

## **ATTACHMENT B**

### **AMENDMENT NO. TWO TO PROFESSIONAL SERVICES AGREEMENT WITH NV5, INC. FOR ENGINEERING SERVICES FOR ASSESSMENT DISTRICT NO. 113**

THIS AMENDMENT NO. TWO TO PROFESSIONAL SERVICES AGREEMENT ("Amendment No. Two") 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 NV5, INC., a California corporation ("Consultant"), whose address is 163 Technology Drive, Suite 100, Irvine, California 92618 and is made with reference to the following:

#### **RECITALS**

- A. On October 8, 2018, City and Consultant entered into a Professional Services Agreement ("Agreement") for Consultant to provide assessment engineering services related to Assessment District No. 113 ("Project").
- B. On December 17, 2018, City and Consultant entered into Amendment No. One to the Agreement ("Amendment No. One") to reflect additional services not included in the Agreement, extend the term of the Agreement and to increase the total compensation.
- C. The parties desire to enter into this Amendment No. Two to reflect additional Services not included in the Agreement, as amended, to extend the term of the Agreement to June 30, 2023, to increase the total compensation, amend the Hold Harmless, Claims, and Notices sections, include Prevailing Wage language, and update Insurance requirements.

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

#### **1. TERM**

Section 1 of the Agreement is amended in its entirety and replaced with the following: "The term of this Agreement shall commence on the Effective Date, and shall terminate on June 30, 2023, unless terminated earlier as set forth herein."

#### **2. SERVICES TO BE PERFORMED**

Exhibit A to the Agreement shall be supplemented to include the Scope of Services, attached hereto as Exhibit A and incorporated herein by reference ("Services" or "Work"). Exhibit A to the Agreement, Exhibit A to this Amendment No. One, and Exhibit A to Amendment No. Two, shall collectively be known as "Exhibit A." The City may elect to delete certain Services within the Scope of Services at its sole discretion.

### 3. COMPENSATION TO CONSULTANT

Exhibit B to the Agreement shall be supplemented to include the Schedule of Billing Rates, attached hereto as Exhibit B and incorporated herein by reference ("Services" or "Work"). Exhibit B to the Agreement, Exhibit B to Amendment No. One, and Exhibit B to Amendment No. Two shall collectively be known as "Exhibit B."

Section 4.1 of the Agreement is amended in its entirety and replaced with the following: "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 **Three Hundred Two Thousand Three Hundred Fifty Dollars and 00/100 (\$302,350.00)**, 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."

The total amended compensation reflects Consultant's additional compensation for additional Services to be performed in accordance with this Amendment No. Two, including all reimbursable items and subconsultant fees, in an amount not to exceed **Two Hundred Thirty Three Thousand Two Hundred Ninety Five Dollars and 00/100 (\$233,295.00)**.

### 4. HOLD HARMLESS

Section 9 of the Agreement is amended in its entirety and replaced with the following:

"9.1 To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers, employees and any person or entity owning or otherwise in legal control of the property upon which Consultant performs the Project and/or Services contemplated by this Agreement (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to any breach of the terms and conditions of this Agreement, any Work performed or Services provided under this Agreement including, without limitation, defects in workmanship or materials or Consultant's presence or activities conducted on the Project (including the negligent, reckless, and/or willful acts, errors and/or omissions of Consultant, its principals, officers, agents, employees, vendors, suppliers, consultants, 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 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 Consultant."

## **5. CONFLICTS OF INTEREST**

Section 25 of the Agreement is amended in its entirety and replaced with the following:

"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."

## **6. NOTICES**

Section 26.3 of the Agreement is amended in its entirety and replaced with the following:

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

Attn: Jeffrey M. Cooper  
NV5, Inc.  
163 Technology Drive, Suite 100  
Irvine, CA 92618"

## **7. CLAIMS**

Section 27 of the Agreement is amended in its entirety and replaced with the following:

"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.)."

## **8. PREVAILING WAGES**

Section 30 shall be added into the Agreement as follows:

"30.1 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.

30.2 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."

## **9. INSURANCE**

Exhibit C of the Agreement shall be deleted in its entirety and replaced with Exhibit C, attached hereto and incorporated herein by reference. Any reference to Exhibit C in the Agreement shall hereafter refer to Exhibit C attached hereto.

## **10. INTEGRATED CONTRACT**

Except as expressly modified herein, all other provisions, terms, and covenants set forth in the Agreement shall remain unchanged and shall be in full force and effect.

**[SIGNATURES ON NEXT PAGE]**

**IN WITNESS WHEREOF**, the parties have caused this Amendment No. Two to be executed on the dates written below.

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

Date: 6/1/2021

By:  for  
Aaron C. Harp  
City Attorney

*06.01.21  
dmj*

**ATTEST:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Leilani I. Brown  
City Clerk

**CITY OF NEWPORT BEACH,**  
a California municipal corporation

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Brad Avery  
Mayor

**CONSULTANT: NV5, INC., a California corporation**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Jeffrey M. Cooper  
Vice President

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Mary Jo O'Brien  
Corporate Secretary

**[END OF SIGNATURES]**

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

# **EXHIBIT A**

## **SCOPE OF SERVICES**

## **EXHIBIT A SCOPE OF SERVICES**

### **Assessment District No. 113 – Additional Scope of Services (Construction Management and Inspection Services)**

Consultant shall complete the following work:

#### **CONSTRUCTION MANAGEMENT & INSPECTION**

11. Coordinate and oversee all activities related to the construction of the Project including residential permit support services, and maintain close liaison with the City Project Administrator.
12. Serve as contact point for coordination with the Contractor designated by City to perform the construction of the Project ("Contractor"), other agencies and utility companies.
13. Provide Project status updates to City Project Administrator.
14. Review and monitor the Contractor's schedule through weekly construction progress meetings.
15. Prepare daily inspection records and bi-weekly status reports.
16. Maintain an awareness of safety and health requirements and enforce applicable contract provisions for the protection of the public and project personnel.
17. Maintain binders of job records, including photos
18. Evaluate cost reduction incentive proposals and provide recommendations to City Project Administrator

#### **SPECIAL INSPECTION & LABORATORY TESTING**

19. Provide qualified field technicians and inspectors on an as-needed basis to observe, sample and test construction materials including but not limited to soil, aggregate, base, Portland cement concrete, and asphalt concrete
20. Coordinate inspection visits at the request of the City's Construction Manager or authorized representative (Engineer).
21. Perform laboratory testing to evaluate material conformance to project requirements. Tests are anticipated to include Modified Proctor (Maximum Density and Optimum Moisture), Sand Equivalent, Grain Size Analysis, Asphalt maximum theoretical density, and unit weight.
22. Prepare and provide daily reports detailing observations, results of testing, and photographs.
23. Notify the Engineer and Contractor of any failures or non-conforming items.
24. Document and track retesting.
25. Provide written laboratory test reports of materials tested.
26. Field technicians and Inspectors will be equipped with appropriate PPE and industry standard sampling and testing equipment. Specialty equipment may be provided upon request at additional cost in accordance with attached Fee Schedule.
27. Registered engineer in the State of California will review all test data for conformance with project requirements.



# **EXHIBIT B**

## **SCHEDULE OF BILLING RATES**

**EXHIBIT B**  
**SCHEDULE OF BILLING RATES**

**Assessment District No. 113 – Additional Scope of Services (Construction Management and Inspection Services)**

Tasks 11 through 27: \$233,295

**NV5**

TASK NO.	WORK DESCRIPTION	Project Manager \$235		Senior Inspector \$155		Admin \$105		Field Technician \$115		Senior Engineer \$170		TOTAL FEE
		HOURS	\$	HOURS	\$	HOURS	\$	HOURS	\$	HOURS	\$	
CONSTRUCTION MANAGEMENT & INSPECTION												
11.0	Oversight of all Construction Related Activities including Residential Permit Support	50	\$11,750	225	\$34,875	100	\$10,500					\$57,125
12.0	Point of Contact for Contractor, City, Utility Companies, etc.	20	\$4,700	125	\$19,375							\$24,075
13.0	Project Status Updates			100	\$15,500	16	\$1,680					\$17,180
14.0	Schedule Review			100	\$15,500	16	\$1,680					\$17,180
15.0	Project Inspection (documented through daily reports and bi-weekly status reports)	30	\$7,050	120	\$18,600							\$25,650
16.0	Enforce Contract Provisions/Manage health and safety requirements	10	\$2,350	100	\$15,500							\$17,850
17.0	Detailed project records, including photos	10	\$2,350	120	\$18,600	18	\$1,890					\$22,840
18.0	Evaluate cost reduction incentives	10	\$2,350	100	\$15,500							\$17,850
Construction Management & Inspection Subtotal		130	\$30,550	990	\$153,450	150	\$15,750	0	\$0	0	\$0	\$199,750
SPECIAL INSPECTION												
19.0	Field Observation and Testing							192	\$22,080			\$22,080
20.0	Coordinate Inspection Visits					7	\$735			6	\$1,020	\$1,755
21.0-26.0	Laboratory Testing	See Detail Below										
27.0	Engineering Review									6	\$1,020	\$1,020
LABORATORY TESTING												
	Modified Proctor (Max Density & Optimum Moisture)	3	\$200									\$600
	Sieve Analysis	3	\$130									\$390
	Sand Equivalent	3	\$95									\$285
	Maximum Theoretical Density (ASTM D2041)	2	\$130									\$260
	Asphalt Core Unit Weight & Thickness	6	\$60									\$360
Special Inspection & Laboratory Testing Subtotal			\$1,895	0	\$0	7	\$735	192	\$22,080	12	\$2,040	\$26,750
	Miscellaneous Expenses at 3%											\$6,795
TOTAL FEE												\$233,295

The City anticipates construction to begin August 1, 2021. Services will be provided over the course of two hundred and sixty (260) working days construction contract.

## 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, employees and any person or entity owning or otherwise in legal control of the property upon which Consultant performs the Project and/or Services contemplated by this Agreement.
  - 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, employees and any person or entity owning or otherwise in legal control of the property upon which Consultant performs the Project and/or Services contemplated by this Agreement 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, employees and any person or entity owning or otherwise in legal control of the property upon which Consultant performs the Project and/or Services contemplated by this Agreement 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.