

**PROFESSIONAL SERVICES AGREEMENT
WITH HORROCKS LLC FOR
BIG CANYON RESTORATION – PHASE 3 CONSTRUCTION MANAGEMENT
SERVICES**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into as of this 26th day of August, 2025 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and HORROCKS LLC, a Delaware limited liability company ("Consultant"), whose local address on file with the California Secretary of State is 3111 Camino Del Rio North, Suite 550, San Diego, CA 92108 and is made with reference to the following:

RECITALS

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.
- B. City desires to engage Consultant to provide Construction Management Services. The Consultant's Construction Manager will oversee and monitor the construction contractor in its performance of the contract document tasks. The Construction Manager will report to the City's Project Manager, provide recommendations on Action Items, receive direction from the City's Project Manager, and communicate decisions to the construction contractor. ("Project").
- C. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the professional services described in this Agreement.
- D. City has solicited and received a proposal from Consultant, has reviewed the previous experience and evaluated the expertise of Consultant, and desires to retain Consultant to render professional services under the terms and conditions set forth in this Agreement.

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

1. TERM

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

2. SERVICES TO BE PERFORMED

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

3. TIME OF PERFORMANCE

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

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

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

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

4. COMPENSATION TO CONSULTANT

4.1 City shall pay Consultant for the Services on a time and expense not-to-exceed basis in accordance with the provisions of this Section and the Schedule of Billing Rates attached hereto as Exhibit B and incorporated herein by reference. Consultant's compensation for all Work performed in accordance with this Agreement, including all reimbursable items and subconsultant fees, shall not exceed **Four Hundred Eighty Seven Thousand Forty Dollars and 00/100 (\$487,040.00)**, without prior written authorization from City. No billing rate changes shall be made during the term of this Agreement without the prior written approval of City.

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

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

4.4 Consultant shall not receive any compensation for Extra Work performed without the prior written authorization of City. As used herein, "Extra Work" means any Work that is determined by City to be necessary for the proper completion of the Project, but which is not included within the Scope of Services and which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Compensation for any authorized Extra Work shall be paid in accordance with the Schedule of Billing Rates as set forth in Exhibit B.

5. PROJECT MANAGER

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

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

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

6. ADMINISTRATION

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

7. CITY'S RESPONSIBILITIES

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

8. STANDARD OF CARE

8.1 All of the Services shall be performed by Consultant or under Consultant's supervision. Consultant represents that it possesses the professional and technical personnel required to perform the Services required by this Agreement, and that it will perform all Services in a manner commensurate with community professional standards and with the ordinary degree of skill and care that would be used by other reasonably

competent practitioners of the same discipline under similar circumstances. All Services shall be performed by qualified and experienced personnel who are not employed by City. By delivery of completed Work, Consultant certifies that the Work conforms to the requirements of this Agreement, all applicable federal, state and local laws, and legally recognized professional standards.

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

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

9. HOLD HARMLESS

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

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

10. INDEPENDENT CONTRACTOR

It is understood that City retains Consultant on an independent contractor basis and Consultant is not an agent or employee of City. The manner and means of conducting the Work are under the control of Consultant, except to the extent they are limited by statute, rule or regulation and the expressed terms of this Agreement. No civil service status or other right of employment shall accrue to Consultant or its employees. Nothing in this Agreement shall be deemed to constitute approval for Consultant or any of Consultant's employees or agents, to be the agents or employees of City. Consultant shall have the responsibility for and control over the means of performing the Work, provided that Consultant is in compliance with the terms of this Agreement. Anything in this Agreement that may appear to give City the right to direct Consultant as to the details of the performance of the Work or to exercise a measure of control over Consultant shall mean only that Consultant shall follow the desires of City with respect to the results of the Services.

11. COOPERATION

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

12. CITY POLICY

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

13. PROGRESS

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

14. INSURANCE

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

15. PROHIBITION AGAINST ASSIGNMENTS AND TRANSFERS

Except as specifically authorized under this Agreement, the Services to be provided under this Agreement shall not be assigned, transferred contracted or subcontracted out without the prior written approval of City. Any of the following shall be construed as an assignment: The sale, assignment, transfer or other disposition of any

of the issued and outstanding capital stock of Consultant, or of the interest of any general partner or joint venturer or syndicate member or cotenant if Consultant is a partnership or joint-venture or syndicate or co-tenancy, which shall result in changing the control of Consultant. Control means fifty percent (50%) or more of the voting power or twenty-five percent (25%) or more of the assets of the corporation, partnership or joint-venture.

16. SUBCONTRACTING

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

17. OWNERSHIP OF DOCUMENTS

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

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

17.3 All written documents shall be transmitted to City in formats compatible with Microsoft Office and/or viewable with Adobe Acrobat.

18. OPINION OF COST

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

19. CONFIDENTIALITY

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

20. INTELLECTUAL PROPERTY INDEMNITY

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

21. RECORDS

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

22. WITHHOLDINGS

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

23. ERRORS AND OMISSIONS

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

24. CITY'S RIGHT TO EMPLOY OTHER CONSULTANTS

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

25. CONFLICTS OF INTEREST

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

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

26. NOTICES

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

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

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

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

Attn: Matt Horrocks
Horrocks LLC
2162 W. Grove Pkwy Ste. 100
Pleasant Grove, UT 84062

27. CLAIMS

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

28. TERMINATION

28.1 In the event that either party fails or refuses to perform any of the provisions of this Agreement at the time and in the manner required, that party shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of two (2) calendar days, or if more than two (2) calendar days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within two (2) calendar days after receipt of written notice of default, specifying the nature of such default and the steps necessary to cure such default, and thereafter diligently take steps to cure the default, the non-defaulting party may terminate the Agreement forthwith by giving to the defaulting party written notice thereof.

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

29. STANDARD PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

[SIGNATURES ON NEXT PAGE]

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

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**

Date: 7/9/25

By: Jose Montoya for
Aaron C. Harp
City Attorney
7.9.25
AG

ATTEST:

Date: _____

By: _____
Molly Perry
Interim City Clerk

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: _____

By: _____
Joe Stapleton
Mayor

CONSULTANT: Horrocks LLC, a
Delaware limited liability company

Date: _____

By: _____
Matt Horrocks
Vice President

[END OF SIGNATURES]

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

EXHIBIT A

SCOPE OF SERVICES

Exhibit A – Scope of Services

June 5, 2025

Project Title: City of Newport Beach RFP #25-46 - Construction Management Services for Big Canyon Restoration – Phase 3

Horrocks is pleased to submit this proposal and the following Scope of Services to the City of Newport Beach for Construction Management Services for the Big Canyon Restoration - Phase 3 project. We understand that the City seeks a qualified Construction Manager to oversee and monitor the construction contractor's performance of contract document tasks. This proposal highlights how our firm will address the needs and scope required for the project. Horrocks is prepared to dedicate experienced professionals who will report directly to the City's Project Manager, providing insightful recommendations, diligently following City direction, and ensuring clear communication of decisions to the contractor, all under the Project Manager's sole authorization and approval. We are confident that our expertise and collaborative approach align perfectly with the requirements of this important restoration project.

STAFFING

This proposal assumes the City of Newport Beach requires full-time inspection in addition to Construction Management due to the project's extensive site, the potential for concurrent tasks, and its location within and adjacent to the sensitive habitats of Back Bay. Given these environmental considerations, we acknowledge the City's concern about the contractor's adherence to the Stormwater Pollution Prevention Plan (SWPPP) and the Floodplain Management Plan (FWMP), as well as their cooperation with the biologist as outlined in the contract specifications. As detailed in the RFP, if the contractor demonstrates consistent progress, follows permit and project guidelines effectively, and collaborates well with third-party staff such as the Biologist, City Inspectors, and other permit holders, Horrocks is prepared to coordinate a reduction in our management and inspection hours with the City. Accordingly, we are prepared to discuss project cost savings in staffing allocation and reimbursable items proportionally at the appropriate time to ensure the budget aligns with the City of Newport Beach's goals and objectives for this project. The staff augmentation services to be provided under this scope shall include work related to the construction phases of the above-mentioned project as outlined by the following tasks. In general, the work consists of services as defined by the City's outline as provided in the RFP.

CONSTRUCTION MANAGER-Representative (CONSTRUCTION MANAGER) acknowledges that the City may retain other consultants, engineering and otherwise, and that coordination between said consultants and CONSTRUCTION MANAGER may be necessary from time to time to ensure services herein performed are effective. CONSTRUCTION MANAGER agrees to provide such coordination as necessary within the scope of services contained herein.

TASK 0 – PROJECT ADMINISTRATION INCLUDING INVOICING AND DOCUMENT CONTROL

CONSTRUCTION MANAGER Representative will conduct an in-house plan review with key team members and review drawings and construction documents for inconsistencies and historical shortcomings in the drawings, specifications and agency standards. Other key elements that will be reviewed and commented on include:

1. Limitations of access for work to be completed
2. Review of specified materials availability and compatibility
3. Review status and recommendations of soil reports, explorations/bores and plan alignment
4. Schedule and chair a meeting with stakeholders impacted or benefactors of the construction project
5. Review existing utilities, highlight critical crossings and review pot-hole information and recommend if additional investigations would be beneficial.
6. Review and check engineer's quantities and estimates for costs

Representation on Behalf of City

CONSTRUCTION MANAGER shall consult with and advise City and act as its representative during construction.

CONSTRUCTION MANAGER shall not be responsible for the means, methods, techniques, sequences, or procedures of construction selected by Contractor(s), or the safety precautions and programs incident to the work of Contractor(s).

CONSTRUCTION MANAGER efforts shall be directed toward providing a greater degree of confidence for the City that the completed work of Contractor(s) will conform to the Contract Documents, the CONSTRUCTION MANAGER Representative shall not be responsible for failure of Contractor(s) to perform the work in accordance with the Contract Documents or Schedule.

On the basis of on-site examination of materials, equipment, and workmanship, CONSTRUCTION MANAGER shall keep City informed of the progress of the work, shall endeavor to guard City against defects and deficiencies in such work and may disapprove or reject work failing to conform to the Contract Documents. CONSTRUCTION MANAGER will notify contractor of defective work and document as necessary.

CONSTRUCTION MANAGER will attend all project meetings as needed during the pre-construction and construction period. CONSTRUCTION MANAGER will prepare an agenda for all meetings and prepare minutes following all meetings on behalf of the city.

Document Management

CONSTRUCTION MANAGER Team members will be provided access to the web-based file management system (if applicable), in order to access pertinent files to review and respond within the timeframes allowed in the project specifications. A CONSTRUCTION MANAGER Representative will serve as the point of contact for all communication and coordination with the City's staff and Contractor representatives.



Records

Maintain orderly files for correspondence, reports of job conferences, Shop Drawings and samples submissions, reproductions of original Contract Documents including all addenda, change orders, field orders, additional Drawings issued subsequent to the execution of the Contract, clarifications and interpretation of the Contract Documents, progress reports, and other Project related documents.

Prepare daily reports including digital photographs with proper labeling for recording Contractor's hours on the job site, weather conditions, data relative to questions of extras or deductions, list of visiting officials and representatives of manufacturers, fabricators, suppliers and distributors, daily activities, decisions, on-site equipment, subcontractors on-site, observations in general and specific observations in more detail as in the case of observing test procedures.

Maintain notes to be capable of verifying record drawing information for accuracy and completeness. Maintain a set of record drawings.

CONSTRUCTION MANAGER shall meet with any outside agencies that are stakeholders in this project and the contractor to make sure all project documentation is compliant.

TASK 1 – PRE-CONSTRUCTION MEETING AND PREP WORK

CONSTRUCTION MANAGER will chair and conduct a Pre-Construction Conference with the City, Contractor, and CONSTRUCTION MANAGER representatives. CONSTRUCTION MANAGER will prepare a general agenda recognizing all city topics and comments prepared as a guide for this scope of work and submit for review and approval by the city prior to issuance/distribution. The major items included in the Pre-construction conference will include but not be limited to : all company personnel and chain of command by organization, dispute resolution protocol, submittals, digital / hard copy record keeping and protocol, construction sequence and key milestone dates, schedule updates, storage of equipment and materials, environmental, traffic control, payment requirements and procedures.

CONSTRUCTION MANAGER will be furnished contract documents and will act as directed by City, in order to assist observing performance of the work of the Contractor(s).

TASK 2 – PROGRESS MEETINGS AND PREP WORK, TASK 3 – MEETING MINUTES AND DISTRIBUTION, TASK 4 – CITY REQUESTED MEETINGS

CONSTRUCTION MANAGER Representatives will schedule and conduct weekly progress meetings including an advanced agenda submittal prior to the upcoming meeting, sign-in sheet, update and submit all submittal logs, and record all meeting and take accurate and comprehensive meeting notes.

All meetings will include an agenda item for schedule updates, conflicts, utilities coordination, traffic impacts, stakeholder interface and notices, and an overall project participation survey on a weekly / bi-weekly basis to maintain the highest level of service and communication throughout the project. The agenda shall include and reference all project "logs" including: RFI's, Submittal, etc.



All meetings shall be recorded, however once the meeting notes have been distributed and accepted by all the recording shall be deleted. These shall be sent out as meeting memorandums by the CONSTRUCTION MANAGER.

CONSTRUCTION MANAGER will attend all City Staff Meetings as requested by owner or stakeholders.

TASK 5 – SUBMITTALS, SCHEDULES AND SWPPP REVIEW AND COORDINATION, TASK 6 – RFI REVIEW AND COORDINATION

CONSTRUCTION MANAGER representatives will receive and log all correspondence, submittals, shop drawings, request for information (RFIs) and samples for use during the project. All logs will be maintained on a daily and weekly basis for reporting and review at the weekly project meetings.

1. Receive and log Shop Drawings and samples, which are furnished by Contractor.
2. Coordinate Review of specified Shop Drawings with design engineer or city representatives, SWPPP, Water Flow Management Plan, Schedule, samples, test results, and other data that Contractor is required to submit, but only for conformance with the information given in the Contract Documents. Such review shall not extend to means, methods, sequences, techniques or procedures of construction selected by Contractor(s), or to safety precautions and programs incident thereto.

TASK 7 – PROJECT INSPECTION

Review of Work, Rejection of Defective Work, Inspections, and Tests

1. Conduct on-site observations of the work in progress to assist City in determining if the work is proceeding in accordance with the Contract Documents and that completed work will conform to the Contract Documents.
2. Report to City and Contractor whenever CONSTRUCTION MANAGER or observer believe that any work is unsatisfactory, faulty or defective or does not conform to the Contract Documents, or does not meet the requirements of any inspections, tests or approval required to be made, or has been damaged prior to final payment; and advise if work should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection, or approval.
3. Verify that all material tests and quality control functions are conducted as required by the Contract Documents and in the presence of the required personnel and that Contractor maintain adequate records thereof; observe, record, and report appropriate details relative to the test procedures and start-ups.
4. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project; record the outcome of these inspections and report to City.
5. Handle notifications of non-compliant work and log work accordingly until all work is compliant.



TASK 8 – CHANGE ORDER REVIEW AND COORDINATION

CONSTRUCTION MANAGER will keep log, consider and evaluate Contractor's suggestions for changes in Drawings or Specifications and report them with recommendations to the City. CONSTRUCTION MANAGER shall complete an independent cost estimate for all change orders as well as evaluate and process all appropriate contract change order and/or value engineering recommendations.

TASK 9 – PAY APPLICATION PROCESSING - QUANTITY TRACKING AND VERIFICATION

Based on CONSTRUCTION MANAGER's team on-site observations, review all applications for payment and the accompanying data and schedules, determine the amounts owing to Contractor(s) and recommend in writing payments to Contractor(s) in such amounts. Such recommendations of payment will constitute a representation to City, that the work has progressed to the point indicated, that, to the best of CONSTRUCTION MANAGER's knowledge, information and belief, the quality of such work is in accordance with the Contract Documents (subject to an evaluation of such work as a functioning Project upon Substantial Completion, and that payment of the amount recommended is due Contractor(s).

All payment applications must be on City supplied form and all items must match the Bid Documents.

TASK 10 – PUNCH LIST CREATION AND INSPECTION, TASK 11 – SUBSTANTIAL COMPLETION WALK AND APPROVAL, TASK 12 – PROJECT CLOSEOUT

CONSTRUCTION MANAGER will coordinate with the contractor's representatives in their preparation of a punch list/deficiencies list to be used to finalize the project and accept the work as complete. CONSTRUCTION MANAGER will conduct an inspection to determine if the Project is complete based on the review of the contractors list and issue to Contractor a list of any observed items requiring completion or correction not included on their list.

Conduct final inspection in the company of City and Contractor and prepare a final list of items to be completed or corrected or make sure the contractor creates the necessary punch list if required by the contract.

Verify that all items on final list have been completed or corrected and confirm, that the Contractor has fulfilled all obligations there under so that ENGINEER may recommend, in writing, final payment to Contractor(s) and may give written notice to City and the Contractor(s) that the work is acceptable (subject to any conditions therein expressed).

CONSTRUCTION MANAGER shall not be responsible for the acts or omissions of any Contractor, or subcontractor, or any of the Contractor(s)' or subcontractor(s)' agents or employees or any other persons (except ENGINEER's own employees and agents) at the site(s) or otherwise performing any of the Contractor(s)' work.

CONSTRUCTION MANAGER will review the contractor's record drawings for completeness and provide 1 copy signed as part of the record drawings files for city records as part of project closeout. Record drawings will be coordinated with contractors' record drawings as required.



LIMITATIONS OF AUTHORITY

Except upon written instructions from the City:

1. Shall not authorize any deviation from the Contract Documents or approve any substitute materials or equipment.
2. Shall not undertake any of the responsibilities of Contractor, subcontractors or Contractor's superintendent, or expedite the work.
3. Shall not advise on or issue directions relative to any aspect of the means, methods, techniques, sequences or procedures of construction unless such is specifically called for in the Contract Documents.
4. Shall not advise on or issue directions as to safety precautions and programs in connection with the work.

CITY OF NEWPORT BEACH RESPONSIBILITIES ACKNOWLEDGED

Horrocks has reviewed the scope of service and acknowledges the responsibilities of the City of Newport Beach in support of this project as included in this RFP.



EXHIBIT B

SCHEDULE OF BILLING RATES

Exhibit B – Proposed Fee

June 5, 2025

Project Title: City of Newport Beach RFP #25-46 - Construction Management Services for Big Canyon Restoration – Phase 3

PROPOSAL FEE

The estimated fees for the proposed scope of services total is \$487,040.00, as detailed in the attached proposal fee breakdown of estimated hours. This proposal is further based on the attached estimate work resource allocation, assuming a total contract duration of 11 months with the staffing resources outlined therein.

Fee Breakdown

		Jim Tomasulo Principal Engineer	Zac Gentry Sr Construction Manager	Josh Farrel Construction Inspector	Lisa Conk Document Control		
Task	Hourly Rates	\$350.00	\$265.00	\$190.00	\$120.00	Task Hours	Task Total
0	Project Administration including Invoicing and Document Control	10	33	0	250	293	\$42,245.00
1	Pre Construction Meeting and Prep Work		12	0	5	17	\$3,780.00
2	Progress Meetings and Prep Work		30	0	15	45	\$9,750.00
3	Meeting Minutes and Distribution		5	0	40	45	\$6,125.00
4	City requested meetings (assume addtl 5 mtgs)		5	0	5	10	\$1,925.00
5	Submittals, Schedules and SWPPP: review and coordination		110	0	65	175	\$36,950.00
6	RFI review and coordination		125	0	75	200	\$42,125.00
7	Project Inspection		105	1280		1385	\$271,025.00
8	Change Order review and coordination		40	0	20	60	\$13,000.00
9	Pay Application Processing - Quantity Tracking and Verification		50	96	50	196	\$37,490.00
10	Punch List Creation and Inspection		10	0		10	\$2,650.00
11	Substantial Completion Walk and Approval		10	0		10	\$2,650.00
12	Project Closeout		45	0	45	90	\$17,325.00
	Subtotal Hours	10	580	1376	570	2536	
	Subtotal Cost	\$3,500.00	\$153,700.00	\$261,440.00	\$68,400.00	Total:	\$487,040.00

Work Allocation

Month	Anticipated Sched Date	Description	Senior Construction Manager	% Allocation	Construction Inspector	% Allocation	Admin/Doc Control	% Allocation
Construction Management for Big Canyon Restoration Phase 3								
Month 1	25-Jul	Construction Management	52	30%	0	0%	25	15%
Month 2	25-Aug	Construction Management	52	30%	0	0%	55	32%
Month 3	25-Sep	Construction Management	56	33%	172	100%	60	35%
Month 4	25-Oct	Construction Management	56	33%	172	100%	60	35%
Month 5	25-Nov	Construction Management	52	30%	172	100%	60	35%
Month 6	25-Dec	Construction Management	52	30%	172	100%	60	35%
Month 7	26-Jan	Construction Management	52	30%	172	100%	60	35%
Month 8	26-Feb	Construction Management	52	30%	172	100%	55	32%
Month 9	26-Mar	Construction Management	52	30%	172	100%	55	32%
Month 10	26-Apr	Construction Management	52	30%	172	100%	55	32%
Month 11	26-May	Construction Management	52	30%	0	0%	25	15%
Hours			580		1376		570	

EXHIBIT C
INSURANCE REQUIREMENTS

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

Contractor shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its City Council, boards and commissions, officers, agents, volunteers, employees, and any person or entity owning or otherwise in legal control of the property upon which Contractor performs the Project and/or Services contemplated by this Agreement.

- B. General Liability Insurance. Contractor shall maintain commercial general liability insurance, and if necessary excess/umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than two million dollars (\$2,000,000) per occurrence, four million dollars (\$4,000,000) general aggregate and four million dollars (\$4,000,000)

completed operations aggregate. The policy shall cover liability arising from bodily injury, property damage, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

- C. Automobile Liability Insurance. Contractor shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of Contractor arising out of or in connection with Work to be performed under this Contract, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit for each accident.
 - D. Professional Liability (Errors & Omissions) Insurance. Contractor shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of two million dollars (\$2,000,000) per claim and four million dollars (\$4,000,000) in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the Effective Date of this Agreement and Contractor agrees to maintain continuous coverage through a period no less than three years after completion of the Services required by this Agreement.
 - E. Excess/Umbrella Liability Insurance. If any Excess or Umbrella Liability policies are used to meet the limits of liability required by this contract, then said policies shall be "following form" of the underlying policy coverage, terms, conditions, and provisions and shall meet all of the insurance requirements stated in this contract, including, but not limited to, the additional insured and primary & non-contributory insurance requirements stated herein. No insurance policies maintained by the City, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Contractor's primary and excess/umbrella liability policies are exhausted.
4. Other Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:
- A. Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this Contract shall be endorsed to waive subrogation against City, its City Council, boards and commissions, officers, agents, volunteers, employees, and any person or entity owning or otherwise in legal control of the property upon which Contractor performs the Project and/or Services contemplated by this Agreement or shall specifically allow Contractor or others providing insurance evidence in compliance with these requirements to waive their right of recovery

prior to a loss. Contractor hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subcontractors.

- B. Additional Insured Status. All liability policies including general liability, products and completed operations, excess/umbrella liability, pollution liability, and automobile liability, if required, shall provide or be endorsed to provide that City, its City Council, boards and commissions, officers, agents, volunteers, employees, and any person or entity owning or otherwise in legal control of the property upon which Contractor performs the Project and/or Services contemplated by this Agreement shall be included as additional insureds under such policies.
 - C. Primary and Non-Contributory. Contractor's insurance coverage shall be primary insurance and/or the primary source of recovery with respect to City, its City Council, boards and commissions, officers, agents, volunteers and employees. Any insurance or self-insurance maintained by City shall be excess of Contractor's insurance and shall not contribute with it.
 - D. Notice of Cancellation. All policies shall provide City with thirty (30) calendar days' notice of cancellation or nonrenewal of coverage (except for nonpayment for which ten (10) calendar days' notice is required) for each required coverage.
5. Additional Agreements Between the Parties. The parties hereby agree to the following:
- A. Evidence of Insurance. Contractor shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. All of the executed documents referenced in this Contract must be returned to City within ten (10) regular City business days after the date on the "Notification of Award". Insurance certificates and endorsements must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Contract. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Contractor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of

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

- B. City's Right to Revise Requirements. The City reserves the right at any time during the term of the Contract to change the amounts and types of insurance required by giving Contractor sixty (60) calendar days' advance written notice of such change. If such change results in substantial additional cost to Contractor, City and Contractor may renegotiate Contractor's compensation.
- C. Right to Review Subcontracts. Contractor agrees that upon request, all agreements with subcontractors or others with whom Contractor enters into contracts with on behalf of City will be submitted to City for review. Failure of City to request copies of such agreements will not impose any liability on City, or its employees. Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a format at least as broad as CG 20 38 04 13.
- D. Enforcement of Contract Provisions. Contractor acknowledges and agrees that any actual or alleged failure on the part of City to inform Contractor of non-compliance with any requirement imposes no additional obligations on City nor does it waive any rights hereunder.
- E. Requirements not Limiting. Requirements of specific coverage features or limits contained in this Exhibit A are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Contractor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for higher limits maintained by the Contractor or sub-contractors. Any available proceeds in excess of specified minimum limits of insurance and coverage shall be available to the City.
- F. Self-Insured Retentions. Contractor agrees not to self-insure or to use any self-insured retentions on any portion of the insurance required herein and further agrees that it will not allow any indemnifying party to self-insure its obligations to City. If Contractor's existing coverage includes a self-insured retention, the self-

insured retention must be declared to City. City may review options with Contractor, which may include reduction or elimination of the self-insured retention, substitution of other coverage, or other solutions. Contractor agrees to be responsible for payment of any deductibles on their policies.

- G. City Remedies for Non-Compliance. If Contractor or any subcontractor fails to provide and maintain insurance as required herein, then City shall have the right but not the obligation, to purchase such insurance, to terminate this Contract, or to suspend Contractor's right to proceed until proper evidence of insurance is provided. Any amounts paid by City shall, at City's sole option, be deducted from amounts payable to Contractor or reimbursed by Contractor upon demand.
- H. Timely Notice of Claims. Contractor shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Contractor's performance under this Contract, and that involve or may involve coverage under any of the required liability policies. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.
- I. Contractor's Insurance. Contractor shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgement may be necessary for its proper protection and prosecution of the Work.
- J. Coverage Renewal. Contractor will renew the coverage required here annually as long as Contractor continues to provide any Work under this or any other Contract or agreement with City. Contractor shall provide proof that policies of insurance required herein expiring during the term of this Contract have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Contractor's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to City with five (5) calendar days of the expiration of the coverages.