

ATTACHMENT C

ON-CALL PROFESSIONAL SERVICES AGREEMENT WITH LEIGHTON CONSULTING, INC. FOR GEOTECHNICAL AND MATERIAL TESTING SERVICES

THIS ON-CALL PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into as of this 8th day of June, 2021 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and LEIGHTON CONSULTING, INC., a California corporation ("Consultant"), whose address is 17781 Cowan, Irvine, California 92614, 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 geotechnical and material testing services on an on-call, as needed basis ("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, 2024, unless terminated earlier as set forth herein.

2. SERVICES TO BE PERFORMED

2.1 Consultant shall perform the on-call services described in the Scope of Services attached hereto as Exhibit A and incorporated herein by reference ("Services" or "Work"). Upon written request from the Project Administrator as defined herein, Consultant shall provide a letter proposal for Services requested by the City (hereinafter referred to as the "Letter Proposal"). The Letter Proposal shall include the following:

2.1.1 A detailed description of the Services to be provided;

2.1.2 The position of each person to be assigned to perform the Services, and the name of the individuals to be assigned, if available;

2.1.3 The estimated number of hours and cost to complete the Services;
and

2.1.4 The time needed to finish the specific project.

2.2 No Services shall be provided until the Project Administrator has provided written acceptance of the Letter Proposal. Once authorized to proceed, Consultant shall diligently perform the duties in the approved Letter Proposal.

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 and the Letter Proposal. 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 and the Letter Proposal, 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 Letter Proposal 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 **Three Hundred Thousand Dollars and 00/100 (\$300,000.00)**, 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 and the Letter Proposal 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 and the Letter Proposal.

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 Jeff Hull 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 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 and the Letter Proposal. 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: Director of Public Works
Public Works
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: Jeff Hull
Leighton Consulting, Inc.
17781 Cowan
Irvine, CA 92614

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.

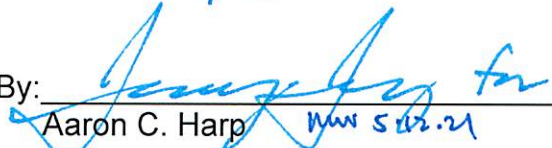
30.12 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

[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: 5/12/21

By: 
Aaron C. Harp
City Attorney

ATTEST:

Date: _____

By: _____
Leilani I. Brown
City Clerk

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: _____

By: _____
Brad Avery
Mayor

CONSULTANT: Leighton Consulting,
Inc., a California corporation

Date: _____

By: _____
Kris R. Lutton
Senior Vice President

Date: _____

By: _____
Terrance M. Brennan
Chief Financial Officer

[END OF SIGNATURES]

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

EXHIBIT A SCOPE OF SERVICES

The following is a list of on-call geotechnical and materials testing Services that Consultant shall provide, based upon City's request and acceptance of written Letter Proposal(s):

- Conduct geotechnical observation, field and lab testing for various types of projects including but not limited to, above and below ground structures, earthwork and grading, slope stability analysis, gravity and pressure pipelines, and roadway construction.
- Observe and test trench backfill, street subgrade, base material, asphalt concrete (AC), Portland Cement Concrete (PCC), and any other material.
- Perform compaction testing of various materials, laboratory testing related to all aspects of geotechnical engineering.
- Perform wet track abrasion testing for slurry seals.
- Prepare geotechnical engineering reports with recommendations such as pavement design and compaction reports, subgrade treatment, and various geotechnical engineering studies.
- Attend field meetings and other geotechnical support services as requested.
- Perform field investigation such as pavement coring and boring.
- Collaborate and work with City staff on various projects as assigned.

Travel time will not be permitted for geotechnical and material testing Services unless specifically authorized by the City. Travel time to and from project sites shall be included in the respective billing rates. Furthermore, all work is subject to prevailing wage rates as set by the State of California. All field work by the Consultant, including its subcontractor(s), shall be completed in accordance with the California Labor Code and is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

No services shall be provided until the Project Administrator has provided written acceptance of the Letter Proposal. Once authorized to proceed, Consultant shall diligently perform the duties in the approved Letter Proposal.

EXHIBIT B
SCHEDULE OF BILLING RATES

EXHIBIT B BILLING RATES

LABOR RATES

CLASSIFICATION	\$/HR	CLASSIFICATION	\$/HR
Technician I.....	89	Project Administrator/Word Processor/Dispatcher	82
Technician II / Special Inspector	99	Information Specialist.....	110
Senior Technician / Senior Special Inspector	113	CAD Operator.....	125
Prevailing Wage (field soils / materials tester) *	147	GIS Specialist.....	140
Prevailing Wage (Special Inspector) *	153	GIS Analyst	165
Prevailing Wage (Source Inspector, NDT and soil remediation O&M)*	157	Staff Engineer / Geologist / Scientist.....	153
System Operation & Maintenance (O&M) Specialist.....	143	Senior Staff Engineer / Geologist / Scientist / ASMR	168
Non Destructive Testing (NDT).....	157	Operations / Laboratory Manager.....	185
Deputy Inspector	113	Project Engineer / Geologist / Scientist	190
Field / Laboratory Supervisor	150	Senior Project Engineer / Geologist / Scientist / SMR.....	210
Source Inspector	135	Associate.....	230
City of Los Angeles Deputy Building (including Grading) Inspector	160	Principal.....	250
* See Prevailing Wages in Terms and Conditions		Senior Principal	295

GEOTECHNICAL LABORATORY TESTING

METHOD	\$/TEST	METHOD	\$/TEST
CLASSIFICATION & INDEX PROPERTIES		COMPACTION & PAVEMENT SUBGRADE TESTS	
Photograph of sample	10	Standard Proctor compaction, 4 points (ASTM D698)	
Moisture content (ASTM D2216)	20	- 4 inch diameter mold (Methods A & B)	160
Moisture & density (ASTM D2937) ring samples.....	30	- 6 inch diameter mold (Method C).....	215
Moisture & density (ASTM D2937) Shelby tube or cutting	40	Modified Proctor compaction 4 points (ASTM D1557):	
Atterberg limits 3 points (ASTM D4318):	150	- 4 inch diameter mold Methods A & B	220
- Single point, non-plastic	85	- 6 inch diameter mold Method C	245
- Atterberg limits (organic ASTM D2487 / D4318)	180	Check point (per point)	65
- Visual classification as non-plastic (ASTM D2488)	10	Relative compaction of untreated/treated soils/aggregates (CTM 216)	250
Particle size:		Relative density 0.1 ft mold (ASTM D4253, D4254).....	235
- Sieve only 1½ inch to #200 (AASHTO T27/ASTM C136/ASTM D6913/CTM 202)... 135		California Bearing Ratio (ASTM D1883)	
- Large sieve 6 inch to #200 (AASHTO T27/ASTM C136/ASTM D6913/CTM 202)... 175		- 3 point	500
- Hydrometer only (ASTM D7928).....	110	- 1 point	185
- Sieve + hydrometer ≤3 inch sieve, (ASTM 7928)	185	R-Value untreated soils/aggregates (AASHTO T190/ASTM D2844/CTM 301).....	310
- Percent passing #200 sieve, wash only (ASTM D1140)	70	R-Value lime or cement treated soils/aggregates (AASHTO T190/ASTM	
Specific gravity and absorption of fine aggregate (AASHTO T84/ASTM C128/		D2844/CTM 301)	340
ASTM D854/CTM 207)	125	SOIL CHEMISTRY & CORROSIVITY	
Specific gravity and absorption of coarse aggregate (AASHTO T85/ASTM		pH Method A (ASTM D4972 or CTM 643)	45
C127/CTM 206)	100	Electrical resistivity – single point – as received moisture.....	45
- Total porosity - on Shelby tube sample (calculated).....	165	Minimum resistivity 3 moisture content points (ASTM G187/CTM 643)	90
- Total porosity - on other sample (calculated)	155	pH + minimum resistivity (CTM 643)	130
Shrinkage limits wax method (ASTM D4943)	126	Sulfate content - gravimetric (CTM 417 B Part 2).....	70
Pinhole dispersion (ASTM D4647)	210	Sulfate content - by ion chromatograph (CTM 417 Part 2)	80
Dispersive characteristics (double hydrometer ASTM D4221)	90	Sulfate screen (Hach®)	30
As-received moisture & density (chunk/carved samples).....	60	Chloride content (AASHTO T291/CTM 422)	70
Sand Equivalent (AASHTO T176/ASTM D2419/CTM 217)	105	Chloride content – by ion chromatograph (AASHTO T291/CTM 422).....	80
SHEAR STRENGTH		Corrosion suite: minimum resistivity, sulfate, chloride, pH (CTM 643).....	265
Pocket penetrometer	15	Organic matter content (ASTM D2974).....	65
Direct shear (ASTM D3080, mod., 3 points):		CONSOLIDATION & EXPANSION/SWELL TESTS	
Consolidated undrained - 0.05 inch/min (CU)	285	Consolidation (ASTM D2435):	195
Consolidated drained - <0.05 inch/min (CD)	345	- Each additional time curve.....	45
Residual shear EM 1110-2-1906-IXA (price per each additional pass after shear)....	50	- Each additional load/unload w/o time reading	40
Remolding or hand trimming of specimens (3 points)	90	Expansion Index (ASTM D4829)	130
Oriented or block hand trimming (per hour).....	65	Single load swell/collapse - Method B (ASTM D4546-B, seat, load & inundate	
Single point shear.....	105	only)	105
Torsional shear (ASTM D6467 / ASTM D7608).....	820	Swell collapse Method A up to 10 load/unloads w/o time curves (ASTM	
		D4546-A).....	290

METHOD	\$/TEST
TRIAXIAL TESTS	
Unconfined compression strength of cohesive soil (with stress/strain plot, ASTM D2166).....	135
Unconsolidated undrained triaxial compression test on cohesive soils (UU, ASTM D2850, USACE Q test, per confining stress)	170
Consolidated undrained triaxial compression test for cohesive soils, (CU, ASTM D4767, USACE R-bar test) with back pressure saturation & pore water pressure measurement (per confining stress).....	375
Consolidated drained triaxial compression test (CD, USACE S test), with volume change measurement. Price per soil type below EM 1110-2-1906(X):	
- Sand or silty sand soils (per confining stress).....	375
- Silt or clayey sand soils (per confining stress)	500
- Clay soils (per confining stress)	705
- Three-stage triaxial (sand or silty sand soils).....	655
- Three-stage triaxial (silt or clayey sand soils)	875
- Three-stage triaxial (clay soils)	1,235
Remolding of test specimens	65

METHOD	\$/TEST
HYDRAULIC CONDUCTIVITY TESTS	
Triaxial permeability in flexible-wall permeameter with backpressure saturation at one effective stress (EPA 9100/ASTM D5084, falling head Method C):.....	310
- Each additional effective stress.....	120
- Hand trimming of soil samples for horizontal K.....	60
Remolding of test specimens	65
Permeability of granular soils (ASTM D2434)	135
Soil suction (filter paper method, ASTM D5298)	400
SOIL-CEMENT	
Moisture-density curve for soil-cement mixtures (ASTM D558)	240
Wet-dry durability of soil-cement mixtures (ASTM D559) ¹	1,205
Compressive strength of molded soil-cement cylinder (ASTM D1633) ¹	60
Soil-cement remolded specimen (for shear strength, consolidation, etc.) ¹ ..	235
¹ Compaction (ASTM D558 maximum density) should also be performed – not included in above price	

CONSTRUCTION MATERIALS LABORATORY TESTING

METHOD	\$/TEST
CONCRETE STRENGTH CHARACTERISTICS	
Concrete cylinders compression (ASTM C39) (6" x 12").....	25
Concrete cylinders compression (ASTM C39) (4" x 8")	22
Compression, concrete or masonry cores (testing only) ≤6 inch (ASTM C42).....	40
Trimming concrete cores (per core)	20
Flexural strength of concrete (simple beam-3rd pt. loading, ASTM C78/CTM 523).....	85
Flexural strength of concrete (simple beam-center pt. loading, ASTM C293/CTM 523).....	85
Non shrink grout cubes (2 inch, ASTM C109/C1107)	25
Drying shrinkage - four readings, up to 90 days, 3 bars (ASTM C157)	400
Length of concrete cores (CTM 531).....	40
HOT MIX ASPHALT (HMA)	
Resistance of compacted HMA to moisture-induced damage (AASHTO T283/CTM 371)	2,100
Hamburg Wheel, 4 briquettes (modified) (AASHTO T324).....	900
Superpave gyratory compaction (AASHTO T312/ASTM D6925)	350
Extraction by ignition oven, percent asphalt (AASHTO T308/ASTM D6307/CTM 382).....	150
Ignition oven correction/correlation values (AASHTO T308/ASTM D6307/CTM 382).....	1,350
Extraction by centrifuge, percent asphalt (ASTM D2172)	150
Gradation of extracted aggregate (AASHTO T30/ASTM D5444/CTM 202).....	135
Stabilometer, S-Value (ASTM D1560/CTM 366).....	265
Bituminous mixture preparation (AASHTO R30/CTM 304)	80
Moisture content of HMA (AASHTO T329/ASTM D6037/CTM 370)	60
Bulk specific gravity of compacted HMA, molded specimen or cores, uncoated (AASHTO T166/ASTM D2726/CTM 308).....	50
Bulk specific gravity of compacted HMA, molded specimen or cores, paraffin-coated (AASHTO T275/ASTM D1188/CTM 308).....	55
Maximum density - Hveem (CTM 308).....	200
Theoretical maximum density and specific gravity of HMA (AASHTO T209/ASTM D2041/CTM 309)	130
Thickness or height of compacted bituminous paving mixture specimens (ASTM D3549)	40
Wet track abrasion of slurry seal (ASTM D3910)	150
Rubberized asphalt (add to above rates).....	+ 25%

METHOD	\$/TEST
AGGREGATE PROPERTIES	
Bulk density and voids in aggregates (AASHTO T19/ASTM C29/CTM 212)	50
Organic impurities in fine aggregate sand (AASHTO T21/ASTM C40/CTM 213)	60
LA Rattler-smaller coarse aggregate <1.5" (AASHTO T96/ASTM C131/CTM 211).....	200
LA Rattler-larger coarse aggregate 1-3" (AASHTO T96/ASTM C535/CTM 211).....	250
Apparent specific gravity of fine aggregate (AASHTO T84/ASTM C128/CTM 208)	130
Clay lumps, friable particles (AASHTO T112/ASTM C142).....	175
Durability Index (AASHTO T210/ASTM D3744/CTM 229).....	200
Moisture content of aggregates by oven drying (AASHTO T255/ASTM C566/CTM 226)	40
Uncompacted void content of fine aggregate (AASHTO T304/ASTM C1252/CTM 234)	130
Percent of crushed particles (AASHTO T335/ASTM D5821/CTM 205).....	135
Flat & elongated particles in coarse aggregate (ASTM D4791/CTM 235).....	215
Cleanliness value of coarse aggregate (CTM 227).....	210
Soundness, magnesium (AASHTO T104/ASTM C88/CTM 214)	225
Soundness, sodium (AASHTO T104/ASTM C88/CTM 214)	650
MASONRY	
Mortar cylinders 2" by 4"(ASTM C780)	25
Grout prisms 3" by 6"(ASTM C1019).....	25
Masonry cores compression, ≤6" diameter - testing only (ASTM C42)	40
Masonry core-shear, Title 24 - test only.....	80
Veneer bond strength, cost for each - 5 required (ASTM C482)	55
CMU compression to size 8" x 8" x 16" - 3 required (ASTM C140).....	45
CMU moisture content, absorption & unit weight - 6 required (ASTM C140).....	40
CMU linear drying shrinkage (ASTM C426).....	175
CMU grouted prisms compression test ≤8" x 8" x 16" (ASTM C1314)	180
CMU grouted prisms compression test > 8" x 8" x 16"(ASTM C1314)	250
BRICK	
Compression - cost for each, 5 required (ASTM C67).....	40
STREET LIGHTS/SIGNALS	
LED Luminaires / Signal Modules / Countdown Pedestrian Signal Face Modules (Caltrans RSS 86).....	1,300

METHOD	\$/TEST
SPRAY APPLIED FIREPROOFING	
Unit weight (density, ASTM E605)	60
BEARING PADS/PLATES AND JOINT SEAL	
Elastomeric bearing pads (Caltrans SS 51-3)	990
Elastomeric bearing pad with hardness and compression tests (Caltrans SS 51-3)	1,230
Type A Joint Seals (Caltrans SS 51-2)	1,620
Type B Joint Seals (Caltrans SS 51-2)	1,530
Bearing plates (A536)	720
REINFORCING STEEL AND PRESTRESSING STRANDS	
Rebar tensile test, ≤ up to No. 10 (ASTM A370)	45
Rebar tensile test, ≥ No. 11 & over (ASTM A370)	100
Rebar bend test, up to No. 11 (ASTM A370)	45
Rebar bend test, ≥ No. 11 & over (ASTM A370)	100
Resistance butt-welded hoops/bars, tensile test, ≤ up to No. 10 (CTM 670)	65
Resistance butt-welded hoops/bars, tensile test, ≥ No. 11 & over (CTM 670)	85
Mechanical rebar splice, tensile test, ≤ up to No. 10 (CTM 670)	65
Mechanical rebar splice, slip test, ≤ up to No. 10 (CTM 670)	40
Mechanical rebar splice, tensile test, ≥ No. 11 & over (CTM 670)	85

METHOD	\$/TEST
Mechanical rebar splice, slip test, ≥ No. 11 & over (CTM 670)	60
Headed rebar splice, tensile test, ≤ up to No. 10 (CTM 670)	65
Headed rebar splice, tensile test, ≥ No. 11 & over (CTM 670)	85
Epoxy coated rebar/dowel film thickness (coating) test (ASTM A775/A934)	45
Epoxy coated rebar/dowel continuity (Holiday) test (ASTM A775/A934)	65
Epoxy coated rebar flexibility/bend test, up to No. 11 (ASTM A775/A934)	45
Prestressing wire, tension (ASTM A416)	150
Sample preparation (cutting)	50
FASTENERS / BOLTS / RODS	
F3125 GR A307, A325 Bolts, tensile test, ≤ up to 1-1/4" diameter, plain (ASTM A370)	65
F3125 GR A307, A325 Bolts, tensile test, ≤ up to 1-1/4" diameter, galvanized (ASTM A370)	75
A490 Bolts, tensile test, ≤ up to 1-1/4" diameter, plain (ASTM A370)	65
A490 Bolts, tensile test, ≤ up to 1-1/4" diameter, galvanized (ASTM A370)	75
A593 Bolts, tensile test, ≤ up to 1-1/4" diameter, stainless steel (ASTM A370)	65
F1554 Bolts, tensile test, ≤ up to 1-1/4" diameter, plain (ASTM A370)	100
F1554 Bolts, tensile test, ≤ up to 1-1/4" diameter, galvanized (ASTM A370)	120
SAMPLE TRANSPORT	
Pick-up & delivery (weekdays, per trip, <50 mile radius from Leighton office)	90

EQUIPMENT LIST

ITEM	\$ UNIT
1/4 inch Grab plates	5 each
1/4 inch Tubing (bonded)	0.55 foot
1/4 inch Tubing (single)	0.35 foot
3/8 inch Tubing, clear vinyl	0.55 foot
4-Gas meter (RKL Eagle or similar)/GEM 2000	130 day
Air flow meter and purge pump (200 cc/min)	50 day
Box of 24 soil drive-sample rings	120 box
Brass sample tubes	10 each
Caution tape (1000-foot roll)	20 each
Combination lock or padlock	11 each
Compressed air tank and regulator	50 day
Concrete coring machine (≤6-inch-dia)	150 day
Consumables (gloves, rope, soap, tape, etc.)	35 day
Core sample boxes	11 each
Crack monitor	25 each
Cutoff saws, reciprocating, electric (Sawzall®)	75 day
Disposable bailers	12 each
Disposable bladders	10 each
Dissolved oxygen meter	45 day
DOT 55-gallon containment drum with lid	65 drum
Double-ring infiltrometer	125 day
Dual-stage interface probe	80 day
Dynamic Cone Penetrometer	400 day
Generator, portable gasoline fueled, 3,500 watts	90 day
Global Positioning System/Laser Range Finder	80 day
Hand auger set	90 day
HDPE safety fence (≤100 feet)	40 roll
Horiba U-51 water quality meter	135 day
Light tower (towable vertical mast)	150 day
Magnehelic gauge	15 day
Manometer	25 day
Mileage (IRS Allowable)	0.575 mile

ITEM	\$ UNIT
Moisture test kit (excludes labor to perform test, ASTM E1907)	60 test
Nuclear moisture and density gauge	88 day
Pachometer	25 day
Particulate Monitor	125 day
pH/Conductivity/Temperature meter	55 day
Photoionization Detector (PID)	120 day
Pump, Typhoon 2 or 4 stage	50 day
QED bladder pump w/QED control box	160 day
Quire fee – Phase I only	200 each
Resistivity field meter & pins	50 day
Slip / threaded cap, 2-inch or 4-inch diameter, PVC Schedule 40	15 each
Slope inclinometer	200 day
Soil sampling T-handle (Encore)	10 day
Soil sampling tripod	35 day
Stainless steel bailer	40 day
Submersible pump, 10 gpm, high powered Grundfos 2-inch with controller	160 day
Submersible pump/transfer pump, 10-25 gpm	50 day
Support service truck usage (well installation, etc.)	200 day
Survey/fence stakes	8 each
Tedlar® bags	18 each
Traffic cones (≤25)/barricades (single lane)	50 day
Turbidity meter	70 day
Tyvek® suit (each)	18 each
Vapor sampling box	55 day
Vehicle usage (carrying equipment)	20 hour
VelociCalc	35 day
Visqueen (20 x 100 feet)	100 roll
Water level indicator (electronic well sounder) <300 feet deep well	60 day
ZIPLEVEL®	15 day
Other specialized geotechnical and environmental testing & monitoring equipment are available, and priced per site	

TERMS AND CONDITIONS

- **Expiration:** This fee schedule is effective through December 31, 2021 after which remaining work will be billed at then-current rates.
- **Proposal Expiration:** Proposals are valid for at least 30 days, subject to change after 30 days; unless otherwise stated in an attached proposal.
- **Prevailing Wages:** Our fees for prevailing wage work are based upon California prevailing wage laws and wage determinations. Unless specifically indicated in our proposal, costs for apprentice are not included. If we are required to have an apprentice on your project, additional fees will be charged.
- **Overtime:** Standard overtime rate is per California Labor Law and is billed at 1.5 or 2 times their hourly billing rate. Overtime rate for non-exempt field personnel working on a Leighton observed holiday is billed at 2 times their hourly billing rate. Overtime rate for Prevailing wage work is per the California Department of Industrial Relations (DIR) determination and is multiplied at 1.5 to 2 times their hourly billing rate for overtime and double-time, respectively.
- **Expert Witness Time:** Expert witness deposition and testimony will be charged at 2 times hourly rates listed on the previous pages, with a minimum charge of four hours per day.
- **Minimum Field Hourly Charges:** For Field Technicians, Special Inspectors or any on-site (field) materials testing services:
 - 4 hours:** 4-hour minimum charge up to the first four hours of work
 - 8 hours:** 8-hour minimum charge for over four hours of work, up to eight hours.
- **Project time accrued includes portal to portal travel time.**
- **Insurance & Limitation of Liability:** These rates are predicated on standard insurance coverage and a limit of Leighton's liability equal to our total fees for a given project.
- **Outside Direct Costs:** Heavy equipment, subcontractor fees and expenses, project-specific permits and/or licenses, project-specific supplemental insurance, travel, subsistence, project-specific parking charges, shipping, reproduction, and other reimbursable expenses will be invoiced at cost plus 18%, unless billed directly to and paid by client.
- **Invoicing:** Invoices are rendered monthly, payable upon receipt in United States dollars. A service charge of 1½-percent per month will be charged for late payment.
- **Client Disclosures:** Client agrees to provide all information in Client's possession about actual or possible presence of buried utilities and hazardous materials on the project site, prior to fieldwork, and agrees to reimburse Leighton for all costs related to unanticipated discovery of utilities and/or hazardous materials. Client is also responsible for providing safe and legal access to the project site for all Leighton field personnel.
- **Earth Material Samples:** Quoted testing unit rates are for soil and/or rock (earth) samples free of hazardous materials. Additional costs will accrue beyond these standard testing unit rates for handling, testing and/or disposing of soil and/or rock containing hazardous materials. Hazardous materials will be returned to the site or the site owner's designated representative at additional cost not included in listed unit rates. Standard turn-around time for geotechnical-laboratory test results is 10 working days. Samples will be stored for 2 months, after which they will be discarded. Prior documented notification is required if samples need to be stored for a longer time. A monthly storage fee of \$10 per bag and \$5 per sleeve or tube will be applied. Quoted unit rates are only for earth materials sampled in the United States. There may be additional cost for handling imported samples.
- **Construction Material Samples:** After all designated 28-day breaks for a given sample set meet specified compressive or other client-designated strength, all "hold" cylinders or specimens will be automatically disposed of, unless specified in writing prior to the 28-day break. All other construction materials will be disposed of after completion of testing and reporting.

EXHIBIT C

INSURANCE REQUIREMENTS – PROFESSIONAL SERVICES

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

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

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

fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

- B. City's Right to Revise Requirements. City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving Consultant sixty (60) calendar days' advance written notice of such change. If such change results in substantial additional cost to Consultant, City and Consultant may renegotiate Consultant's compensation.
- C. Right to Review Subcontracts. Consultant agrees that upon request, all agreements with subcontractors or others with whom Consultant 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. Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Consultant 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 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.
- E. 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.
- F. 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.

- G. 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.
- H. 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.
- I. 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.