceeding, including action for declaratory relief, is brought for the enforcement of this Agreement or because of an alleged dispute, breach, default or misrepresentation in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees, experts' fees, and other costs, in addition to any other relief to which the party may be entitled.

26. Third-Party Claim. The City has full authority to compromise or otherwise settle any claim relating to this Agreement at any time. The City shall timely notify Contractor of the receipt of any third-party claim relating to the Agreement. The City shall be entitled to recover its reasonable costs incurred in providing the notification required by Public Contract Code Section 9201(b).

27. Contractor's Independent Investigation. No plea of ignorance of conditions that exist or that may hereafter exist or of conditions of difficulties that may be encountered in the execution of the work under this Agreement, as a result of failure to make the necessary independent examinations and investigations, and no plea of reliance on initial investigations or reports prepared by City for purposes of letting this Agreement out to proposal will be accepted as an excuse for any failure or omission on the part of the Contractor to fulfill in every detail all requirements of this Agreement, nor will such reasons be accepted as a basis for any claims whatsoever for extra compensation or for an extension of time.

28. Conflicts of Interest. Contractor agrees not to accept any employment or representation during the term of this Agreement or within twelve (12) months after completion of the work under this Agreement which is or may likely make Contractor "financially interested," as provided in Government Code Sections 1090 and 87100, in any decisions made by City on any matter in connection with which Contractor has been retained pursuant to this Agreement.

29. Assignment. Contractor shall not assign or transfer any interest in this Agreement or any part thereof, whether by assignment or novation, without the prior written consent of the City. Any purported assignment without written consent shall be null and void, and Contractor shall hold harmless, defend and indemnify the City and its officers, officials, employees, agents and representatives with respect to any claim, demand or action arising from any unauthorized assignment.

30. Independent Contractor. Contractor is and shall at all times remain, as to the City, a wholly independent contractor. Neither the City nor any of its agents shall have control over the conduct of Contractor or any of the Contractor's employees, except as herein set forth, and Contractor is free to dispose of all portions of its time and activities which it is not obligated to devote to the City in such a manner and to such persons, firms, or corporations as the Contractor wishes except as expressly provided in this Agreement. Contractor shall have no power to incur any debt, obligation, or liability on behalf of the City or otherwise act on behalf of the City as an agent. Contractor shall not, at any time or in any manner, represent that it or any of its agents, servants or employees are in any manner agents, servants or employees of City. Contractor agrees to pay all required taxes on amounts paid to Contractor under this Agreement, and to indemnify and hold the City harmless from any and all taxes, assessments, penalties, and interest asserted against the City by reason of the independent contractor relationship created by this Agreement. Contractor shall fully comply with the workers' compensation law regarding Contractor and its employees, and Contractor further agrees to indemnify and hold the City harmless from any failure of Contractor to comply with applicable workers' compensation laws. The City shall have the right to offset against the amount of any fees due to Contractor under this Agreement any amount due to the City from Contractor as a result of its failure to promptly pay to the City any reimbursement or indemnification arising under this Section.

31. Titles. The titles used in this Agreement are for general reference only and are not part of the Agreement.

32. Entire Agreement. This Agreement, including any other documents incorporated herein by specific reference, represents the entire and integrated agreement between the City and Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified or amended, or provisions or breach may be waived, only by subsequent written agreement signed by both parties.

33. Construction. In the event of any asserted ambiguity in, or dispute regarding the interpretation of any matter herein, the interpretation of this Agreement shall not be resolved by any rules of interpretation providing for interpretation against the party who causes the uncertainty to exist or against the party who drafted the Agreement or that portion of the Agreement.

34. Required Provisions Deemed Inserted. Each and every provision of law and clause required by law to be inserted in the Agreement or Plans and Specifications shall be deemed to be inserted, and the Agreement or Plans and Specifications shall be read and enforced as though such provisions were included. If through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either party, the Director of Public Works or his or her designee shall promptly amend the Agreement or Plans and Specifications to make such insertion or correction.

35. No Third Party Beneficiary. This Agreement is not intended or designed to create any benefit or right for any person or entity of any kind that is not a party to this Agreement.

36. Authority to Execute this Agreement. The person or persons executing this Agreement on behalf of Contractor warrants and represents that he or she has the authority to execute this Agreement on behalf of Contractor and has the authority to bind Contractor to the performance of its obligations under this Agreement.

37. Non-Waiver of Terms, Rights and Remedies. Waiver by either party of any one or more of the conditions of performance under this Agreement shall not be a waiver of any other condition of performance under this Agreement. In no event shall the making by the City of any payment to Contractor constitute or be construed as a waiver by the City of any breach of covenant, or any default which may then exist on the part of Contractor, and the making of any such payment by the City shall in no way impair or prejudice any right or remedy available to the City with regard to such breach or default.

38. 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.

39. Notice. Except as otherwise required by law, any notice, request, direction, demand, payment, consent, waiver, approval or other communication required or permitted to be given hereunder shall not be effective unless it is given in writing and shall be delivered (a) in person or (b) by certified mail, postage prepaid, and addressed to the parties at the addresses stated below, or at such other address as either party may hereafter notify the other in writing as aforementioned:

To CITY:

Mr. Ray Holland, Director of Public Works

City of Rancho Palos Verdes
30940 Hawthorne Blvd.
Rancho Palos Verdes, CA 90275

To CONTRACTOR:

Rafael Padilla, Vice President
West Coast Storm, Inc.
654 South Lincoln Avenue
San Bernardino, CA 92408

A party may change its address by giving written notice to the other party. Thereafter, any notice or other communication shall be addressed and transmitted to the new address. If sent by mail, any notice, tender, demand, delivery or other communication shall be deemed effective three (3) business days after it has been deposited in the United States mail. For purposes of communicating these time frames, weekends and federal, State, religious, County of Los Angeles or City holidays shall be excluded. No communication via facsimile or electronic mail shall be effective to give any such notice or other communication hereunder.

[signatures on next page]

IN WITNESS WHEREOF, the parties hereto have executed the Agreement as of the day and year first above written.

Dated: _____

CONTRACTOR

BY: _____

Printed Name: _____

Title: _____

BY: _____

Printed Name: _____

Title: _____

Dated: _____

CITY OF RANCHO PALOS VERDES,
A Municipal Corporation

BY: _____

MAYOR

ATTEST:

BY: _____

CITY CLERK

PROFESSIONAL/TECHNICAL SERVICES AGREEMENT

This Agreement (the "Agreement") is made and entered into this _____ day of _____, 2010 by and between the City of Rancho Palos Verdes (hereinafter referred to as the "CITY") Charles Abbott Associates, Inc. (hereafter referred to as "CONSULTANT").

IN CONSIDERATION of the covenants hereinafter set forth, the parties hereto mutually agree as follows:

ARTICLE 1 SCOPE OF SERVICES

1.1 Project Description

The Project is described as the Machado Lake Drainage Catch Basin Pipe Screen Installation Project – Phase I.

1.2 Description of Services

CONSULTANT shall provide construction inspection services as described in the Consultant's Proposal Letter, dated July 13, 2010, which is attached hereto as Exhibit "A" and incorporated herein by this reference.

1.3 Schedule of Work

Upon receipt of written Notice to Proceed from the CITY, CONSULTANT shall perform with due diligence the services requested by the CITY related to this Agreement. Time is of the essence in this Agreement. 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, or 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, other consultants/contractors, or governmental agencies, or any other delays beyond CONSULTANT's control or without CONSULTANT's fault.

ARTICLE 2 COMPENSATION

2.1 Fee

CITY agrees to compensate CONSULTANT, on an hourly basis for services rendered at the rate eighty-five dollars (\$85) per hour, a not to exceed amount of four thousand and eighty dollars (\$4,080) unless additional services are required pursuant to Section 2.4 of this Agreement.

2.2 Payment Address

All payments due CONSULTANT shall be paid to:

Charles Abbott Associates
879 West 190th Street, Suite 920
Gardena, CA 90248

2.3 Terms of Compensation

CONSULTANT shall submit monthly invoices for the hours of work completed in the previous month. CITY agrees to authorize payment for all undisputed invoice amounts within thirty (30) days of receipt of the invoice. CITY agrees to use its best efforts to notify CONSULTANT of any disputed invoice amounts or claimed completion percentages within ten (10) days of the receipt of each invoice. However, CITY's failure to timely notify CONSULTANT of a disputed amount of claimed completion percentage shall not be deemed a waiver of CITY's right to challenge such amount or percentage.

Additionally, in the event CITY fails to pay any undisputed amounts due CONSULTANT within forty-five (45) days after invoices are received by CITY then CITY agrees that CONSULTANT shall have the right to consider said default a total breach of this Agreement and be terminated by CONSULTANT without liability to CONSULTANT upon ten (10) working days advance written notice.

2.4 Additional Services

CITY may request in writing that CONSULTANT perform additional services not covered by the specific Scope of Work set forth in Article 1 of this Agreement, and CONSULTANT shall perform such services and will be paid for such additional services at the hourly rate of eighty-five dollars (\$85) per hour.

2.5 Term of Agreement:

This Agreement shall commence on September 15, 2010 and shall terminate on June 30, 2011, unless sooner terminated pursuant to Article 4 of this Agreement, and may be renewed for one (1) additional one-year period by mutual written agreement.

ARTICLE 3
INDEMNIFICATION AND INSURANCE

3.1 Indemnification

With respect to non professional acts, CONSULTANT will defend, indemnify and hold harmless CITY and its officials, officers, employees, agents and volunteers free and harmless from all tort liability, including liability for claims, suits, actions, expenses or costs of any kind, whether actual, alleged or threatened, actual

attorneys' fees, experts' fees, or court costs incurred by the CITY, to the extent arising out of or in any way connected with, in whole or in part, the negligent or reckless acts or omissions or willful misconduct of CONSULTANT or any of CONSULTANT's officers, agents, employees or contractors in the performance of this Agreement. This includes but is not limited to claims, suits and liabilities for bodily injury, death or property damage to any individual or entity, including officers, agents, employees or contractors of the CONSULTANT. The provisions of this paragraph shall not apply to claims to the extent arising out of the active negligence or willful misconduct of the CITY and its officials, officers, employees, agents and volunteers.

In addition to the foregoing, CONSULTANT shall indemnify, defend and hold free and harmless the CITY and the CITY's officials, officers, employees, agents and volunteers from and against any and all losses, liabilities, damages, costs and expenses, including reasonable attorneys' fees, experts' fees, and costs to the extent the same are caused by negligence, recklessness, or willful misconduct of the CONSULTANT, or any of the CONSULTANT's officials, officers, agents, employees or volunteers, in the performance of professional services pursuant to this Agreement.

3.2 General Liability

CONSULTANT shall at all times during the term of the Agreement carry, maintain, and keep in full force and effect, a policy or policies of Commercial General Liability Insurance, with minimum limits of one million dollars (\$1,000,000) for each occurrence and two million dollars (\$2,000,000) general aggregate for bodily injury, death, loss or property damage for products or completed operations and any and all other activities undertaken by CONSULTANT in the performance of this Agreement. Said policy or policies shall be issued by an insurer admitted to do business in the State of California and rated in A.M. Best's Insurance Guide with a rating of A:VII or better.

3.3 Professional Liability

CONSULTANT shall at all times during the term of this Agreement, carry, maintain, and keep in full force and effect a policy or policies of professional liability insurance with a minimum limit of one million dollars (\$1,000,000) per claim and aggregate for errors and/or omissions of CONSULTANT in the performance of this Agreement. Said policy or policies shall be issued by an insurer admitted to do business in the State of California and rated in Best's Insurance Guide with a rating of A:VII or better. If a "claims made" policy is provided, such policy shall be maintained in effect from the date of performance of work or services on the CITY's behalf until three (3) years after the date of work or services are accepted as completed. Coverage for the post-completion period may be provided by renewal or replacement of the policy for each of the three (3) years or by a three-year extended reporting period endorsement, which reinstates all limits for the extended reporting period. If any such policy and/or policies have a retroactive date, that date shall be no later than the date of first performance of work or services on behalf of the CITY. Renewal or replacement policies shall not allow for any advancement of such retroactive date.

3.4 Automobile Liability

CONSULTANT shall at all times during the term of this Agreement obtain, maintain, and keep in full force and effect, a policy or policies of Automobile Liability Insurance, with minimum of one million dollars (\$1,000,000) per claim and occurrence and two million dollars (\$2,000,000) in the aggregate for bodily injuries or death of one person and \$500,000 for property damage arising from one incident.

3.5 Worker's Compensation

CONSULTANT agrees to maintain in force at all times during the performance of work under this Agreement worker's compensation insurance as required by the law. CONSULTANT shall require any subcontractor similarly to provide such compensation insurance for their respective employees.

3.6 Notice of Cancellation

A. All insurance policies shall provide that the insurance coverage shall not be cancelled by the insurance carrier without thirty (30) days prior written notice to CITY, or ten (10) days notice if cancellation is due to nonpayment of premium. CONSULTANT agrees that it will not cancel or reduce said insurance coverage.

B. CONSULTANT agrees that if it does not keep the aforesaid insurance in full force and effect, CITY may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, CITY may take out the necessary insurance and pay, at CONSULTANT's expense, the premium thereon.

3.7 Certificate of Insurance

At all times during the term of this Agreement, CONSULTANT shall maintain on file with the CITY Clerk certificates of insurance showing that the aforesaid policies are in effect in the required amounts. The commercial general liability shall contain endorsements naming the CITY, its officers, agents and employees as additional insured.

3.8 Primary Coverage

The insurance provided by CONSULTANT shall be primary to any coverage available to CITY. The insurance policies (other than workers compensation and professional liability) shall include provisions for waiver of subrogation.

ARTICLE 4 TERMINATION

4.1 Termination of Agreement

(a) This Agreement may be terminated at any time, with or without cause, by the CITY upon thirty (30) days prior written notice or by CONSULTANT upon ninety (90) days prior written notice. Notice shall be deemed served if completed in compliance with Section 6.13.

(b) In the event of termination of this Agreement by CONSULTANT or CITY, due to no fault or failure of performance by CONSULTANT, CONSULTANT shall be paid compensation for all services performed by CONSULTANT, in an amount to be determined as follows: for work satisfactorily done in accordance with all of the terms and provisions of this Agreement, CONSULTANT shall be paid an amount equal to the percentage of services performed prior to the effective date of termination or cancellation in accordance with the work items; provided, in no event shall the amount of money paid under the foregoing provisions of this paragraph exceed the amount which would have been paid to CONSULTANT for the full performance of the services described in Section 2.1.

ARTICLE 5 OWNERSHIP OF DOCUMENTS

5.1 Ownership of Documents and Work Product

All documents, plans, specifications, reports, photographs, images, video files and media created or developed by CONSULTANT pursuant to this Agreement ("Written Products") shall be and remain the property of the CITY without restriction or limitation upon its use, duplication or dissemination by the CITY. All Written Products shall be considered "works made for hire," and all Written Products and any and all intellectual property rights arising from their creation, including, but not limited to, all copyrights and other proprietary rights, shall be and remain the property of the CITY without restriction or limitation upon their use, duplication or dissemination by the CITY. CONSULTANT shall not obtain or attempt to obtain copyright protection as to any Written Products.

CONSULTANT hereby assigns to the CITY all ownership and any and all intellectual property rights to the Written Products that are not otherwise vested in the CITY pursuant to the paragraph directly above this one.

CONSULTANT warrants and represents that it has secured all necessary licenses, consents or approvals to use any instrumentality, thing or component as to which any intellectual property right exists, including computer software, used in the rendering of the services and the production of all Written Products produced under this Agreement, and that the CITY has full legal title to and the right to reproduce the Written Products. CONSULTANT shall defend, indemnify and hold the CITY, and its elected officials, officers, employees, servants, attorneys, designated volunteers, and agents serving as independent contractors in the role of CITY officials, harmless from any loss, claim or liability in any way

related to a claim that CITY's use of any of the Written Products is violating federal, state or local laws, or any contractual provisions, or any laws relating to trade names, licenses, franchises, copyrights, patents or other means of protecting intellectual property rights and/or interests in products or inventions. CONSULTANT shall bear all costs arising from the use of patented, copyrighted, trade secret or trademarked documents, materials, equipment, devices or processes in connection with its provision of the services and Written Products produced under this Agreement. In the event the use of any of the Written Products or other deliverables hereunder by the CITY is held to constitute an infringement and the use of any of the same is enjoined, CONSULTANT, at its expense, shall: (a) secure for CITY the right to continue using the Written Products and other deliverables by suspension of any injunction, or by procuring a license or licenses for CITY; or (b) modify the Written Products and other deliverables so that they become non-infringing while remaining in compliance with the requirements of this Agreement. This covenant shall survive the termination of this Agreement.

Upon termination, abandonment or suspension of the Project, the CONSULTANT shall deliver to the CITY all Written Products and other deliverables related to the Project. If CONSULTANT prepares a document on a computer, CONSULTANT shall provide CITY with said document both in a printed format and in an electronic format that is acceptable to the City.

ARTICLE 6 GENERAL PROVISIONS

6.1 Representation

The CITY's representative shall be Director of Public Works or his or her designee and the CONSULTANT's representative shall be designated by CONSULTANT as the primary contact person regarding performance of this Agreement.

6.2 Fair Employment Practices/Equal Opportunity Acts

In the performance of this Agreement, CONSULTANT shall comply with all applicable provisions of the California Fair Employment Practices Act (California Government Code Sections 12940-48) and the applicable equal employment provisions of the Civil Rights Act of 1964 (42 U.S.C. 200e-217), and the Americans with Disabilities Act of 1992 (42 U.S.C. § 11200, et seq.).

6.3 Personnel

CONSULTANT represents that it has, or shall secure at its own expense, all personnel required to perform CONSULTANT's services under this Agreement. Any person who performs engineering services pursuant to this Agreement shall be licensed as a Civil Engineer by the State of California and shall be in good standing. CONSULTANT shall make reasonable efforts to maintain the continuity of CONSULTANT's staff who are assigned to perform the services hereunder and shall obtain the approval of the Director of

Public Works of all proposed staff members who will perform such services. CONSULTANT may associate with or employ associates or subcontractors in the performance of its services under this Agreement, but at all times shall be responsible for their services.

6.4 Conflicts of Interest

CONSULTANT agrees not to accept any employment or representation during the term of this Agreement or within twelve (12) months after completion of the work under this Agreement which is or may likely make CONSULTANT "financially interested" (as provided in California Government Code Sections 1090 and 87100) in any decisions made by CITY on any matter in connection with which CONSULTANT has been retained pursuant to this Agreement.

6.5 Legal Action

(a) Should either party to this Agreement bring legal action against the other, the validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the State of California, excluding California's choice of law rules. Venue for any such action relating to this Agreement shall be in the Los Angeles County Superior Court.

(b) If any legal action or other proceeding, including action for declaratory relief, is brought for the enforcement of this Agreement or because of an alleged dispute, breach, default or misrepresentation in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees, experts' fees, and other costs, in addition to any other relief to which the party may be entitled.

(c) Should any legal action about a project between CITY and a party other than CONSULTANT require the testimony of CONSULTANT when there is no allegation that CONSULTANT was negligent, CITY shall compensate CONSULTANT for its testimony and preparation to testify at hourly rates that are agreed-upon in advance in writing by both parties.

6.6 Assignment

Neither this Agreement nor any part thereof shall be assigned by CONSULTANT without the prior written consent of the CITY. Any such purported assignment without written consent shall be null and void, and CONSULTANT shall hold harmless, defend and indemnify the CITY and its officers, officials, employees, agents and representatives with respect to any claim, demand or action arising from any unauthorized assignment.

Notwithstanding the above, CONSULTANT may use the services of persons and entities not in CONSULTANT's direct employ, when it is appropriate and customary to do so. Such persons and entities include, but are not necessarily limited to, surveyors,

specialized consultants, and testing laboratories. CONSULTANT's use of subcontractors for additional services shall not be unreasonably restricted by the CITY provided CONSULTANT notifies the CITY in advance.

6.7 Independent Contractor

CONSULTANT is and shall at all times remain, as to the CITY, a wholly independent contractor. Neither the CITY nor any of its agents shall have control over the conduct of CONSULTANT or any of the CONSULTANT's employees, except as herein set forth, and CONSULTANT is free to dispose of all portions of its time and activities which it is not obligated to devote to the CITY in such a manner and to such persons, firms, or corporations at the CONSULTANT wishes except as expressly provided in this Agreement. CONSULTANT shall have no power to incur any debt, obligation, or liability on behalf of the CITY or otherwise act on behalf of the CITY as an agent. CONSULTANT shall not, at any time or in any manner, represent that it or any of its agents, servants or employees, are in any manner agents, servants or employees of CITY. CONSULTANT agrees to pay all required taxes on amounts paid to CONSULTANT under this Agreement, and to indemnify and hold the CITY harmless from any and all taxes, assessments, penalties, and interest asserted against the CITY by reason of the independent contractor relationship created by this Agreement. CONSULTANT shall fully comply with the workers' compensation law regarding CONSULTANT and its employees. CONSULTANT further agrees to indemnify and hold the CITY harmless from any failure of CONSULTANT to comply with applicable workers' compensation laws. The CITY shall have the right to offset against the amount of any fees due to CONSULTANT under this Agreement any amount due to the CITY from CONSULTANT as a result of its failure to promptly pay to the CITY any reimbursement or indemnification arising under this Article.

6.8 Titles

The titles used in this Agreement are for general reference only and are not part of the Agreement.

6.9 Entire Agreement

This Agreement, including any other documents incorporated herein by specific reference, represents the entire and integrated agreement between CITY and CONSULTANT and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified or amended, or provisions or breach may be waived, only by subsequent written agreement signed by both parties.

6.10 Construction

In the event of any asserted ambiguity in, or dispute regarding the interpretation of any matter herein, the interpretation of this Agreement shall not be resolved by any rules of interpretation providing for interpretation against the party who causes the uncertainty to exist or against the party who drafted the Agreement or who

drafted that portion of the Agreement.

6.11 Non-Waiver of Terms, Rights and Remedies

Waiver by either party of any one or more of the conditions of performance under this Agreement shall not be a waiver of any other condition of performance under this Agreement. In no event shall the making by the CITY of any payment to CONSULTANT constitute or be construed as a waiver by the CITY of any breach of covenant, or any default which may then exist on the part of CONSULTANT, and the making of any such payment by the CITY shall in no way impair or prejudice any right or remedy available to the CITY with regard to such breach or default.

6.12 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.

6.13 Notice

Except as otherwise required by law, any notice, request, direction, demand, consent, waiver, approval or other communication required or permitted to be given hereunder shall not be effective unless it is given in writing and shall be delivered (a) in person or (b) by certified mail, postage prepaid, and addressed to the parties at the addresses stated below, or at such other address as either party may hereafter notify the other in writing as aforementioned:

To CITY:

Ray Holland, Director
Department of Public Works
City of Rancho Palos Verdes
30940 Hawthorne Blvd.
Rancho Palos Verdes, CA 90275

To CONSULTANT:

Allan Rigg, Division Manager
Charles Abbott Associates
879 West 190th Street, Suite 920
Gardena, CA 90248

A party may change its address by giving written notice to the other party. Thereafter, any notice or other communication shall be addressed and transmitted to the new address. If sent by mail, any notice, tender, demand, delivery or other communication shall be deemed effective three (3) business days after it has been deposited in the United States mail. For purposes of communicating these time frames, weekends and federal, state, religious, County of Los Angeles or CITY holidays shall be excluded. No

communication via facsimile or electronic mail shall be effective to give any such notice or other communication hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

Dated: _____

Charles Abbott Associates, Inc.
("CONSULTANT")

BY: _____

BY: _____

Dated: _____

CITY OF RANCHO PALOS VERDES
A Municipal Corporation ("CITY")

BY: _____
MAYOR

ATTEST:

CITY CLERK

Exhibit "A": Consultant's Proposal Letter