

ATTACHMENT B

PROFESSIONAL SERVICES AGREEMENT WITH PSOMAS FOR CAMEO HIGHLANDS STREET RECONSTRUCTION DESIGN

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into as of this 13th day of August, 2019 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and PSOMAS, a California corporation ("Consultant"), whose address is 3 Hutton Centre Drive, Suite 200, Santa Ana, CA 92707, 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 civil engineering and surveying services for the design of the Cameo Highlands Street Reconstruction Project. ("Project").
- C. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the professional services described in this Agreement.
- D. City has solicited and received a proposal from Consultant, has reviewed the previous experience and evaluated the expertise of Consultant, and desires to retain Consultant to render professional services under the terms and conditions set forth in this Agreement.

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

1. TERM

The term of this Agreement shall commence on the Effective Date, and shall terminate on June 30, 2021, 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 **Two Hundred Thirty Three Thousand Two Hundred Thirty Five Dollars and 00/100 (\$233,235.00)**, 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 Heideman to be its Project Manager. Consultant shall not remove or reassign the Project Manager or any personnel listed in Exhibit A or assign any new or replacement personnel to the Project without the prior written consent of City. City's approval shall not be unreasonably withheld with respect to the removal or assignment of non-key personnel.

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

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

6. ADMINISTRATION

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

7. CITY'S RESPONSIBILITIES

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

8. STANDARD OF CARE

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

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

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

9. HOLD HARMLESS

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

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

10. INDEPENDENT CONTRACTOR

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

this Agreement that may appear to give City the right to direct Consultant as to the details of the performance of the Work or to exercise a measure of control over Consultant shall mean only that Consultant shall follow the desires of City with respect to the results of the Services.

11. COOPERATION

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

12. CITY POLICY

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

13. PROGRESS

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

14. INSURANCE

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

15. PROHIBITION AGAINST ASSIGNMENTS AND TRANSFERS

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

16. SUBCONTRACTING

The subcontractors 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 CADD data delivered to City shall include the professional stamp of the engineer or architect in charge of or responsible for the Work. City agrees that Consultant shall not be liable for claims, liabilities or losses arising out of, or connected with (a) the modification or misuse by City, or anyone authorized by City, of CADD data; (b) the decline of accuracy or readability of CADD data due to inappropriate storage conditions or duration; or (c) any use by City, or anyone authorized by City, of CADD data for additions to this Project, for the completion of this Project by others, or for any other Project, excepting only such use as is authorized, in writing, by Consultant. By acceptance of CADD data, City agrees to indemnify Consultant for damages and liability resulting from the modification or misuse of such CADD data. All original drawings shall be submitted to City in the version of AutoCAD used by the City in .dwg file format, on a CD, and should comply with the City's digital submission requirements for improvement plans available from the City's Public Works Department. The City will provide Consultant with City title sheets as AutoCAD file(s) in .dwg file format. All written documents shall

be transmitted to City in formats compatible with Microsoft Office and/or viewable with Adobe Acrobat.

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

18. OPINION OF COST

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

19. CONFIDENTIALITY

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

20. INTELLECTUAL PROPERTY INDEMNITY

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

21. RECORDS

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

22. WITHHOLDINGS

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

23. ERRORS AND OMISSIONS

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

24. CITY'S RIGHT TO EMPLOY OTHER CONSULTANTS

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

25. CONFLICTS OF INTEREST

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

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

26. NOTICES

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

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

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

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

Attn: Matt Heideman
PSOMAS
3 Hutton Centre Drive, Suite 200
Santa Ana, CA 92707

27. CLAIMS

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

27.2 To the extent that Consultant's claim is a "Claim" as defined in Public Contract Code section 9204 or any successor statute thereto, the Parties agree to follow the dispute resolution process set forth therein. Any part of such "Claim" remaining in dispute after completion of the dispute resolution process provided for in Public Contract Code section 9204 or any successor statute thereto shall be subject to the Government Claims Act requirements requiring Consultant to file a claim in strict conformance with the Government Claims Act. To the extent that Contractor/Consultant's claim is not a "Claim" as defined in Public Contract Code section 9204 or any successor statute thereto, Consultant shall be required to file such claim with the City in strict conformance with the Government Claims Act (Government Code sections 900 et seq.).

28. TERMINATION

28.1 In the event that either party fails or refuses to perform any of the provisions of this Agreement at the time and in the manner required, that party shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of two (2) calendar days, or if more than two (2) calendar days are reasonably required

to cure the default and the defaulting party fails to give adequate assurance of due performance within two (2) calendar days after receipt of written notice of default, specifying the nature of such default and the steps necessary to cure such default, and thereafter diligently take steps to cure the default, the non-defaulting party may terminate the Agreement forthwith by giving to the defaulting party written notice thereof.

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

29. PREVAILING WAGES

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

29.2 Unless otherwise exempt by law, Consultant warrants that no contractor or subcontractor was listed on the bid proposal for the Services that it is not currently registered and qualified to perform public work. Consultant further warrants that it is currently registered and qualified to perform "public work" pursuant to California Labor Code section 1725.5 or any successor statute thereto and that no contractor or subcontractor will engage in the performance of the Services unless currently registered and qualified to perform public work.

30. STANDARD PROVISIONS

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

30.2 Compliance with all Laws. Consultant shall, at its own cost and expense, comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted. In addition, all Work prepared by Consultant shall conform to applicable City, county, state and federal laws, rules, regulations and permit requirements and be subject to approval of the Project Administrator and City.

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

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

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

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

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

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

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

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

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

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

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: 7/30/2019

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: _____

By: *Aaron C. Harp*
For: Aaron C. Harp
City Attorney
MMI
7-26-19

By: _____
Diane B. Dixon
Mayor

ATTEST:

Date: _____

CONSULTANT: PSOMAS, a California
corporation

Date: _____

By: _____
Leilani I. Brown
City Clerk

By: _____
Robert J. Talafus, PE, QSD, ENV SP
Vice President

[END OF SIGNATURES]

Attachments: Exhibit A – Scope of Work
 Exhibit B – Schedule of Fees
 Exhibit C – Insurance Requirements

EXHIBIT A

SCOPE OF WORK

Scope of Work

PROJECT UNDERSTANDING

The City of Newport (City) is preparing to develop a plan for reconstruction of the streets within the Cameo Highlands neighborhood in the City of Newport Beach. The project limits are:

- Cameo Highlands Drive
- Rockford Road
- Garrett Drive
- Cortland Drive
- Rockford Place
- Wayne Road
- Dorchester Road
- Surrey Drive

In general, this project consists of reconstructing the existing asphalt roadway, reconstructing deteriorated concrete flatwork, completing ADA improvements in the project area, adjusting utilities to grade, and installing street signs and pavement striping.

The Cameo Highlands Tract was originally constructed in the early 1960s. The existing pavement structural section is “two inches of plant mixed surfacing over four inches of untreated rock base.” The entire tract has been slurry sealed several times over the past 60 years. Psomas and LaBelle-Marvin will perform value engineering to develop flexible pavement design alternatives and submit a pavement report for City staff review and consideration.

PROJECT APPROACH

We have visited the site, taken pictures, and reviewed the City’s RFP in preparation for developing the scope of work described below. Psomas will coordinate and manage the design team consisting of LaBelle-Marvin as our pavement design expert. Psomas will provide civil engineering and surveying services for development of the street and ADA improvements, ensuring proper drainage is maintained, wet utility mapping, and horizontal control of the project.

Psomas proposes to assign as the Project Manager Matt Heideman who has worked with the City of Newport Beach on the 15th Street and Balboa Boulevard Revitalization Project and with LaBelle-Marvin on other projects within Orange County. Bob Talafus will be the Principal-in-Charge ensuring the City is provided the necessary support and staffing to deliver the project on schedule and will be a resource to the project. Their experience is described further in Sections 2 and 3 of this proposal. Section 3 also provides background on the extensive experience of our subconsultants in the areas of paving and utility coordination.

The design team will start by setting up a kick-off meeting with the City to discuss ideas and strategize further about the approach and potential paving alternatives the team could explore. The design team will return to the City with three (3) concepts to get their comments and then implement the preferred alternative as part of the 50% design submittal. The design team

will also provide the City with a preliminary assessment of the existing ADA accessibility within the project limits and discuss proposed improvements to address any deficiencies.

SCOPE OF WORK

Psomas will provide the following services:

Task 1 – Design Surveying

Psomas will utilize fast static GPS and conventional survey methods to provide the design survey (including topography with one-foot contours) necessary to complete the design. As a minimum, the survey field crew will cross section each street at a 25 foot interval and will include back of walks, top of curbs, flow lines, edge of gutters, crown lines, and grade breaks every 25 feet. All topographic features such as water valves, manholes, street lights, trees, traffic and utility pull boxes, will also be included. Manholes will be located horizontally only. Invert elevations will not be obtained. Aerial topographic mapping will be performed to produce a 40 scale planimetric map of existing surface features of the entire tract. The Basis of Bearings and Benchmark will be consistent with Orange County Survey Horizontal Controls and the North American Vertical Datum 1988, respectively.

Task 2 -Base Mapping

Once field activities have been performed and the data has been processed, Psomas will prepare a base map based on the data collected in Task 1 above and results of research and utility coordination discussed in Task 3 below. The base map will include, as a minimum, street centerlines, right-of-way lines, sidewalks, curbs, gutters, pavement striping, all topographic features such as street lights, signs and trees, one-foot contour lines, and all existing utility lines. The base map will be field verified by Psomas surveyors. Street centerlines and rights-of-way will be calculated in their record positions from a sufficient number of centerline monuments to do so. A boundary survey will not be performed, and a Record of Survey will not be filed.

Task 3 – Plan Preparation (50%, 90% and 100% Design)

Research and Data Collection – Psomas will gather and review all available information such as preliminary engineering reports, record drawings, assessor's parcel maps, right-of-way maps, street centerline ties, and utility maps.

Utility Coordination – City staff will send out the first utility request and will forward the received maps/atlas to Psomas. Psomas will identify all utilities within project limits on construction drawings. Psomas will send out utility verification and/or relocation notices. Utility adjustments and relocations will be shown on contract drawings.

Prepare 25 foot Cross Sections - Street cross sections showing existing condition and proposed improvements will also be provided at every 25-foot interval

Provide Pavement Report – LaBelle-Marvin will provide a pavement report for the project, which includes existing structural sections and several recommended flexible pavement structural sections. Field pavement coring

will also be included. The purpose of this task is to evaluate the conditions of the pavements, to record a detailed condition analysis in conjunction with a proposed materials investigation, and to then prepare a recommended course of structural improvements for all pavement areas.

The following proposed structural investigation, by pavement coring method and laboratory analysis, provides the City with a rational design, enhancing future pavement performance and reducing risks. The comprehensive study defines subgrade strengths (R-Value Test Method) beneath the pavement surface which may impact both construction logistics and long-term performance prior to pavement construction operations.

All testing and engineering services proposed herein will provide current structural needs and reinforcement requirements based upon the California Highway Design Manual for Flexible Pavement and Roadway Rehabilitation.

LaBelle-Marvin, Inc., will provide the following services:

Laboratory Materials Testing

- Subgrade soil samples taken in the field will be identified, labeled and measured during the sampling process. Data developed during the laboratory testing will be utilized to project probable field support conditions during construction and highlight where appropriate special care may be required during roadway preparation.
- Evaluation of the present pavement thicknesses utilizing component analysis with R-value data will be combined with future traffic estimates (Traffic Index provided by City) for design and development of suitable, alternative structural replacement sections.
- Laboratory tests included within this investigation are as follows:
 - 11 Moisture Content Tests: Subgrade soil samples taken in the field will be visually classified and the in-situ moisture content (CA 226) will be determined per location.
 - Two (2) R-Value Tests: Representative sample(s) will be selected and tested for R-Value (soil strength) determinations (CA 301) on the subgrade.

Visual Site Condition Evaluations

- The Registered Civil Engineer will perform a site evaluation of all select street segments. Pavement conditions will be recorded for the purposes of compiling the recommendation plan(s) and report. Compare field conditions with thickness data obtained during core sampling and GPR testing. Compare field conditions with component analysis based on representative laboratory subgrade strength testing.

Structural Design Rehabilitation Alternatives

- A Registered Civil Engineer will supervise all operations and incorporate results of materials testing with observed pavement conditions. Engineered recommendations for alternate methods of pavement rehabilitation and reconstruction will be based upon the California Highway Design Manual for Flexible Pavement and Roadway Rehabilitation.

Final Pavement Evaluation Report

- A Registered Civil Engineer will prepare the final pavement structural investigation report. The deliverables will include all data developed during the investigation with design structural replacement sections, field and laboratory test data. All services will be supervised by the Civil Engineer specializing in the evaluation and design of pavement systems and Registered in the State of California.
- Should this investigation show need for further analysis and/or testing, such recommended services will be discussed thoroughly within the final report.

Phasing Plan – Psomas will prepare a Phasing Plan identifying approximate limits of construction and broken down into phases with the intention to minimize disruption of the community and ensure access is maintained in a reasonable manner. This plan will give the City the opportunity to convey their concerns about phasing and logistics into a document that can be included in the contractor bid documents. The contractor can offer alternative phasing options during the bid phase; however, the process of preparing this document with the design team will prepare the City and team to respond appropriately to contractor recommendations.

Construction Plans – Construction drawings will be at a scale of 1 inch = 20 feet. For clarity purposes, details may be drawn at a larger scale. As a minimum, construction drawings will include a Title Sheet, Typical Sections, Plan and Profile Sheets, Details, and Signing and Striping Plans. Drawings will be prepared in AutoCAD Civil 3D 2015 and will comply with City CAD standards. Once design has been completed, Psomas will submit electronic files of each submittal and final drawings in both AutoCAD and Adobe (PDF) format.

Special Provisions – Psomas will prepare Special Provisions to the Standard Specifications for Public Works Construction (2015 Edition) in Microsoft Word. An electronic copy in Microsoft Word format will be submitted at the completion of design. City staff will provide a Special Provision boilerplate.

Cost Estimate – Psomas will prepare an itemized cost estimate. Quantity back-ups will also be submitted with the cost estimate. Cost Estimate will be prepared in Microsoft Excel format. This will be an Engineer's Estimate of Probable Cost and contractor is responsible for preparing their own construction cost estimate for their purposes. This Engineer's estimate is intended to assist the City in evaluating contractor bids.

Progress submittals and/or meetings will be required throughout the design process. Milestone submittals include:

- 50 Percent Design – Includes preliminary title sheet, base plan and profile sheets, sketches of details and sections, and preliminary quantities and cost estimates.
- 90 Percent Design – Includes final plans, completed specifications, and final quantities and cost estimates. All 50 percent design review comments will be addressed at this time.
- 100 Percent Final Design – Includes final plans, completed specifications, and final quantities and cost estimates. All 90 percent design review comments will be addressed at this time.

Task 4 – Project Management, Coordination and Meetings

Psomas will meet with City staff during the design process to review and discuss progress and coordinate courses of action. It is anticipated that a maximum of four (4) design meetings will be required in addition to an initial project kick-off meeting, and project submittal meetings at 50%, 90% and 100% design submittals.

Psomas will provide project management and coordination between the City, Psomas and other project consultants. We will prepare meeting minutes, distribute progress documents, and review information provided by other consultants. We will compile and coordinate submittal documents and monitor and report on project schedule, scope of work and budgets. Psomas will maintain communications with the City relating to development of the project design, technical issues and decisions, and requests for information from other Team Members or Agencies.

Task 5 – Construction Support Services

Psomas will revise final construction drawings, project specifications, and any bid addendum during the bidding process and resolve any discrepancies.

Psomas will attend the pre-construction meeting and will be available to respond to questions.

Psomas will review shop drawing and/or material submittals related to the design

Psomas will provide guidance and recommendations to the City with respect to the contractor's general conformance to plans and specifications. Psomas will not be responsible for project construction inspection but will provide observation when appropriate and provide clarifications and recommendations as issues arise relative to the plans prepared by the team. Construction duration is assumed to be approximately four (4) months for purposes of estimating these services.

As-built Drawings and Project Close Out – Upon completion of construction, Psomas will prepare as- built drawings based on contractor mark-ups. As-built drawings will be submitted in AutoCAD and Adobe (PDF) format. Mylar hard copies are not required.

The following items are excluded from this proposal:

- Relocating or removal of any existing overhead or underground dry utility systems (onsite or offsite) affected by the proposed project improvements other than those detailed per the Exhibit A.
- Conduit, cable design, or composite exhibit for SCE, The Gas Company, Frontier, and Spectrum. Psomas will coordinate with SCE, The Gas Company, Frontier, and Spectrum as they prepare their conduit and cable designs for this project.
- Building and/or meter room design coordination. It is the responsibility of the City's Electrical Engineer and/or Architect to design project plans to the serving utility requirements and standards. Any deviation from this will result in potential project delay. Coordination or negotiation of the building and/or meter room design with the utility is not included.

- 2lb/5lb pressure approval letter from the Gas Company. These letters are typically available at the end of the Gas Company design phase. Should these letters be required earlier for permitting/plan approval purposes, the plumbing engineer will be responsible for coordinating directly with the Gas Company.
- Location of Gas 5lb step-down regulator(s) within the building.
- Electric Maximum Fault Current Value/Letter approval letter from SCE. This information/letter is typically available at the end of the design phase. Should these letters be required earlier for permitting/plan approval purposes, the electrical engineer will be responsible for coordinating directly with SCE.
- Switchgear plan submittal for approval by SCE. The electrical engineer is required to coordinate with the switchgear manufacturer to submit to the appropriate SCE planner for the project location to obtain an approval on the selected switchgear prior to order and installation. Typically, the switchgear manufacturer has all the contact information necessary for this task.
- Temporary Service.
- Lot, building, and unit addressing per the utilities request. It will be the responsibility of the City and/or development team to provide in an Excel document all addresses for the lot(s)/building(s)/unit(s) within the project site. For residential lots this includes a City approved list on City letterhead. For multi-unit building(s) this address list must include the unit numbers and associated meter panels for each unit.
- Offsite backbone bring-up work order coordination and design.
- Any permit coordination, processing, and/or language assistance. Each utility company will be responsible for permit submittal. Psomas will not process any permits for this project.
- Disconnection and/or removal of any existing dry utility services.
- Service Extension Coordination. Psomas will not coordinate with field personnel to schedule the physical extension of services (ducts, structures, and cable) to the homes/buildings.
- Utility Service Application. It is the responsibility of the developer to contact the utility companies to place their order for service and initiate appropriate billing for this service directly.
- Field identification of utility lines/conflicts. It will be the responsibility of the developer and their contractor to coordinate any necessary pothole/survey effort in the field. The developer and contractor are responsible for contacting a utility locating service such as Dig Alert 800-227-2600 to verify any utility system locations.
- Plan check submittal and associated fees will be the responsibility of the client.
- Site/landscape lighting and electrical engineering services

Project Team

The Psomas project team includes well-qualified staff members to provide the City with the full range of engineering services needed for this project. The team will be led by **Bob Talafus, PE, QSD, ENV SP**, serving as Principal-in-Charge/Project Representative, and **Matt Heideman, PE, QSD/P, ENV SP**, serving as Project Manager/Alternative Project Representative. The project team has the expertise to provide the City with a comprehensive full range of services that may be needed for the project. Full resumes highlighting relevant experience for all key staff members on the Organization Chart shown below and listed above begin on the following page of this submittal. The key staff will be supported by an additional 20 professional engineers and 16 surveyors from our Santa Ana office who can assist as needed. Staff members work seamlessly together as a team with our proposed subconsultants and are available to provide as-needed support to ensure that the City's project schedules are met.

ORGANIZATION CHART

The organization chart below identifies team members' roles, project hierarchy, and lines of communication.

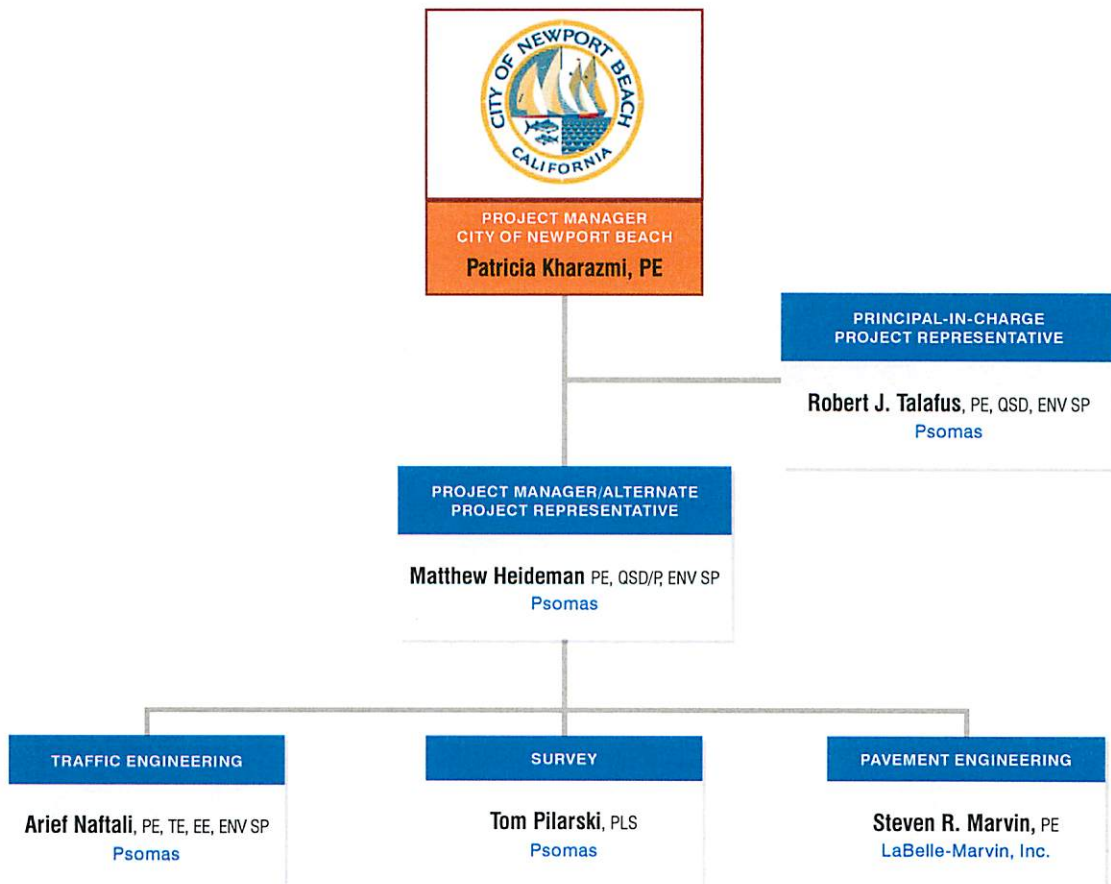


EXHIBIT B

SCHEDULE OF BILLING RATES

EXHIBIT B
FEE SCHEDULE

Cameo Highlands Street Reconstruction Contract No. 7067-1

Project No. 20R21

- | | |
|---------|---|
| Task 1: | Data Collection & Surveying |
| Task 2: | Base Mapping |
| Task 3: | Design |
| Task 4: | Project Management, Coordination & Meetings |
| Task 5: | Construction Support |

Subtotal:	\$225,425.00
Pavement Engineering Services:	\$7,810.00
Total Not-To-Exceed:	\$233,235.00

WORK BREAKDOWN STRUCTURE DESCRIPTION	
1.0	
	Research
	Horizontal, Vertical Control and AT's
	Topography - Field
	Control and Topography Data Processing
	Aerial Flight and Image (fixed)
	Aerial (Office)
2.0 Base Mapping	
	Base Mapping - Paper Boundary
	Base Mapping - Topography
	Base Mapping - QA/QC
	Base Mapping Delivery
3.1 50% Design	
	Research and Data Collection
	Utility Coordination
	Existing 25 ft Cross Sections (320 sections)
	Pavement Report
	Phasing Outline
	50% Plan Preparation (21 shfs)
	Outline of Special Provisions
	Preliminary Quantities
	QA/QC and Submittal Prep
3.2 90% Design	
	Respond to Comments
	Prepare Phasing Plan
	Add Proposed Condition to 25' Cross Sections
	Prepare 90% Construction Docs
	Cost Estimate Update
	Special Provisions
	QA/QC and Submittal Prep
3.3 100% Design	
	Respond to Comments
	Prepare 100% Construction Plans and Specs
	Update Cost Estimate
	QA/QC and Submittal Prep
4.0 Project Management, Coordination and Meetings	
	Project Management and Coordination
	Meetings - 8 meetings
	(kickoff, 3 submittal mtrs and 4 design meetings)
5.0 Construction Support	
	Respond to City Comments and Issue Bid Documents
	Respond to Bid Questions
	Revise Plans and Specs
	Issue Bid Addendum
	Pre-Construction Meeting
	Review Shop Drawings and Submittals
	Respond to RFI's and provide Field Recommendations
	As Built Drawings and Project Close Out
999 ODC	
	Reimbursables

2019 Fee Schedule

PSOMAS
Orange County, California
Facilities Infrastructure and Development

Hourly Rates

Office Services

\$ 75.00 - \$110.00	- Project Assistants/Administrative/Word Processing
\$ 85.00 - \$130.00	- Designer, Assistant Engineers, Assistant Planners
\$135.00 - \$180.00	- Planners, Engineers and Surveyors
\$165.00 - \$195.00	- Survey/GIS Project Management
\$175.00 - \$250.00	- Project Management, Directors
\$175.00 - \$250.00	- Planning and Entitlements, Principals

Hourly Rates

Field Services

\$185.00	- One-man Survey Party
\$285.00	- Two-man Survey Party
\$395.00	- Three-man Survey Party
\$150.00	- Field Supervisor

Hourly rates for field survey parties include normal usage of field equipment and are fully equipped rates.

Reimbursables

Mileage at current IRS allowable rate and parking expenses incurred by office employees is charged at cost. Per Diem rates- \$150 per day, per employee.

Prints, plots, messenger service, subsistence, air travel, and other direct expenses will be charged at cost plus ten percent. The services of outside consultants will be charged at cost plus fifteen percent.

Special Equipment and Other Costs

\$250.00 per day - 3D Laser Scanner (Static)

\$5,000.00 per day – 3D Laser Scanner (Mobile Mapping System)

Standard computer and technology costs are incorporated into the hourly rates shown above.

The above schedule is for straight time. Overtime will be charged at 135 percent of the standard hourly rates. Sundays and holidays will be charged at 170 percent of the standard hourly rates.

EXHIBIT C

INSURANCE REQUIREMENTS – PROFESSIONAL SERVICES

1. Provision of Insurance. Without limiting Consultant's indemnification of City, and prior to commencement of Work, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City. Consultant agrees to provide insurance in accordance with requirements set forth here. If Consultant uses existing coverage to comply and that coverage does not meet these requirements, Consultant agrees to amend, supplement or endorse the existing coverage.
2. Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.
3. Coverage Requirements.
 - A. Workers' Compensation Insurance. Consultant shall maintain Workers' Compensation Insurance, statutory limits, and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000) each accident for bodily injury by accident and each employee for bodily injury by disease in accordance with the laws of the State of California, Section 3700 of the Labor Code.

Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its City Council, boards and commissions, officers, agents, volunteers and employees.
 - B. General Liability Insurance. Consultant shall maintain commercial general liability insurance, and if necessary umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) general aggregate. The policy shall cover liability arising from premises, operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
 - C. Automobile Liability Insurance. Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit each accident.

- D. Professional Liability (Errors & Omissions) Insurance. Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the Effective Date of this Agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the Services required by this Agreement.
4. Other Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:
- A. Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City, its City Council, boards and commissions, officers, agents, volunteers and employees or shall specifically allow Consultant or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers from each of its subconsultants.
- B. Additional Insured Status. All liability policies including general liability, excess liability, pollution liability, and automobile liability, if required, but not including professional liability, shall provide or be endorsed to provide that City, its City Council, boards and commissions, officers, agents, volunteers and employees shall be included as insureds under such policies.
- C. Primary and Non Contributory. All liability coverage shall apply on a primary basis and shall not require contribution from any insurance or self-insurance maintained by City.
- D. Notice of Cancellation. All policies shall provide City with thirty (30) calendar days' notice of cancellation (except for nonpayment for which ten (10) calendar days' notice is required) or nonrenewal of coverage for each required coverage.
5. Additional Agreements Between the Parties. The parties hereby agree to the following:
- A. Evidence of Insurance. Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

- B. City's Right to Revise Requirements. City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving Consultant sixty (60) calendar days' advance written notice of such change. If such change results in substantial additional cost to Consultant, City and Consultant may renegotiate Consultant's compensation.
- C. Enforcement of Agreement Provisions. Consultant acknowledges and agrees that any actual or alleged failure on the part of City to inform Consultant of non-compliance with any requirement imposes no additional obligations on City nor does it waive any rights hereunder.
- D. Requirements not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.
- E. Self-insured Retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these requirements unless approved by City.
- F. City Remedies for Non-Compliance. If Consultant or any subconsultant fails to provide and maintain insurance as required herein, then City shall have the right but not the obligation, to purchase such insurance, to terminate this Agreement, or to suspend Consultant's right to proceed until proper evidence of insurance is provided. Any amounts paid by City shall, at City's sole option, be deducted from amounts payable to Consultant or reimbursed by Consultant upon demand.
- G. Timely Notice of Claims. Consultant shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.
- H. Consultant's Insurance. Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own

judgment may be necessary for its proper protection and prosecution of the Work.