



**RANCHO PALOS VERDES CITY COUNCIL  
AGENDA REPORT**

**MEETING DATE: 12/01/2020  
AGENDA HEADING: Regular Business**

**AGENDA DESCRIPTION:**

Consideration and possible action to approve a second amendment to the Professional Services Agreement with Johnson Favaro for the Ladera Linda Park Master Plan Project.

**RECOMMENDED COUNCIL ACTION:**

- (1) Authorize the Mayor to approve a second amendment to the Professional Services Agreement with Johnson Favaro for architectural and engineering design services for the Ladera Linda Park Master Plan Project thereby allowing sufficient time to complete their scope of work consisting of assisting with the CUP/CEQA process and creating construction-ready documents.

**FISCAL IMPACT:**

<b>Amount Budgeted:</b>	\$624,164
<b>Additional Appropriation:</b>	None
<b>Account Number(s):</b>	334-400-8405-8001 (\$80,964) (Quimby Fund – Ladera Linda/Professional Services)
	334-400-8405-8004 (\$543,200) (Quimby Fund – Ladera Linda/Design Services) <i>TM</i>

**ORIGINATED BY:** Matt Waters, Senior Administrative Analyst *(mm)*

**REVIEWED BY:** Cory Linder, Director of Recreation and Parks *(cl)*

**APPROVED BY:** Ara Mihranian, Acting City Manager *(AM)*

**ATTACHED SUPPORTING DOCUMENTS:**

- A. Amendment No. 2 to the Johnson Favaro Professional Services Agreement (page A-1)
- B. 2018 City Contract Services Agreement with Johnson Favaro (page B-1)
- C. Amendment No. 1 to the Johnson Favaro Professional Services Agreement (page C-1)

## **BACKGROUND AND DISCUSSION:**

At its December 18, 2018 meeting, the City Council reviewed and approved a Professional Services Agreement with Johnson Favaro for architectural and engineering design services for the Ladera Linda Park Master Plan Project at a cost of \$538,460 (Attachment B).

The project's scope was divided into two phases. The first phase consisted of refining and developing the conceptual Master Plan before presenting to the City Council for review and approval. This phase involved extensive public outreach, particularly with HOAs located adjacent to Ladera Linda. The second phase of the project scope was the development of a fully-completed construction design and construction-ready documents for this project. To date, Johnson Favaro has prepared and submitted a 100% schematic design and design development documents for the City's review. The City Council approved the conceptual plan on August 20, 2019 and directed the consultant to move on to the second phase.

On December 17, 2019, a one-year contract extension, Amendment No.1, was approved by the City Council with an expiration date of December 18, 2020 (Attachment C). This amended contract included a \$14,740 increase to the Agreement for additional services related to completing a Conditional Use Permit (CUP) entitlement process and an environmental review (CEQA) process increasing the contract total from \$538,460 to \$553,200. This process involves Johnson Favaro submitting documents to the Community Development Department for review. Through the CUP entitlement process, public concerns about the proposed project's operations and conditions that were addressed during earlier outreach efforts would be thoroughly reviewed and memorialized in conditions of approval, as well as any project design refinements considered by the Planning Commission.

The scope of work detailed in the 2019 City Council-approved Amendment No. 1 is currently in progress, but has not been completed. At this time, the first public hearing with the Planning Commission on the Conditional Use Permit is tentatively scheduled for January. Once a decision is rendered by the Planning Commission, it will be presented to the City Council for consideration. The preparation of the construction drawings will proceed if directed by the City Council.

Due to the timeline described above, Amendment No. 2 to the Agreement is needed to extend the services provided by the Consultant for an additional one-year (Attachment A). No additional funds are being requested. The amended Agreement covers expenses related to the CUP/CEQA process and the subsequent development of construction-ready documents. This amendment does not cover the costs of additional significant redesign work. If significant additional services by Johnson Favaro are deemed necessary as a result of the CUP public hearing process, an additional amendment detailing those costs and services would be brought back to the City Council for consideration.

An updated schedule is included in the attached amendment, excerpt below.

CUP/CEQA Process Including Planning Commission and City Council Review and Approval	December 2020 to March 2021
Construction Documents Phase	April 2021 to September 2021
City Review of Construction Documents Including Plan Check	July 2021 to September 2021
Permit Bldg. Department Review	July 2021 to September 2021
Bid Phase and Award of Contract Including City Council Approval	September 2021 to October 2021

#### **ADDITIONAL INFORMATION:**

Below is the Capital Improvement Plan (CIP) Project Summary Table for the Ladera Linda Park Master Plan Project

<b>8405 - Ladera Linda Community Center Final Design &amp; Construction Drawings</b>				
<b>Description</b>	<b>Budget</b>	<b>Actual/ Committed</b>	<b>Balance</b>	<b>Notes</b>
Revised Budget	591,343.00	591,343.00	-	
19-20 Continuing Appropriation	32,821.00	-	32,821.00	Pending CC Approval 12/16/2020
Total Project Budget	624,164.00	591,343.00	32,821.00	
Project Costs				
8001 Professional/Technical Services	80,964.00	62,883.00	18,081.00	
8004 Architectural Design Services	543,200.00	528,460.00	14,740.00	
	624,164.00	591,343.00	32,821.00	
<b>Project Balance</b>	<b>624,164.00</b>	<b>591,343.00</b>	<b>32,821.00</b>	

#### **ALTERNATIVES:**

In addition to the Staff recommendation, the following alternative actions are available for the City Council's consideration:

1. Do not approve the amended agreement with Johnson Favaro.
2. Take other action as deemed appropriate by the City Council.

## AMENDMENT NO. 2

### TO AGREEMENT FOR CONTRACTUAL SERVICES

THIS AMENDMENT TO THE AGREEMENT FOR CONTRACTUAL SERVICES (“Amendment No. 2”) by and between the **CITY OF RANCHO PALOS VERDES** (“City”) and **JOHNSON FAVARO**, a California corporation (“Consultant”) is effective as of \_\_\_\_\_, 2020.

#### RECITALS

A. City and Consultant entered into that certain Agreement for Contractual Services dated December 18, 2018 (“Agreement”) whereby Consultant agreed to provide engineering design services (the “Services”) for a Term of one year, for a Contract Sum of \$538,460. The Agreement provided for an additional one-year extension at the City’s discretion.

B. Due to the unforeseen necessity for Conditional Use Permit review and California Environmental Quality Act review, the Services required additional tasks and would take longer than anticipated. Therefore, on December 17, 2019, the City and Consultant entered into the Amendment No. 1 to the Agreement to extend the Term of the Agreement by one year, to expire on December 18, 2020, and increase the Contract Sum to \$553,200.

C. Due to delays resulting from the COVID-19 pandemic, additional time is required to complete the Services. Therefore, the City and Consultant now desire to amend the Agreement to extend the Term of the Agreement one additional year, to expire on December 18, 2021.

#### TERMS

1. **Contract Changes.** The Agreement is amended as provided herein. Deleted text is indicated in ~~strikethrough~~ and added text in ***bold italics***.

(a) Section 3.4, Term, is hereby amended as follows:

“Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding ***December 18, 2021 December 18, 2020***, except as otherwise provided in the Schedule of Performance ( Exhibit D).”

(b) Exhibit “A”, Scope of Work, Section I(C)(17) is hereby amended as follows:

***“17. Consultant will submit any and all required documents necessary for the project’s Conditional Use Permit/entitlements review and environmental review (CEQA). In addition, Consultant will participate in internal meetings with City Staff during the CUP/CEQA review phase as well as prepare presentations and present at public hearings as needed. Consultant will also prepare minor revisions to submitted materials as needed after both internal/departmental review and after public hearings. CUP/CEQA Support: The Consultant will utilize the 100% ”***

*Design Development drawings for the Conditional Use Permit (CUP) and California Environmental Quality Act (CEQA) applications. With regard to design documents, anticipated are minor revisions to the completed 100% Design Development drawings as a result of the CUP/CEQA process. This scope of work does not include design changes which will require revision of the building configuration, plan layout, building size, parking configuration or parking quantity which would require revision of the completed 100% Design Development drawings and additional work and coordination with MEP, Lighting, Landscape, Structural and Civil Consultants. Changes that require major revisions to the completed 100% Design Development drawings will required a revision to the proposed Project Schedule.*

- 1. Consultant will review and complete an application for the CUP. The application will be filled out by Consultant to the best of the Consultant's knowledge.*
- 2. Consultant will prepare and submit any and all required documents necessary for the project's CUP/entitlements review and environmental review (CEQA).*
- 3. Consultant will participate in internal meetings with City Staff during the CUP/CEQA review phase as well as prepare presentations and present at public hearings as needed. Anticipated at present are two (2) Planning Commission meetings and one (1) City Council meeting.*
- 4. Consultant will also prepare minor revisions to submitted materials as needed after both internal/departmental review and after public hearings.”*

(c) Exhibit “D,” Schedule of Performance, is hereby replaced in its entirety with the new Exhibit “D,” Schedule of Performance, attached hereto and incorporated herein by this reference.

2. **Continuing Effect of Agreement.** Except as amended by this Amendment No. 2, all provisions of the Agreement shall remain unchanged and in full force and effect. From and after the date of this Amendment No. 2, whenever the term “Agreement” appears in the Agreement, it shall mean the Agreement, as amended by Amendment No. 1 and Amendment No. 2 to the Agreement.

3. **Affirmation of Agreement; Warranty Re Absence of Defaults.** City and Consultant each ratify and reaffirm each and every one of the respective rights and obligations arising under the Agreement. Each party represents and warrants to the other that there have been no written or oral modifications to the Agreement other than as provided herein. Each party represents and warrants to the other that the Agreement is currently an effective, valid, and binding obligation.

Consultant represents and warrants to City that, as of the date of this Amendment No. 2, City is not in default of any material term of the Agreement and that there have been no events

that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

City represents and warrants to Consultant that, as of the date of this Amendment No. 2, Consultant is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

4. **Adequate Consideration.** The parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment No. 2.

5. **Authority.** The persons executing this Amendment No. 2 on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Amendment No. 2 on behalf of said party, (iii) by so executing this Amendment No. 2, such party is formally bound to the provisions of this Amendment No. 2, and (iv) the entering into this Amendment No. 2 does not violate any provision of any other agreement to which said party is bound.

**[SIGNATURES ON FOLLOWING PAGE]**

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the date and year first-above written.

**CITY:**

CITY OF RANCHO PALOS VERDES, a municipal corporation

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Mayor

ATTEST:

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Emily Colborn, City Clerk

**APPROVED AS TO FORM:**

ALESHIRE & WYNDER, LLP

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William W. Wynder, City Attorney

**CONSULTANT:**

JOHNSON FAVARO, a California corporation

By: \_\_\_\_\_

Name: Jim Favaro  
Title: Principal

By: \_\_\_\_\_

Name: Steve Johnson  
Title: Principal

Address: 5898 Blackwelder Street  
Culver City, CA 90232

**Two corporate officer signatures required when Consultant is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. CONSULTANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONSULTANT'S BUSINESS ENTITY.**

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On \_\_\_\_\_, 2020 before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

#### CAPACITY CLAIMED BY SIGNER

INDIVIDUAL  
 CORPORATE OFFICER

\_\_\_\_\_  
TITLE(S)

PARTNER(S)  LIMITED  
  GENERAL  
 ATTORNEY-IN-FACT  
 TRUSTEE(S)  
 GUARDIAN/CONSERVATOR  
 OTHER \_\_\_\_\_

#### DESCRIPTION OF ATTACHED DOCUMENT

\_\_\_\_\_  
TITLE OR TYPE OF DOCUMENT

\_\_\_\_\_  
NUMBER OF PAGES

\_\_\_\_\_  
DATE OF DOCUMENT

#### SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

\_\_\_\_\_  
SIGNER(S) OTHER THAN NAMED ABOVE

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On \_\_\_\_\_, 2020 before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

#### CAPACITY CLAIMED BY SIGNER

INDIVIDUAL  
 CORPORATE OFFICER

\_\_\_\_\_

PARTNER(S)  LIMITED  
 GENERAL

ATTORNEY-IN-FACT

TRUSTEE(S)

GUARDIAN/CONSERVATOR

OTHER \_\_\_\_\_

#### DESCRIPTION OF ATTACHED DOCUMENT

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

#### SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

\_\_\_\_\_

**EXHIBIT "D"**

**SCHEDULE OF PERFORMANCE**

**I. Consultant shall perform all Services timely in accordance with the following schedule. Some portions of the Phases may be conducted concurrently.**

	<b>Phase</b>	<b>Duration (Calendar Days)</b>	<b>Start</b>	<b>Finish</b>
<b>A.</b>	Pre-Design	45	2.21.19	5.31.19
	RPV Review and NTP	15	6.1.19	6.15.19
<b>B.</b>	Schematic Design	45	6.3.19	7.25.19
	RPV Review and NTP	15	7.25.19	9.16.19
<b>C.</b>	Design Development	45	9.16.19	11.22.19
	RPV Review and NTP	15	11.23.19	12.22.19
	CUP/CEQA Review Process	90	12.01.20	3.31.21
<b>D.</b>	Construction Documents	90	04.01.21*	6.29.21
	RPV Review and NTP	15	3.30.21	7.14.21
<b>E.</b>	Permit	60**	7.15.21	9.12.21
<b>F.</b>	City Council action to approve project to go to bid	30**	9.13.21	10.12.21
<b>G.</b>	Bid	45**	10.13.21	11.26.21
<b>H.</b>	City Council action to award contract to successful bidder	45**	11.27.21	01.10.22
<b>I.</b>	Construction Duration	14 months**	1.11.22	3.11.23

\* Anticipated start date dependent on CUP/CEQA review process, if either of the two processes take longer than the 3 months anticipated, the Construction Documentation phase will be affected.

\*\* Approximate time estimate, this is subject to change.

**II. Consultant shall deliver the following tangible work products to the City by the following dates.**

Per Section I, above.

**III. The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.**

**CONTRACT SERVICES AGREEMENT**

**By and Between**

**CITY OF RANCHO PALOS VERDES**

**and**

**JOHNSON FAVARO**

**AGREEMENT FOR CONTRACT SERVICES  
BETWEEN THE CITY OF RANCHO PALOS VERDES AND  
JOHNSON FAVARO**

THIS AGREEMENT FOR CONTRACT SERVICES (herein "Agreement") is made and entered into this 18 day of December, 2018 by and between the City of Rancho Palos Verdes, a California municipal corporation ("City") and Johnson Favaro, a California corporation ("Consultant"). City and Consultant may be referred to, individually or collectively, as "Party" or "Parties."

**RECITALS**

A. City has sought, by issuance of a Request for Proposals or Invitation for Bids, the performance of the services defined and described particularly in Article 1 of this Agreement.

B. Consultant, following submission of a proposal or bid for the performance of the services defined and described particularly in Article 1 of this Agreement, was selected by the City to perform those services.

C. Pursuant to the City of Rancho Palos Verdes' Municipal Code, City has authority to enter into and execute this Agreement.

D. The Parties desire to formalize the selection of Consultant for performance of those services defined and described particularly in Article 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

**OPERATIVE PROVISIONS**

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

**ARTICLE 1. SERVICES OF CONSULTANT**

**1.1 Scope of Services.**

In compliance with all terms and conditions of this Agreement, the Consultant shall provide those services specified in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by this reference, which may be referred to herein as the "services" or "work" hereunder. As a material inducement to the City entering into this Agreement, Consultant represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, competent, and professional manner, and is experienced in performing the work and services contemplated herein. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Consultant covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be both of good quality as well as fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those

standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

### **1.2 Consultant's Proposal.**

The Scope of Service shall include the Consultant's scope of work or bid which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.

### **1.3 Compliance with Law.**

Consultant shall keep itself informed concerning, and shall render all services hereunder in accordance with, all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

### **1.4 California Labor Law.**

If the Scope of Services includes any "public work" or "maintenance work," as those terms are defined in California Labor Code section 1720 *et seq.* and California Code of Regulations, Title 8, Section 16000 *et seq.*, and if the total compensation is \$1,000 or more, Consultant shall pay prevailing wages for such work and comply with the requirements in California Labor Code section 1770 *et seq.* and 1810 *et seq.*, and all other applicable laws, including the following requirements:

(a) **Public Work.** The Parties acknowledge that some or all of the work to be performed under this Agreement is a "public work" as defined in Labor Code Section 1720 and that this Agreement is therefore subject to the requirements of Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code relating to public works contracts and the rules and regulations established by the Department of Industrial Relations ("DIR") implementing such statutes. The work performed under this Agreement is subject to compliance monitoring and enforcement by the DIR. Contractor shall post job site notices, as prescribed by regulation.

(b) **Prevailing Wages.** Contractor shall pay prevailing wages to the extent required by Labor Code Section 1771. Pursuant to Labor Code Section 1773.2, copies of the prevailing rate of per diem wages are on file at City Hall and will be made available to any interested party on request. By initiating any work under this Agreement, Contractor acknowledges receipt of a copy of the Department of Industrial Relations (DIR) determination of the prevailing rate of per diem wages, and Contractor shall post a copy of the same at each job site where work is performed under this Agreement.

(c) **Penalty for Failure to Pay Prevailing Wages.** Contractor shall comply with and be bound by the provisions of Labor Code Sections 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. The Contractor shall, as a penalty to the City, forfeit two hundred dollars (\$200) for each calendar

day, or portion thereof, for each worker paid less than the prevailing rates as determined by the DIR for the work or craft in which the worker is employed for any public work done pursuant to this Agreement by Contractor or by any subcontractor.

(d) Payroll Records. Contractor shall comply with and be bound by the provisions of Labor Code Section 1776, which requires Contractor and each subcontractor to: keep accurate payroll records and verify such records in writing under penalty of perjury, as specified in Section 1776; certify and make such payroll records available for inspection as provided by Section 1776; and inform the City of the location of the records.

(e) Apprentices. Contractor shall comply with and be bound by the provisions of Labor Code Sections 1777.5, 1777.6, and 1777.7 and California Code of Regulations Title 8, Section 200 *et seq.* concerning the employment of apprentices on public works projects. Contractor shall be responsible for compliance with these aforementioned Sections for all apprenticeable occupations. Prior to commencing work under this Agreement, Contractor shall provide City with a copy of the information submitted to any applicable apprenticeship program. Within sixty (60) days after concluding work pursuant to this Agreement, Contractor and each of its subcontractors shall submit to the City a verified statement of the journeyman and apprentice hours performed under this Agreement.

(f) Eight-Hour Work Day. Contractor acknowledges that eight (8) hours labor constitutes a legal day's work. Contractor shall comply with and be bound by Labor Code Section 1810.

(g) Penalties for Excess Hours. Contractor shall comply with and be bound by the provisions of Labor Code Section 1813 concerning penalties for workers who work excess hours. The Contractor shall, as a penalty to the City, forfeit twenty-five dollars (\$25) for each worker employed in the performance of this Agreement by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the Labor Code. Pursuant to Labor Code section 1815, work performed by employees of Contractor in excess of eight (8) hours per day, and forty (40) hours during any one week shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than one and one-half (1½) times the basic rate of pay.

(h) Workers' Compensation. California Labor Code Sections 1860 and 3700 provide that every employer will be required to secure the payment of compensation to its employees if it has employees. In accordance with the provisions of California Labor Code Section 1861, Contractor certifies as follows:

“I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.”

Contractor's Authorized Initials



(i) Contractor's Responsibility for Subcontractors. For every subcontractor who will perform work under this Agreement, Contractor shall be responsible for such subcontractor's compliance with Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code, and shall make such compliance a requirement in any contract with any subcontractor for work under this Agreement. Contractor shall be required to take all actions necessary to enforce such contractual provisions and ensure subcontractor's compliance, including without limitation, conducting a review of the certified payroll records of the subcontractor on a periodic basis or upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages. Contractor shall diligently take corrective action to halt or rectify any such failure by any subcontractor.

#### **1.5      Licenses, Permits, Fees and Assessments.**

Consultant shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes, penalties or interest levied, assessed or imposed against City hereunder.

#### **1.6      Familiarity with Work.**

By executing this Agreement, Consultant warrants that Consultant (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Consultant warrants that Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Consultant discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Consultant shall immediately inform the City of such fact and shall not proceed except at Consultant's risk until written instructions are received from the Contract Officer.

#### **1.7      Care of Work.**

The Consultant shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own negligence.

#### **1.8      Further Responsibilities of Parties.**

Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other.

### **1.9 Additional Services.**

City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Consultant, incorporating therein any adjustment in (i) the Contract Sum for the actual costs of the extra work, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Consultant. Any increase in compensation of up to ten percent (10%) of the Contract Sum or \$25,000, whichever is less; or, in the time to perform of up to one hundred eighty (180) days, may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively, must be approved by the City Council. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefor. City may in its sole and absolute discretion have similar work done by other contractors. No claims for an increase in the Contract Sum or time for performance shall be valid unless the procedures established in this Section are followed.

### **1.10 Special Requirements.**

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

## **ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.**

### **2.1 Contract Sum.**

Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed **Five Hundred Thirty Eight Thousand Four Hundred Sixty Dollars (\$538,460)** (the "Contract Sum"), unless additional compensation is approved pursuant to Section 1.9.

### **2.2 Method of Compensation.**

The method of compensation may include: (i) a lump sum payment upon completion; (ii) payment in accordance with specified tasks or the percentage of completion of the services, less contract retention; (iii) payment for time and materials based upon the Consultant's rates as specified in the Schedule of Compensation, provided that (a) time estimates are provided for the performance of sub tasks, (b) contract retention is maintained, and (c) the Contract Sum is not exceeded; or (iv) such other methods as may be specified in the Schedule of Compensation.

### **2.3 Reimbursable Expenses.**

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the Contract Officer in advance, or actual subcontractor expenses of an approved subcontractor pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Consultant at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the work with City is a critical component of the services. If Consultant is required to attend additional meetings to facilitate such coordination, Consultant shall not be entitled to any additional compensation for attending said meetings.

### **2.4 Invoices.**

Each month Consultant shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City's Director of Finance. By submitting an invoice for payment under this Agreement, Consultant is certifying compliance with all provisions of the Agreement. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-contractor contracts. Sub-contractor charges shall also be detailed by such categories. Consultant shall not invoice City for any duplicate services performed by more than one person.

City shall independently review each invoice submitted by the Consultant to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Consultant which are disputed by City, or as provided in Section 7.3, City will use its best efforts to cause Consultant to be paid within forty-five (45) days of receipt of Consultant's correct and undisputed invoice; however, Consultant acknowledges and agrees that due to City warrant run procedures, the City cannot guarantee that payment will occur within this time period. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission. Review and payment by City for any invoice provided by the Consultant shall not constitute a waiver of any rights or remedies provided herein or any applicable law.

### **2.5 Waiver.**

Payment to Consultant for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Consultant.

## **ARTICLE 3. PERFORMANCE SCHEDULE**

**3.1 Time of Essence.**

Time is of the essence in the performance of this Agreement.

**3.2 Schedule of Performance.**

Consultant shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this reference. When requested by the Consultant, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively.

**3.3 Force Majeure.**

The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Consultant, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the Consultant shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Consultant be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant's sole remedy being extension of the Agreement pursuant to this Section.

**3.4 Term.**

Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding one years from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "D"). [The City may, in its sole discretion, extend the Term for one additional one-year terms.]

**ARTICLE 4. COORDINATION OF WORK****4.1 Representatives and Personnel of Consultant.**

The following principals of Consultant ("Principals") are hereby designated as being the principals and representatives of Consultant authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

Jim Favaro  
(Name)

Principal  
(Title)

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. All personnel of Consultant, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the foregoing Principals may not be replaced nor may their responsibilities be substantially reduced by Consultant without the express written approval of City. Additionally, Consultant shall utilize only competent personnel to perform services pursuant to this Agreement. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and subcontractors, if any, assigned to perform the services required under this Agreement. Consultant shall notify City of any changes in Consultant's staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

#### **4.2 Status of Consultant.**

Consultant shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Consultant, nor any of Consultant's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim Consultant may have to any such rights.

#### **4.3 Contract Officer.**

The Contract Officer shall be Elias Sassoon, Director of Public Works, and Ron Dragoo, Principal/City Engineer, or such person as may be designated by the City Manager. It shall be the Consultant's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Consultant shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

#### **4.4 Independent Consultant.**

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Consultant's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Consultant shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Consultant shall not at any

time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Consultant in its business or otherwise or a joint venturer or a member of any joint enterprise with Consultant.

#### **4.5 Prohibition Against Subcontracting or Assignment.**

The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Consultant shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Consultant, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Consultant or any surety of Consultant of any liability hereunder without the express consent of City.

### **ARTICLE 5. INSURANCE AND INDEMNIFICATION**

#### **5.1 Insurance Coverages.**

Without limiting Consultant's indemnification of City, and prior to commencement of any services under this Agreement, 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.

(a) General liability insurance. Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

(b) 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 the Consultant arising out of or in connection with Services to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

(c) 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 \$1,000,000 per claim and 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 (3) years after completion of the services required by this Agreement.

(d) Workers' compensation insurance. Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).

(e) Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall include all of the requirements stated herein.

(f) Additional Insurance. Policies of such other insurance, as may be required in the Special Requirements in Exhibit "B".

## 5.2 General Insurance Requirements.

(a) Proof 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. Insurance certificates and endorsements must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

(b) Duration of coverage. Consultant shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Services hereunder by Consultant, its agents, representatives, employees or subconsultants.

(c) Primary/noncontributing. Coverage provided by Consultant shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

(d) City's rights of enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

(e) Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or that is on the List of Approved Surplus Line Insurers in the State of California, with an

assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

(f) Waiver of subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications 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 and insurance clauses from each of its subconsultants.

(g) Enforcement of contract provisions (non-estoppel). Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

(h) 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 the 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.

(i) Notice of cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide to City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

(j) Additional insured status. General liability policies shall provide or be endorsed to provide that City and its officers, officials, employees, and agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.

(k) Prohibition of undisclosed coverage limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

(l) Separation of insureds. A severability of interests provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

(m) Pass through clause. Consultant agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by Consultant, provide the same minimum insurance coverage and endorsements required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to City for review.

(n) Agency's right to revise specifications. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the City and Consultant may renegotiate Consultant's compensation.

(o) 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 specifications unless approved by City.

(p) 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.

(q) Additional 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.

### **5.3 Indemnification.**

To the full extent permitted by law, Consultant agrees to indemnify, defend and hold harmless the City, its officers, employees and agents ("Indemnified Parties") against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Consultant, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Consultant is legally liable ("indemnitors"), or arising from Consultant's or indemnitors' reckless or willful misconduct, or arising from Consultant's or indemnitors' negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

(a) Consultant will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Consultant will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Consultant hereunder; and Consultant agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Consultant for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Consultant hereunder, Consultant agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

Consultant shall incorporate similar indemnity agreements with its subcontractors and if it fails to do so Consultant shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Consultant in the performance of professional services hereunder. The provisions of this Section do not apply to claims or liabilities occurring as a result of City's sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City's negligence, except that design professionals' indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the design professional. The indemnity obligation shall be binding on successors and assigns of Consultant and shall survive termination of this Agreement.

## **ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION**

### **6.1 Records.**

Consultant shall keep, and require subcontractors to keep, such ledgers, books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of three (3) years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of Consultant's business, custody of the books and records may be given to City, and access shall be provided by Consultant's successor in interest. Notwithstanding the above, the Consultant shall fully cooperate with the City in providing access to the books and records if a public records request is made and disclosure is required by law including but not limited to the California Public Records Act.

## 6.2 Reports.

Consultant shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Consultant hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Consultant agrees that if Consultant becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Consultant is providing design services, the cost of the project being designed, Consultant shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Consultant is providing design services, the estimated increased or decreased cost estimate for the project being designed.

## 6.3 Ownership of Documents.

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the "documents and materials") prepared by Consultant, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Consultant will be at the City's sole risk and without liability to Consultant, and Consultant's guarantee and warranties shall not extend to such use, reuse or assignment. Consultant may retain copies of such documents for its own use. Consultant shall have the right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom. Moreover, Consultant with respect to any documents and materials that may qualify as "works made for hire" as defined in 17 U.S.C. § 101, such documents and materials are hereby deemed "works made for hire" for the City.

## 6.4 Confidentiality and Release of Information.

(a) All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the Contract Officer.

(b) Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

(c) If Consultant, or any officer, employee, agent or subcontractor of Consultant, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorney's fees, caused by or incurred as a result of Consultant's conduct.

(d) Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

## **ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION**

### **7.1 California Law.**

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Los Angeles, State of California, or any other appropriate court in such county, and Consultant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in the County of Los Angeles, State of California.

### **7.2 Disputes; Default.**

In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, the City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Consultant is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Consultant does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Consultant's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

### **7.3 Retention of Funds.**

Consultant hereby authorizes City to deduct from any amount payable to Consultant (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in

dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Consultant's acts or omissions in performing or failing to perform Consultant's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Consultant, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Consultant to insure, indemnify, and protect City as elsewhere provided herein.

#### 7.4 Waiver.

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Consultant shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

#### 7.5 Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

#### 7.6 Legal Action.

In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding any contrary provision herein, Consultant shall file a statutory claim pursuant to Government Code Sections 905 et seq. and 910 et seq., in order to pursue a legal action under this Agreement.

#### 7.7 Liquidated Damages.

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Contractor and its sureties shall be liable for and shall pay to the City the sum of zero (\$0) as liquidated damages for each working day of delay in the performance of any service required hereunder. The City may withhold from any monies payable on account of services performed by the Contractor any accrued liquidated damages.

### **7.8 Termination Prior to Expiration of Term.**

This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to Consultant, except that where termination is due to the fault of the Consultant, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Consultant reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Consultant may determine. Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Consultant has initiated termination, the Consultant shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Consultant has initiated termination, the Consultant shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

### **7.9 Termination for Default of Consultant.**

If termination is due to the failure of the Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Consultant shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Consultant for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

### **7.10 Attorneys' Fees.**

If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

## **ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION**

### **8.1 Non-liability of City Officers and Employees.**

No officer or employee of the City shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

#### **8.2 Conflict of Interest.**

Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the Contract Officer. Consultant agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which affects her/his financial interest or the financial interest of any corporation, partnership or association in which (s)he is, directly or indirectly, interested, in violation of any State statute or regulation. The Consultant warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

#### **8.3 Covenant Against Discrimination.**

Consultant covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry or other protected class in the performance of this Agreement. Consultant shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry or other protected class.

#### **8.4 Unauthorized Aliens.**

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq.*, as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Consultant hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

### **ARTICLE 9. MISCELLANEOUS PROVISIONS**

#### **9.1 Notices.**

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer (with her/his name and City title), City of Rancho Palos Verdes, 30940 Hawthorne Blvd., Rancho Palos Verdes, California 90275 and in the case of the Consultant, to the person(s) at the address designated on the execution page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

#### **9.2 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 this Agreement or any other rule of construction which might otherwise apply.

#### **9.3 Counterparts.**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

#### **9.4 Integration; Amendment.**

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the parties. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Consultant and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

#### **9.5 Severability.**

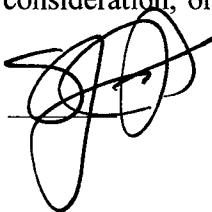
In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

#### **9.6 Warranty & Representation of Non-Collusion.**

No official, officer, or employee of City has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of City participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of

any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interests found to be "remote" or "noninterests" pursuant to Government Code Sections 1091 or 1091.5. Consultant warrants and represents that it has not paid or given, and will not pay or give, to any third party including, but not limited to, any City official, officer, or employee, any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded any agreement. Consultant further warrants and represents that (s)he/it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any City official, officer, or employee, as a result of consequence of obtaining or being awarded any agreement. Consultant is aware of and understands that any such act(s), omission(s) or other conduct resulting in such payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect.

Consultant's Authorized Initials



**9.7 Corporate Authority.**

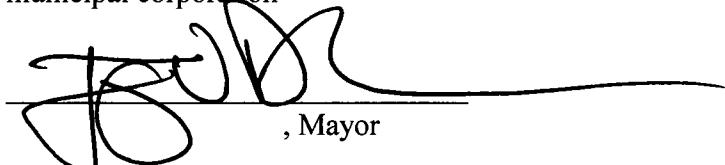
The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) that entering into this Agreement does not violate any provision of any other Agreement to which said party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

**[SIGNATURES ON FOLLOWING PAGE]**

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the date and year first-above written.

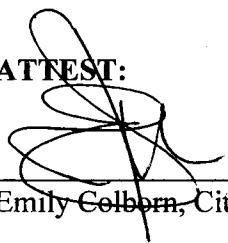
**CITY:**

CITY OF RANCHO PALOS VERDES, a municipal corporation



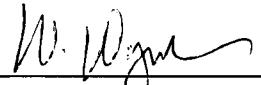
, Mayor

**ATTEST:**



Emily Colborn, City Clerk

**APPROVED AS TO FORM:**  
ALESHIRE & WYNDER, LLP

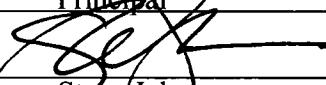


William W. Wynder, City Attorney

**CONSULTANT:**

**JOHNSON FAVARO**

By:   
 Name: Jim Favaro  
 Title: Principal

By:   
 Name: Steve Johnson  
 Title: Principal

Address:

5898 Blackwelder Street  
 Culver City, CA 90232

Two corporate officer signatures required when Consultant is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. CONSULTANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONSULTANT'S BUSINESS ENTITY.

## ALL-PURPOSE ACKNOWLEDGMENT

Title of Document: Scope of ServiceDate of Document: 12/21/18

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

)

County of Los Angeles)ss.  
)

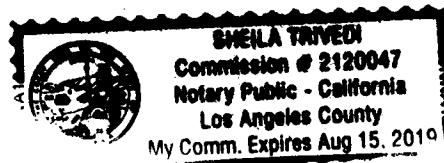
On 12/21/18 before me, Shaila Trivedi, Notary Public,  
personally appeared Tim Favaro & Stere Johnson

who proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

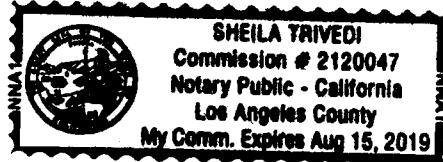
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Shaila Trivedi



FOR NOTARY STAMP



## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

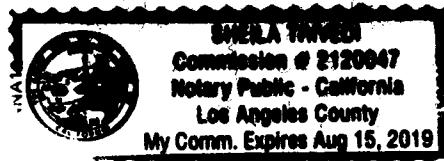
STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On Dec, 21st, 2018 before me, Suzita Thibot, personally appeared STEVE JOHNSON and Jim Fararo, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Steve Johnson

## OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

## CAPACITY CLAIMED BY SIGNER

## DESCRIPTION OF ATTACHED DOCUMENT

INDIVIDUAL  
 CORPORATE OFFICER

TITLE OR TYPE OF DOCUMENT

TITLE(S)

PARTNER(S)  LIMITED  
 GENERAL  
 ATTORNEY-IN-FACT  
 TRUSTEE(S)  
 GUARDIAN/CONSERVATOR  
 OTHER \_\_\_\_\_

NUMBER OF PAGES

DATE OF DOCUMENT

## SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

SIGNER(S) OTHER THAN NAMED ABOVE

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

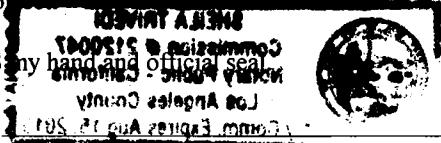
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On \_\_\_\_\_, 2018 before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal  
  
 Signature: \_\_\_\_\_

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

**CAPACITY CLAIMED BY SIGNER****DESCRIPTION OF ATTACHED DOCUMENT**

INDIVIDUAL  
 CORPORATE OFFICER

\_\_\_\_\_ TITLE OR TYPE OF DOCUMENT

\_\_\_\_\_ TITLE(S)

PARTNER(S)  LIMITED  
 GENERAL  
 ATTORNEY-IN-FACT  
 TRUSTEE(S)  
 GUARDIAN/CONSERVATOR  
 OTHER \_\_\_\_\_

\_\_\_\_\_ NUMBER OF PAGES

\_\_\_\_\_ DATE OF DOCUMENT

**SIGNER IS REPRESENTING:**

(NAME OF PERSON(S) OR ENTITY(IES))

SIGNER(S) OTHER THAN NAMED ABOVE

**EXHIBIT "A"****SCOPE OF SERVICES**

I. Consultant will perform engineering design services for the **Ladera Linda Community Park Project** (the Services). The project's scope is divided into two phases: PHASE 1: The first phase consists of refining and developing the existing approved conceptual Master Plan to a 30% completion level. This phase will be presented to the City Council for review and approval. PHASE 2: The second phase consists of the development of a fully-completed construction design and construction-ready documents for this project. Consultant will coordinate work with the subconsultants to ensure that is completed in a timely and professional manner, and shall be solely responsible for the work of subconsultants.

**PHASE 1**

A. **PRE-DESIGN.** The work shall be performed by Consultant.

1. In cooperation with the City the Consultant shall produce existing conditions documentation based on City provided site survey, geotechnical investigative report, and other documents and date as required by the City's Contract Officer.
2. Consultant shall create documentation of the Ladera Linda Park Master Plan dated March 20, 2018 (Master Plan) suitable for a basis of design, and presentation(s) to the City, community stakeholders and other as required by the City's Contract Officer.
3. Consultant shall engage in a community outreach effort (including (3) meetings with neighboring HOAs and others as required by the City's Contract Officer) to confirm those features of the park master plan to remain and those which are to be revised.
4. Consultant shall produce models and drawings suitable for incorporation into subsequent design and document sets, as well as presentation of same to City and community groups.

B. **SCHEMATIC DESIGN.** The work shall be performed by Consultant, in conjunction with subconsultants MGAC, KPFF, Englekirk Institutional, NOVUS, KSA, and Technical Resources Consultants.

1. In cooperation with the City, the Consultant shall prepare documents illustrating the scale and relationship of project components (Schematic Design Documents) of the Project. The documents shall include, but not be limited to a site plan, enlarged site plans, floor plans, elevations, site sections, site elevations, outline specifications and other documents necessary and as

required to illustrate the proposed project scope and concept. The Consultant shall incorporate into the Schematic Documents the proposed program and functional requirements as approved by the City, established in the Master Plan, as well as revisions in the pre-design phase.

2. The Schematic Design documents shall include preliminary selections of major building systems, and construction materials shall be noted on the drawings or described in writing.
3. Consultant shall meet with the City's Contract Officer at intervals as necessary to develop the design and review progress drawings and other documents which depict schematic status of the Project design.
4. Community/stakeholder workshops as required by the City's Contract Officer are proposed during this phase in order to update Project design progress and solicit comment.
5. Consultant shall target LEED Certified Equivalent per the U.S. Green Building Council (USGBC) rating system and provide LEED checklists and reports indicating probable design credits for the Project and assignment of subconsultant responsibility for ensuring each measure is properly applied to the Project design.
6. Consultant shall coordinate as required with City's staff in order to confirm compliance with City standards and to develop furniture and equipment plans for the Project design that are consistent with City requirements and standards.
7. Consultant shall prepare a preliminary site development package to include civil plans illustrating demolition; grading and paving; hydrology calculations and drainage (to include potential detention basins and/or bioswales) and all utility services.
8. Consultant has the sole responsibility for preparing documentation of the preliminary design for review and comment by all appropriate agencies and utility providers, including but not limited to the City of Rancho Palos Verdes, and others as required. Consultant is not responsible for the actions, non-actions, change of action by these agencies and utility providers after all efforts are made by Consultant to solicit review and to incorporate all review comments. All work associated with change-of-action based on previous direction by the agencies identified will be considered Additional Services.
9. Consultant shall prepare an Estimated Project Construction Cost Estimate in a format acceptable to the City at 100% completion of Schematic Design, the purpose of which is to show the probable construction cost in relation to the City's Construction Budget. If the Consultant perceives site considerations

or City project requirements which render the project cost prohibitive, the Consultant shall disclose such conditions in writing to the City immediately.

10. Consultant shall make presentations of the Schematic Design documents and 100% Schematic Design Cost Estimates to the City of Rancho Palos Verdes staff, City Council, Commissions and others as required in order to update design progress, solicit comment, and obtain approval for the Schematic Design project scope and budget.
11. Consultant shall make presentations of the 100% Schematic Design Cost Estimates to the City. The City shall prepare at City's discretion and at its own expense the independent third party estimates of probable construction costs. All cost estimates will be reconciled with an City/ Project Management Cost Estimate developed by an independent third party cost estimator. The Consultant shall attend one (1) cost reconciliation meeting with the third-party cost estimator for the purpose of reconciling the 100% Schematic Design Estimated Project Construction Costs.
12. City's Contract Officer and Consultant shall meet to review the provisional Schematic Design Documents and Cost Estimates in order to reach agreement on any City-authorized adjustment to the approved Project schedule or construction budget and identify any necessary clarifications of the provisional Schematic Design Documents.
13. Consultant shall make all City-requested changes, additions, deletions, and corrections in the Schematic Design Documents which may result from the City's or any constructability review, at no additional cost to the City, so long as they are not in conflict with the requirements of the public agencies having jurisdiction or prior approval, or inconsistent with earlier City direction or Consultant's professional judgment. If such changes are inconsistent with prior City direction, Consultant shall make such alterations and be compensated therefore pursuant to the Additional Services provision of this Agreement.
14. Unless City agrees otherwise in writing, the Consultant shall revise respective provisional Schematic Design documents and Cost Estimates to reflect adjustments and clarifications agreed upon in the review meeting and resubmit Schematic Design documents and Cost Estimates to City. Once approved, the revised Schematic Design documents shall become the final Schematic Design Documents.
15. If the City's Contract Officer has not authorized in writing a revision to the project scope and the Estimated Project Construction Cost based on Schematic Design documents exceeds the City's Construction Budget by more than ten percent (10%), the City may request the Consultant to amend, at the Consultant's sole cost and expense, the Schematic Design Documents in order to meet the City's Construction Budget.

**PHASE 2**

C. **DESIGN DEVELOPMENT.** The work shall be performed by the Consultant, in conjunction with subconsultants MGAC, KPFF, Englekirk Institutional, NOVUS, Darkhorse Lighworks, KSA, and Technical Resources Consultants.

1. Upon written approval by the City's Contract Officer of the Schematic Design documents and the 100% Schematic Design Estimated Project Construction Cost, the Consultant shall prepare Design Development documents consisting of, but not limited to, site plans, enlarged site plans, building floor plans, enlarged floor plans, site sections, building sections, building elevations, typical construction details, finish schedules indicating finish selection, interior elevations, outline specifications and other drawings and documents sufficient to fix and describe the scope, relationship, size, appearance and character of the project components.
2. Design Development documents shall include Mechanical, Electrical, and Plumbing system designs and equipment layouts including single line diagrams and an energy analysis report.
3. Consultant shall provide interior and exterior lighting design services to include lighting design plans and schedules and photometric calculations as required for permit and to confirm minimum or maximum light levels for site development and building areas, including parking lots, path of travel and emergency egress.
4. Consultant shall update the LEED checklists and report identifying probable design credits for the Project and prepare as needed concept cost/benefit analysis of individual design elements for review and consideration by the City.
5. Consultant shall finalize storm water and design drainage plans and incorporate site features in conformance with the guidelines of the Governing Agency and as required to comply with City regulations.
6. Consultant shall take the lead role in applying for and obtaining required approvals from all federal, state, regional or local agencies concerned with the Project.
7. Consultant shall interpret all applicable federal, state and local laws, rules, and regulations with respect to access, including those of the Americans with Disabilities Act (ADA). Consultant shall identify all non-compliant construction within the Project scope area and complete plans and specifications for site and building improvements within the Project scope area as required to correct or remove non-compliant construction as required for permit, including, but not limited to path of travel, curb ramps and accessible parking.

8. Consultant shall meet with the City at intervals as necessary to develop the design and to review progress drawings and other documents that depict the Design Development status of the Project.
9. Consultant shall establish an updated Estimated Project Construction Costs at 100% completion of Design Development documents containing detail consistent with the Design Development documents.
10. Community/stakeholder workshops are proposed as required by the City's Contract Officer during this phase in order to update Project design progress and solicit comment.
11. Consultant shall make presentations of the City of Rancho Palos Verdes staff, City Council, Commissions, and others as required by the City's Contract Officer, to update design progress, solicit comment, and obtain approval for the Design Development project scope and budget.
12. Design Development documents and 100% Design Development Cost Estimates to the City. All cost estimates will be reconciled with an City/Project Management Cost Estimate developed by an independent third party cost estimator. The City shall prepare at City's discretion and at its own expense the independent third party estimates of probable construction costs. The Consultant shall attend one (1) cost reconciliation meeting with the third-party cost estimator for the purpose of reconciling the 100% Design Development Estimated Project Construction Costs.
13. The City and the Consultant shall meet to review the provisional Design Development Documents and Cost Estimates in order to reach agreement on any City-authorized adjustment to the approved Project schedule or construction budget and identify any necessary clarifications of the provisional Design Development Documents and/or the 100% Design Development Cost Estimates.
14. Consultant shall make all City-requested changes, additions, deletions, and corrections in the Design Development documents which may result from any constructability review, at no additional cost to the City, so long as they are not in conflict with the requirements of the public agencies having jurisdiction or prior approval, or inconsistent with earlier City direction or Consultant's professional judgment. If such changes are inconsistent with prior City direction, Consultant shall make such alterations and be compensated therefore pursuant to the Additional Services provision of this Agreement.
15. Unless the City agrees otherwise in writing, the Consultant shall revise provisional Design Development documents and Cost Estimates to reflect adjustments and clarifications agreed upon in the review meeting and resubmit. Design Development documents and Cost Estimates to the City.

Once approved, the revised Design Development documents shall become the final Design Development Documents.

16. If the City has not authorized in writing a revision to the project scope and Estimated Project Construction Costs based on Design Development documents exceeds the City's Construction Budget by more than ten percent (10%), the City may request the Consultant to amend, at the Consultant's sole cost and expense, the Design Development Documents in order to meet the City's Construction Budget.

**D. CONSTRUCTION DOCUMENTS.** The work shall be performed by Consultant, in conjunction with subconsultants MGAC, KPFF, Englekirk Institutional, NOVUS, Darkhorse Lightworks, KSA, and Technical Resources Consultants.

1. Based on approved Design Development Documents and the approved updated project Construction Budget, the Consultant shall prepare, for approval by City, Construction Documents consisting of drawings and other documents setting forth in detail the requirements for construction of the Project. The Consultant shall prepare complete drawings and specifications as are necessary for developing complete bids and for properly executing the Project work. Drawings and specifications shall set forth in detail all of the following: 1) the Project construction work to be done; 2) the materials, workmanship, finishes, and equipment required for the Project; and 3) the utility service connection equipment and site work.
2. Consultant shall prepare a Storm Water Pollution Prevention Plan (SWPPP) which will include Best Management Practices (BMP's) that outline standard practices that can be implemented to decrease the discharge of pollutants into storm drains during construction operation on the site.
3. Consultant shall submit a written Estimated Project Construction Cost for the project based on the Construction Document Phase Documents at 90% completion. Construction Document Phase Documents shall be consistent with the Project Construction Budget and if not in conformance shall be revised until approved in writing by the City.
4. All cost estimates will be reconciled with an City/Project Management Cost Estimate developed by an independent third-party cost estimator. The City shall prepare at City's discretion and at its own expense the independent third-party estimate of probable construction costs. The Consultant shall attend one (1) cost reconciliation meeting at each Construction Document milestone with the City's third-party cost estimator for the purpose of reconciling the 90% Construction Document Estimated Project Construction Cost.

5. The City's Contract Officer and the Consultant shall meet to review the provisional 100% Construction Documents and Cost Estimate to reach agreement on any City-authorized adjustment to the approved Project schedule or construction budget and identify any necessary clarifications of the provisional Construction Documents and Cost Estimates.
6. The parties agree that the Consultant, and not the City, possess the requisite expertise to determine the constructability of the Construction Documents. However, the City reserves the right to conduct one or more constructability review processes with the Construction Documents, and to hire an independent architect or other consultant to perform such reviews. Any such independent constructability reviews shall be at the City's expense.
7. Consultant shall make all City-requested changes, additions, deletions, and corrections in the Construction Documents which may result from any constructability review, at no additional cost to the City, so long as they are not in conflict with the requirements of the public agencies having jurisdiction or prior approval, or inconsistent with earlier City direction or with Consultant's professional judgment. If such changes are inconsistent with prior City direction, Consultant shall make such alterations and be compensated therefore pursuant to the Additional Services provision of this Agreement.
8. Unless the City agrees otherwise in writing, the Consultant shall revise provisional Construction Documents and Cost Estimates to reflect adjustments and clarifications agreed upon in the review meeting and resubmit Construction Documents and Cost Estimates to the City. Once approved, the revised Construction Documents shall become the final 100% Construction Documents.
9. The Consultant shall provide two (2) sets full size (30" x 42") and half size (15" x 21") hard copies at 50% Construction Documents for City review and input. Changes directed by City which are inconsistent with prior City direction shall be made by the Consultant and compensated as Additional Services. The scope of and compensation for such changes shall be mutually agreed upon by the Consultant and City before such changes are initiated.
10. Revise the 50% Construction Documents and submit another two (2) set of documents at 90% Construction Documents for City review and input. Changes directed by City which are inconsistent with prior City direction shall be made by the Consultant and compensated as Additional Services. The scope of and compensation for such changes shall be mutually agreed upon by the Consultant and City before such changes are initiated.
11. Consultant shall submit two (2) sets of 90% Construction Documents for submittal to the Building and Safety Department for review and approval.

12. Complete corrections on the 100% Construction Documents as required by the various City departments to obtain final approval of the Construction Documents for bidding purposes.
13. Provide a final Cost Estimate and Project Schedule to confirm the project is on target.
14. Submit two (2) sets of approved 100% Construction Documents and Specifications for City's records and electronic copies on a CD along with a flash drive.

**E. PERMIT. The work shall be performed by the Consultant, in conjunction with subconsultants KPFF, Englekirk Institutional, NOVUS, and KSA.**

1. The Construction Documents and Specifications must be in such form as will enable the Consultant and City to secure the required permits and approvals for all federal, state, regional or local agencies concerned with the Project.

**F. BIDDING. The work shall be performed by Consultant, in conjunction with subconsultants KPFF, Englekirk Institutional, NOVUS, and KSA.**

1. Assist in the submittal of the Bid Drawings (100% Construction Documents) and Specifications to the City's Project Manager.
2. Respond to all Requests for Information (RFIs) working with the City's Project Manager.
3. Assist the City's Project Manager in reviewing and evaluating the bids and related documents for contract award to the lowest responsive and responsible bidder.

**II. Exclusions.**

See Exhibit "A-1"

**III. As part of the Services, Consultant will prepare and deliver the following tangible work products to the City:**

1. Models and drawings
2. Schematic Design Documents
3. Preliminary site development package
4. Estimated Project Construction Cost Estimates
5. Presentation files
6. Design Development documents
7. Storm Water Pollution Prevention Plan (SWPPP)

## 8. Construction Documents

**IV.** In addition to the requirements of Section 6.2, during performance of the Services, Consultant will keep the City apprised of the status of performance by delivering the following status reports:

NOT APPLICABLE

**V.** All work product is subject to review and acceptance by the City, and must be revised by the Consultant without additional charge to the City until found satisfactory and accepted by City.

**VI.** Consultant will utilize the following personnel to accomplish the Services:

- A. Jim Favaro, Steve Johnson, Brian Davis and Kathy Williams
- B. KSA: Katherine Spitz, Jake Patton
- C. KPFF: Tom Gsell
- D. MGAC: Rick Lloyd
- E. Englekirk Institutional: Tom Sabol and Diana Nishi
- F. NOVUS: Michael Leung
- G. Darkhorse Lightworks: TRC Dawn Hollingsworth

**EXHIBIT "A-1"****EXCLUSIONS**

The following services are expressly not included in this Scope of Work, and shall be charged as Additional Services pursuant to Section 1.8 if requested by City.

**A. General**

1. Land Survey
2. Geotechnical Investigative Report
3. Phase 1 or Phase 2 Environmental Review
4. Tree Survey or Arborist Services
5. Materials Testing
6. Hazardous materials abatement scope related to survey of existing conditions, drawings, reports, documents and or specifications.
7. Methane extraction systems
8. Off-site public improvements, not described in this Proposal including adjoining street widening.
9. Physical presentation models
10. Partnering Workshops
11. Additional cost estimates or revisions to completed cost estimates

**B. Civil Engineering**

1. Preparation of schematic opinion of probable construction costs.
2. Preparation of preliminary below-slab de-watering plan
3. Preparation of design development opinion of probable construction costs.
4. Assist in the filing of permits for the permanent or temporary discharge of groundwater.
5. Special studies.
6. Land surveys.
7. Design of site retaining walls.
8. Services relative to future facilities, systems, and equipment.
9. Service to investigate existing conditions or facilities, or to make measured drawings thereof.
10. Coordination of construction performed by separate contractors or by owner's forces.

11. Services regarding work of a construction manager or separate consultants retained by owner.
12. Detailed estimates of construction cost.
13. Record drawings.
14. Services of sub-consultants.
15. Storm water facilities.
16. Road widening.
17. Bicycle paths.
18. Traffic signals.
19. Street dedications.
20. Street lighting.
21. Striping plans.
22. Sewer improvements.
23. Water improvements.
24. Traffic studies.
25. Franchise Utility Coordination, includes natural gas lines, power and communications conduits, etc.
26. Assist the owner in coordinating the abandonment and/or relocation of existing franchise utilities.
27. Underground mechanical systems coordination, includes coordination of chilled water lines, steam lines, distilled water, etc. Note that coordination includes horizontal alignment only. Detailed design of these items is to be accomplished by others.
28. Design of sewer seepage pits, septic tanks, or leech fields.
29. Design of water wells.
30. Preparation of excavation documents/rough grading plans.
31. Preparation of studies of alternative site plans.
32. Flood, plain, wetland, or environmental work.
33. Design of lift stations for sanitary sewer or storm drainage systems.
34. Design of booster pumps for inadequate water pressure.
35. Intensive research and testing to determine conditions of existing site utilities (e.g. potholing, smoke testing, dye testing, pressure testing, and video testing).
36. Assist the general contractor with the design and permits associated with construction site dewatering.

- 37. Design and documentation relative to special storm water detention and treatment systems required to obtain LEED credits.
- 38. Landscape Architecture
- 39. Hardscape design
- 40. Landscape design for adjacent hillside areas
- 41. Playground or sports courts equipment
- 42. Community Outreach
- 43. Lighting Design
- 44. Record Drawings/ As-Builts
- 45. LEED calculations and documentation

**C. Structural Engineering**

- 1. Structural engineering services outside of community center building except foundation design and detailing of playground equipment

**D. MEP Engineering**

- 1. Design change requests and LEED strategy reassessment requested after completion of 100% Schematic Design that require significant redesign and/or redrawing.
- 2. Significant changes to building or MEP systems requiring reassessment of systems proposed will require additional services to assess.
- 3. MEP demolition drawings or documentation of any existing as-built conditions
- 4. Work on buildings and site other than those described under 'Project Description' above
- 5. Design of systems outside of five feet from building or buildings described under 'Project Description' above, except for site related work as included in Services descriptions.
- 6. LEED and Title 24-2016 Required Commissioning and 3rd Party Peer Reviews
- 7. Construction management or bidding coordination
- 8. Kitchen design or specification of any kitchen equipment
- 9. Construction cost estimates will be by construction cost estimator. We will review cost estimator's pricing, participate in reconciliation and provide feedback.
- 10. Acoustical calculations for systems are not included. We will include modifications to our systems per your acoustical consultants' recommendations within our base fee.
- 11. Smoke modeling and any work on atriums
- 12. Routing of utilities (gas, water, sanitary, electrical, etc.) outside of five feet from the building

13. Design of building footing drainage and/or sub-slab groundwater drainage will be performed by others.
14. Trenching and backfilling details or specifications related to underground piping and/or tanks
15. Cogeneration systems
16. Audio Visual systems, Cabling for telephone or CATV, Fire Alarm and Security system design
17. Layout of fire sprinkler heads and routing of fire sprinkler piping in the building
18. Fire alarm system design
19. Design or testing of fire protection systems
20. Fuel oil under/above ground storage tanks, pumping, piping, and leak detection systems.
21. Storm water detention/reclamation system design.
22. Solar thermal water heating system design.
23. Medical gas system and piping distribution design including air, vacuum, oxygen and nitrogen.
24. Full Design of Solar Photovoltaic systems.
25. Energy storage power systems
26. Structural calculations for the seismic restraint of mechanical, electrical and plumbing equipment are not included
27. Waterproofing details/requirements for building components by others
28. Cost reduction requiring redesign after approved systems have been designed including but not limited to change order issues or ASI's. Issue of ASI's, change orders, plan revisions, etc. generated by others will require additional fees to be submitted for prior approval before completing these services.
29. Review of change order costs initiated by others will be billed hourly, on prior approval.
30. Determination/interpretation of egress lighting paths with local officials.
31. Distributed antenna system.
32. Kitchen exhaust and make-up air systems design.
33. Smoke control system or stair/elevator shaft pressurization system design.
34. Any Plug Load Monitoring or Submissions
35. Lighting design for areas not specifically listed under Lighting scope
36. Theatrical Lighting
37. Design of Landscape and Exterior Lighting

- 38. Mock-ups
- 39. Cost estimating
- 40. Multiple-name specifications
- 41. Control system specifications
- 42. Custom fixture design
- 43. Supervision of contractors
- 44. Aiming of installed light fixtures
- 45. Life Cycle Cost Analysis
- 46. Record drawings of completed project
- 47. Cost reduction requiring redesign
- 48. Determination/interpretation of egress lighting paths with local officials
- 49. Location of Exit Signs
- 50. Preparation and documentation of any LEED or similar credit programs
- 51. Power to street lighting at city sidewalks and right of ways.
- 52. Low Voltage Conduit design, routing and coordination.
- 53. Design-Bid-Build Early Foundation Package.
- 54. Filing of applications for building or other permits, payment of any fees associated with permits or associated applications.
- 55. Preparation of cost estimates.
- 56. Overall project BIM management.
- 57. Participations in development of BIM execution plans.
- 58. Design of an emergency or standby back up power system via a diesel generator.
- 59. Responses to additional rounds of comments from owners. One round of comments has been included in the scope of work.
- 60. Design for grease interceptor and plumbing for a commercial kitchen.

**E. Lighting**

- 1. Revit model production. Darkhorse will utilize the Revit model to extract current backgrounds, sections and details, but will not produce a linked model. It is the architect or engineer's responsibility to populate the model with lighting families. Darkhorse will assist to obtain available manufacturers families for luminaires specified.
- 2. Additional site visits shall be billed at the day rates as noted in the fee schedule. Day rates are described as one (1) man-day of 8 hours.
- 3. Production time for additional drawing submissions not included in the scope of services.

4. Bidding and Negotiation.
5. As-built drawings, Record drawings and Close-out documentation.
6. Decorative lighting (FF&E) is to be provided by architect. Darkhorse shall assist with sources and dimming and at times might suggest fixtures but the responsibility is that of the interior designers. Should it be requested that Darkhorse source decorative light fixtures, a separate fee should be assessed based on the scope of the request.
7. Programming of the lighting controls system. This work shall be completed by the manufacturer's authorized personnel.
8. Commissioning of lighting and controls systems. This work shall be performed by a certified commissioning agent.
9. Emergency lighting, life safety. As directed, Darkhorse shall incorporate architectural lighting fixtures capable of emergency lighting to support and assist in efforts through zoning but it is the Electrical Engineer's responsibility to circuit the emergency lighting, verify that it meets code and specify visible emergency lighting, concealed EM lights, BOH, Staircase and other lighting not in Darkhorse's scope.
10. Energy code calculations, LEED submittals, lighting power density and other permit documents are supplied by consulting engineers. Darkhorse shall provide a fixture schedule and zone schedule with wattage information for areas within scope but does not have the authority to submit to agencies and municipalities.
11. LEED Compliance, WELL Building, Savings by Design or other third-party building program documentation unless specifically included. Related services are considered additional services upon request.
12. Living Building Challenge documentation and specifications unless specifically included. Compliance is the responsibility of manufacturers. If notified at the beginning the project will seek LBC status, Darkhorse will make every effort to specify products in compliance but does not warrant products specified comply with the LBC Red List. Coordination and all related efforts are considered additional services.
13. Landmarks approval documentation.
14. Lighting renderings are an additional service. Fees shall be based on the extent of the request.
15. Mock-ups shall be billed at the hourly rate. Any expenses associated with the construction of materials for the mock up shall be paid upon receipt of invoice.
16. Additional photometric calculations shall be billed as additional services at the hourly rates set forth herein.
17. Review and testing of fixture and/or control system substitutions proposed by others.

18. Should the client request custom light fixtures; the design shall be billed at \$4,500.00 USD per fixture design. All copyrights remain the property of Darkhorse. A custom lighting fixture is defined as an entirely new design and would require design approvals, prototypes and coordination of fabrication. Darkhorse does not charge additional fees for assisting with modifications or coordinating custom fixture as provided by other designers.
19. Should the overall design phase extend past twenty (20) months Darkhorse reserves the right to renegotiate fees and ask for additional compensation due to additional hours needed.
20. The specification and design of lighting control and dimming system, unless specifically included above.
21. Value engineering past 100% Design Development phases.
22. Written specifications beyond the information provided in our fixture schedule.

**EXHIBIT "B"****SPECIAL REQUIREMENTS****(Superseding Contract Boilerplate)**

Added text is indicated in ***bold italics***, and deleted text is indicated in ~~strikethrough~~.

**I. Section 4.5, Prohibition Against Subcontracting or Assignment, is amended to read:**

The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Consultant shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. *The following subconsultants are deemed approved: KPFF Consulting Engineers; KSA Design Studios; Englekirk Institutional; NOVUS Design Studio; Darkhorse Lightworks, LLC; MGAC; and Technical Resources Consultants.* In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Consultant, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Consultant or any surety of Consultant of any liability hereunder without the express consent of City.

**II. Section 7.7, Liquidated Damages, is deleted in its entirety.**

**EXHIBIT "C"****SCHEDULE OF COMPENSATION****I. Consultant and subconsultants shall perform the following tasks at the following rates:**

Discipline/Firm	Predesign	Schematic design	Design Development	Construction Documents	Permit	Bid	Sub-Budget
<b>Architecture/ Johnson Favaro</b>	\$45,000	\$45,000	\$60,000	\$125,000	\$5,000	\$3,500	\$283,500
<b>Cost Planning/ MGAC</b>	\$0	\$3,000	\$6,000	\$4,500	\$0	\$0	\$13,500
<b>Civil Engineering/ KPFF</b>	\$0	\$19,360	\$20,240	\$35,200	\$10,200	\$3,000	\$88,000
<b>Structural Engineering/ Englekirk</b>	\$0	\$2,750	\$6,300	\$24,000	\$500	\$500	\$34,050
<b>MEP, FLS/ Novus</b>	\$0	\$10,000	\$13,000	\$22,500	\$3,000	\$1,500	\$50,000
<b>Lighting/ Darkhorse Lighting</b>	\$0	\$0	\$4,500	\$7,500	\$0	\$0	\$12,000
<b>Landscape Architecture/ KSA</b>	\$0	\$10,520	\$9,800	\$18,000	\$590	\$500	\$39,410
<b>Specifications/TRC</b>	\$0	\$0	\$5,000	\$2,000	\$1,000	\$0	\$8,000
<b>Reimbursable Expenses*</b>							\$10,000
<b>TOTALS</b>	<b>\$45,000</b>	<b>\$90,630</b>	<b>\$124,840</b>	<b>\$238,700</b>	<b>\$20,290</b>	<b>\$9,000</b>	<b>\$538,460</b>

\*Reimbursable expenses shall include reasonable out of pocket expenses that are incurred and paid by Consultant and subconsultants in furtherance of this Agreement. Reimbursable expenses shall include:

- Printing and reproduction costs
- Project-related mileage
- Shipping, overnight mail, postage, messenger and other handling of drawings and documents
- Presentation models
- Fees paid to third parties for securing approval of authorities having jurisdiction over the Project

Additional consultants not included in this Agreement, subject to the City's Contract Officer's prior written approval.

**II. A retention of ten percent (10%) shall be held from each payment as a contract retention to be paid as part of the final payment upon satisfactory completion of services.**

NOT APPLICABLE

**III. Within the budgeted amounts for each Task, and with the approval of the Contract Officer, funds may be shifted from one Task subbudget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Services are approved per Section 1.9.**

**IV. The City will compensate Consultant for the Services performed upon submission of a valid invoice. Each invoice is to include:**

- A. Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate.**
- B. Line items for all materials and equipment properly charged to the Services.**
- C. Line items for all other approved reimbursable expenses claimed, with supporting documentation.**
- D. Line items for all approved subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.**

**V. The total compensation for the Services shall not exceed the Contract Sum as provided in Section 2.1 of this Agreement.**

**VI. The billing rates for Consultant's and subconsultants' personnel are attached as Exhibit C-1.**

**EXHIBIT "C-1"****CONSULTANT TEAM HOURLY RATES****Johnson Favaro - Architect**

Partners	\$220
Senior Associate	\$180
Senior Staff 3	\$120

**KSA Design - Landscape Architect**

Principal	\$235
Project Manager/Project Designer	\$135
Draftsperson	\$90

**MGAC - Cost Consultant**

Senior Cost Manager	\$200
Cost Manager	\$175
Assistant Cost Manager	\$100

**KPFF - Civil Engineers**

Principal	\$225
Project Manager	\$180
Project Engineer	\$150

**Englekirk Institutional - Structural Engineers**

Principal	\$275
Project Director	\$195
Associate	\$175

**Novus - MEP**

Senior Engineer	\$135
BIM Designer	\$115

**Darkhorse Lightworks - Lighting**

Principal	\$190
Senior Designer	\$175
Designer	\$150

**Technical Resources Consultants - Specifications**

Principal	\$165
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**EXHIBIT "D"**  
**SCHEDULE OF PERFORMANCE**

**I. Consultant shall perform all Services timely in accordance with the following schedule.**

	<b>Phase</b>	<b>Duration (Calendar Days)</b>	<b>Start</b>	<b>Finish</b>
A.	Pre-Design	45	11.01.18	12.15.18
	RPV Review and NTP	15	12.15.18	01.01.19
B.	Schematic Design	45	01.01.19	2.15.19
	RPV Review and NTP	15	2.15.19	3.01.19
C.	Design Development	45	3.01.19	4.15.19
	RPV Review and NTP	15	4.15.19	5.01.19
D.	Construction Documents	90	5.01.19	08.01.19
	RPV Review and NTP	15	08.01.19	08.15.19
E.	Permit	45	08.15.19	10.01.19
F.	Bid	15	10.01.19	10.15.19

**II. Consultant shall deliver the following tangible work products to the City by the following dates.**

Per Section I, above.

**III. The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.**

**AMENDMENT NO. 1**

**TO AGREEMENT FOR CONTRACTUAL SERVICES**

**THIS AMENDMENT TO THE AGREEMENT FOR CONTRACTUAL SERVICES** (“Amendment No. 1”) by and between the **CITY OF RANCHO PALOS VERDES** (“City”) and **JOHNSON FAVARO**, a California corporation (“Consultant”) is effective as of Dec. 17  
\_\_\_\_\_, 2019

**RECITALS**

A City and Consultant entered into that certain Agreement for Contractual Services dated December 18, 2018 (“Agreement”) whereby Consultant agreed to provide engineering design services (the “Services”) for a Term of one year, for a Contract Sum of \$538,460. The Agreement provided for an additional one-year extension at the City’s discretion.

B Due to the unforeseen necessity for a Conditional Use Permit review and California Environmental Quality Act review, the Services will require additional tasks and take longer than anticipated. Therefore, the City and Consultant now desire to amend the Agreement to extend the Term of the Agreement by one year, to expire on December 18, 2020, and increase the Contract Sum to \$553,200.

**TERMS**

1 **Contract Changes** The Agreement is amended as provided herein. Deleted text is indicated in ~~strikethrough~~ and added text in ***bold italics***.

(a) Section 2 1, Contract Sum, is hereby amended as follows

“Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in the “Schedule of Compensation” attached hereto as Exhibit “C” and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed ~~Five Hundred Thirty Eight Thousand Four Hundred Sixty (\$538,460)~~ ***Five Hundred Fifty Three Thousand and Two Hundred Dollars (\$553,200)*** (the “Contract Sum”), unless additional compensation is approved pursuant to Section 1 9.”

(b) Section 3 4, Term, is hereby amended as follows

“Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding ~~December 18, 2020 one years from the date hereof~~, except as otherwise provided in the Schedule of Performance (Exhibit D”) [~~The City may, in its sole discretion, extend the Term for one additional one year terms~~]”

(c) Exhibit “A,” Scope of Services, is hereby replaced in its entirety with the new Exhibit “A,” Scope of Services, attached hereto and incorporated herein by this reference.

- (d) Exhibit "C," Schedule of Compensation, is hereby replaced in its entirety with the new Exhibit "C," Schedule of Compensation, attached hereto and incorporated herein by this reference
- (e) Exhibit "D," Schedule of Performance, is hereby replaced in its entirety with the new Exhibit "D," Schedule of Performance, attached hereto and incorporated herein by this reference

**2 Continuing Effect of Agreement** Except as amended by this Amendment No 1, all provisions of the Agreement shall remain unchanged and in full force and effect From and after the date of this Amendment No 1, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement, as amended by this Amendment No 1 to the Agreement

**3 Affirmation of Agreement; Warranty Re Absence of Defaults.** City and Consultant each ratify and reaffirm each and every one of the respective rights and obligations arising under the Agreement Each party represents and warrants to the other that there have been no written or oral modifications to the Agreement other than as provided herein Each party represents and warrants to the other that the Agreement is currently an effective, valid, and binding obligation

Consultant represents and warrants to City that, as of the date of this Amendment No 1, City is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement

City represents and warrants to Consultant that, as of the date of this Amendment No 1, Consultant is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement

**4 Adequate Consideration.** The parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment No 1

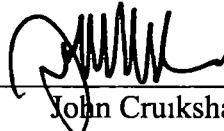
**5 Authority** The persons executing this Amendment No 1 on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Amendment No 1 on behalf of said party, (iii) by so executing this Amendment No 1, such party is formally bound to the provisions of this Amendment No 1, and (iv) the entering into this Amendment No 1 does not violate any provision of any other agreement to which said party is bound

**[SIGNATURES ON FOLLOWING PAGE]**

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the date and year first-above written

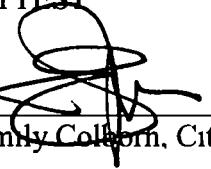
**CITY**

CITY OF RANCHO PALOS VERDES, a municipal corporation



John Cruikshank, Mayor

**ATTEST**



Emily Colborn, City Clerk

**APPROVED AS TO FORM:**

ALESHIRE & WYNDER, LLP



William W. Wynder, City Attorney

**CONSULTANT**

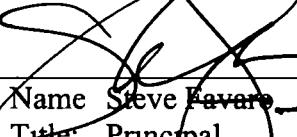
JOHNSON FAVARO, a California Corporation

By



Name Jim Favaro  
Title Principal

By



Name Steve Favaro  
Title Principal

Address 5898 Blackwelder Street  
Culver City, CA 90232

Two corporate officer signatures required when Consultant is a corporation, with one signature required from each of the following groups 1) Chairman of the Board, President or any Vice President, and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. CONSULTANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONSULTANT'S BUSINESS ENTITY

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document

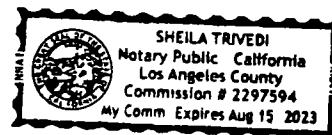
STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On 1/17/2020, 2019 before me, SHEILA TRIVEDI, personally appeared Jim Fava who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct

WITNESS my hand and official seal

Signature Sheila Trivedi

## OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

## CAPACITY CLAIMED BY SIGNER



INDIVIDUAL  
CORPORATE OFFICER

TITLE(S) \_\_\_\_\_



PARTNER(S)   LIMITED  
                           GENERAL



ATTORNEY-IN-FACT



TRUSTEE(S)



GUARDIAN/CONSERVATOR

OTHER None

## DESCRIPTION OF ATTACHED DOCUMENT

Agreement for loan tract

TITLE OR TYPE OF DOCUMENT

3

NUMBER OF PAGES

1/17/2020

DATE OF DOCUMENT

## SIGNER IS REPRESENTING

(NAME OF PERSON(S) OR ENTITY(IES))

SelfNONE

SIGNER(S) OTHER THAN NAMED ABOVE

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document

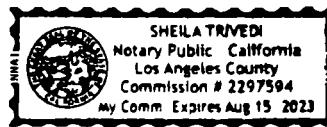
STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On 1/17, <sup>2020</sup> before me, SHEILA TRIVEDI, personally appeared JOHNSON STEVEN LONG, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct

WITNESS my hand and official seal

Signature Sheila Trivedi

## OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

## CAPACITY CLAIMED BY SIGNER

INDIVIDUAL  
 CORPORATE OFFICER

TITLE(S) \_\_\_\_\_

PARTNER(S)  LIMITED  
  GENERAL

ATTORNEY-IN-FACT

TRUSTEE(S)

GUARDIAN/CONSERVATOR

OTHER \_\_\_\_\_

## DESCRIPTION OF ATTACHED DOCUMENT

CONTRACT  
consultant (Agreement)

TITLE OR TYPE OF DOCUMENT

3  
 NUMBER OF PAGES

1/17/2020  
 DATE OF DOCUMENT

## SIGNER IS REPRESENTING

(NAME OF PERSON(S) OR ENTITY(IES))

SELF

SIGNER(S) OTHER THAN NAMED ABOVE

WONG

**EXHIBIT "A"****SCOPE OF SERVICES**

**I.** Consultant will perform engineering design services for the **Ladera Linda Community Park Project** (the Services). The project's scope is divided into two phases PHASE 1. The first phase consists of refining and developing the existing approved conceptual Master Plan to a 30% completion level. This phase will be presented to the City Council for review and approval. PHASE 2. The second phase consists of the development of a fully-completed construction design and construction-ready documents for this project. Consultant will coordinate work with the subconsultants to ensure that is completed in a timely and professional manner, and shall be solely responsible for the work of subconsultants.

**PHASE 1****A. PRE-DESIGN. The work shall be performed by Consultant.**

- 1 In cooperation with the City the Consultant shall produce existing conditions documentation based on City provided site survey, geotechnical investigative report, and other documents and date as required by the City's Contract Officer
- 2 Consultant shall create documentation of the Ladera Linda Park Master Plan dated March 20, 2018 (Master Plan) suitable for a basis of design, and presentation(s) to the City, community stakeholders and other as required by the City's Contract Officer
- 3 Consultant shall engage in a community outreach effort (including (3) meetings with neighboring HOAs and others as required by the City's Contract Officer) to confirm those features of the park master plan to remain and those which are to be revised
- 4 Consultant shall produce models and drawings suitable for incorporation into subsequent design and document sets, as well as presentation of same to City and community groups

**B. SCHEMATIC DESIGN. The work shall be performed by Consultant, in conjunction with subconsultants MGAC, KPFF, Englekirk Institutional, NOVUS, KSA, and Technical Resources Consultants.**

- 1 In cooperation with the City, the Consultant shall prepare documents illustrating the scale and relationship of project components (Schematic Design Documents) of the Project. The documents shall include, but not be limited to a site plan, enlarged site plans, floor plans, elevations, site sections, site elevations, outline specifications and other documents necessary and as required to illustrate the proposed project scope and concept. The Consultant shall incorporate into the Schematic Documents the proposed program and

functional requirements as approved by the City, established in the Master Plan, as well as revisions in the pre-design phase

- 2 The Schematic Design documents shall include preliminary selections of major building systems, and construction materials shall be noted on the drawings or described in writing
- 3 Consultant shall meet with the City's Contract Officer at intervals as necessary to develop the design and review progress drawings and other documents which depict schematic status of the Project design
- 4 Community/stakeholder workshops as required by the City's Contract Officer are proposed during this phase in order to update Project design progress and solicit comment
- 5 Consultant shall target LEED Certified Equivalent per the U S Green Building Council (USGBC) rating system and provide LEED checklists and reports indicating probable design credits for the Project and assignment of subconsultant responsibility for ensuring each measure is properly applied to the Project design
- 6 Consultant shall coordinate as required with City's staff in order to confirm compliance with City standards and to develop furniture and equipment plans for the Project design that are consistent with City requirements and standards
- 7 Consultant shall prepare a preliminary site development package to include civil plans illustrating demolition, grading and paving, hydrology calculations and drainage (to include potential detention basins and/or bio-swales) and all utility services
- 8 Consultant has the sole responsibility for preparing documentation of the preliminary design for review and comment by all appropriate agencies and utility providers, including but not limited to the City of Rancho Palos Verdes, and others as required. Consultant is not responsible for the actions, non-actions, change of action by these agencies and utility providers after all efforts are made by Consultant to solicit review and to incorporate all review comments. All work associated with change-of-action based on previous direction by the agencies identified will be considered Additional Services
- 9 Consultant shall prepare an Estimated Project Construction Cost Estimate in a format acceptable to the City at 100% completion of Schematic Design, the purpose of which is to show the probable construction cost in relation to the City's Construction Budget. If the Consultant perceives site considerations or City project requirements which render the project cost prohibitive, the Consultant shall disclose such conditions in writing to the City immediately
- 10 Consultant shall make presentations of the Schematic Design documents and 100% Schematic Design Cost Estimates to the City of Rancho Palos Verdes

staff, City Council, Commissions and others as required in order to update design progress, solicit comment, and obtain approval for the Schematic Design project scope and budget

- 11 Consultant shall make presentations of the 100% Schematic Design Cost Estimates to the City. The City shall prepare at City's discretion and at its own expense the independent third party estimates of probable construction costs. All cost estimates will be reconciled with an City/ Project Management Cost Estimate developed by an independent third party cost estimator. The Consultant shall attend one (1) cost reconciliation meeting with the third-party cost estimator for the purpose of reconciling the 100% Schematic Design Estimated Project Construction Costs
- 12 City's Contract Officer and Consultant shall meet to review the provisional Schematic Design Documents and Cost Estimates in order to reach agreement on any City-authorized adjustment to the approved Project schedule or construction budget and identify any necessary clarifications of the provisional Schematic Design Documents
- 13 Consultant shall make all City-requested changes, additions, deletions, and corrections in the Schematic Design Documents which may result from the City's or any constructability review, at no additional cost to the City, so long as they are not in conflict with the requirements of the public agencies having jurisdiction or prior approval, or inconsistent with earlier City direction or Consultant's professional judgment. If such changes are inconsistent with prior City direction, Consultant shall make such alterations and be compensated therefore pursuant to the Additional Services provision of this Agreement
- 14 Unless City agrees otherwise in writing, the Consultant shall revise respective provisional Schematic Design documents and Cost Estimates to reflect adjustments and clarifications agreed upon in the review meeting and resubmit Schematic Design documents and Cost Estimates to City. Once approved, the revised Schematic Design documents shall become the final Schematic Design Documents
- 15 If the City's Contract Officer has not authorized in writing a revision to the project scope and the Estimated Project Construction Cost based on Schematic Design documents exceeds the City's Construction Budget by more than ten percent (10%), the City may request the Consultant to amend, at the Consultant's sole cost and expense, the Schematic Design Documents in order to meet the City's Construction Budget

## PHASE 2

C. **DESIGN DEVELOPMENT.** The work shall be performed by the Consultant, in conjunction with subconsultants MGAC, KPFF, Englekirk Institutional, NOVUS, Darkhorse Lighworks, KSA, and Technical Resources Consultants

- 1 Upon written approval by the City's Contract Officer of the Schematic Design documents and the 100% Schematic Design Estimated Project Construction Cost, the Consultant shall prepare Design Development documents consisting of, but not limited to, site plans, enlarged site plans, building floor plans, enlarged floor plans, site sections, building sections, building elevations, typical construction details, finish schedules indicating finish selection, interior elevations, outline specifications and other drawings and documents sufficient to fix and describe the scope, relationship, size, appearance and character of the project components
- 2 Design Development documents shall include Mechanical, Electrical, and Plumbing system designs and equipment layouts including single line diagrams and an energy analysis report
- 3 Consultant shall provide interior and exterior lighting design services to include lighting design plans and schedules and photometric calculations as required for permit and to confirm minimum or maximum light levels for site development and building areas, including parking lots, path of travel and emergency egress
- 4 Consultant shall update the LEED checklists and report identifying probable design credits for the Project and prepare as needed concept cost/benefit analysis of individual design elements for review and consideration by the City
- 5 Consultant shall finalize storm water and design drainage plans and incorporate site features in conformance with the guidelines of the Governing Agency and as required to comply with City regulations
- 6 Consultant shall take the lead role in applying for and obtaining required approvals from all federal, state, regional or local agencies concerned with the Project
- 7 Consultant shall interpret all applicable federal, state and local laws, rules, and regulations with respect to access, including those of the Americans with Disabilities Act (ADA) Consultant shall identify all non-compliant construction within the Project scope area and complete plans and specifications for site and building improvements within the Project scope area as required to correct or remove non-compliant construction as required for permit, including, but not limited to path of travel, curb ramps and accessible parking
- 8 Consultant shall meet with the City at intervals as necessary to develop the design and to review progress drawings and other documents that depict the Design Development status of the Project

- 9 Consultant shall establish an updated Estimated Project Construction Costs at 100% completion of Design Development documents containing detail consistent with the Design Development documents
- 10 Community/stakeholder workshops are proposed as required by the City's Contract Officer during this phase in order to update Project design progress and solicit comment
- 11 Consultant shall make presentations of the City of Rancho Palos Verdes staff, City Council, Commissions, and others as required by the City's Contract Officer, to update design progress, solicit comment, and obtain approval for the Design Development project scope and budget
- 12 Design Development documents and 100% Design Development Cost Estimates to the City All cost estimates will be reconciled with an City/Project Management Cost Estimate developed by an independent third party cost estimator The City shall prepare at City's discretion and at its own expense the independent third party estimates of probable construction costs The Consultant shall attend one (1) cost reconciliation meeting with the third-party cost estimator for the purpose of reconciling the 100% Design Development Estimated Project Construction Costs
- 13 The City and the Consultant shall meet to review the provisional Design Development Documents and Cost Estimates in order to reach agreement on any City-authorized adjustment to the approved Project schedule or construction budget and identify any necessary clarifications of the provisional Design Development Documents and/or the 100% Design Development Cost Estimates
- 14 Consultant shall make all City-requested changes, additions, deletions, and corrections in the Design Development documents which may result from any constructability review, at no additional cost to the City, so long as they are not in conflict with the requirements of the public agencies having jurisdiction or prior approval, or inconsistent with earlier City direction or Consultant's professional judgment If such changes are inconsistent with prior City direction, Consultant shall make such alterations and be compensated therefore pursuant to the Additional Services provision of this Agreement
- 15 Unless the City agrees otherwise in writing, the Consultant shall revise provisional Design Development documents and Cost Estimates to reflect adjustments and clarifications agreed upon in the review meeting and resubmit Design Development documents and Cost Estimates to the City Once approved, the revised Design Development documents shall become the final Design Development Documents
- 16 If the City has not authorized in writing a revision to the project scope and Estimated Project Construction Costs based on Design Development

documents exceeds the City's Construction Budget by more than ten percent (10%), the City may request the Consultant to amend, at the Consultant's sole cost and expense, the Design Development Documents in order to meet the City's Construction Budget

- 17 Consultant will submit any and all required documents necessary for the project's Conditional Use Permit/entitlements review and environmental review (CEQA) In addition, Consultant will participate in internal meetings with City Staff during the CUP/CEQA review phase as well as prepare presentations and present at public hearings as needed Consultant will also prepare minor revisions to submitted materials as needed after both internal/departmental review and after public hearings

**D. CONSTRUCTION DOCUMENTS. The work shall be performed by Consultant, in conjunction with subconsultants MGAC, KPFF, Englekirk Institutional, NOVUS, Darkhorse Lightworks, KSA, and Technical Resources Consultants.**

- 1 Based on approved Design Development Documents and the approved updated project Construction Budget, the Consultant shall prepare, for approval by City, Construction Documents consisting of drawings and other documents setting forth in detail the requirements for construction of the Project The Consultant shall prepare complete drawings and specifications as are necessary for developing complete bids and for properly executing the Project work Drawings and specifications shall set forth in detail all of the following 1) the Project construction work to be done, 2) the materials, workmanship, finishes, and equipment required for the Project, and 3) the utility service connection equipment and site work
- 2 Consultant shall prepare a Storm Water Pollution Prevention Plan (SWPPP) which will include Best Management Practices (BMP's) that outline standard practices that can be implemented to decrease the discharge of pollutants into storm drains during construction operation on the site
- 3 Consultant shall submit a written Estimated Project Construction Cost for the project based on the Construction Document Phase Documents at 90% completion Construction Document Phase Documents shall be consistent with the Project Construction Budget and if not in conformance shall be revised until approved in writing by the City
- 4 All cost estimates will be reconciled with an City/Project Management Cost Estimate developed by an independent third-party cost estimator The City shall prepare at City's discretion and at its own expense the independent third-party estimate of probable construction costs The Consultant shall attend one (1) cost reconciliation meeting at each Construction Document milestone with the City's third-party cost estimator for the purpose of reconciling the 90% Construction Document Estimated Project Construction Cost

- 5 The City's Contract Officer and the Consultant shall meet to review the provisional 100% Construction Documents and Cost Estimate to reach agreement on any City-authorized adjustment to the approved Project schedule or construction budget and identify any necessary clarifications of the provisional Construction Documents and Cost Estimates
- 6 The parties agree that the Consultant, and not the City, possess the requisite expertise to determine the constructability of the Construction Documents. However, the City reserves the right to conduct one or more constructability review processes with the Construction Documents, and to hire an independent architect or other consultant to perform such reviews. Any such independent constructability reviews shall be at the City's expense.
- 7 Consultant shall make all City-requested changes, additions, deletions, and corrections in the Construction Documents which may result from any constructability review, at no additional cost to the City, so long as they are not in conflict with the requirements of the public agencies having jurisdiction or prior approval, or inconsistent with earlier City direction or with Consultant's professional judgment. If such changes are inconsistent with prior City direction, Consultant shall make such alterations and be compensated therefore pursuant to the Additional Services provision of this Agreement.
- 8 Unless the City agrees otherwise in writing, the Consultant shall revise provisional Construction Documents and Cost Estimates to reflect adjustments and clarifications agreed upon in the review meeting and resubmit Construction Documents and Cost Estimates to the City. Once approved, the revised Construction Documents shall become the final 100% Construction Documents.
- 9 The Consultant shall provide two (2) sets full size (30" x 42") and half size (15" x 21") hard copies at 50% Construction Documents for City review and input. Changes directed by City which are inconsistent with prior City direction shall be made by the Consultant and compensated as Additional Services. The scope of and compensation for such changes shall be mutually agreed upon by the Consultant and City before such changes are initiated.
- 10 Revise the 50% Construction Documents and submit another two (2) set of documents at 90% Construction Documents for City review and input. Changes directed by City which are inconsistent with prior City direction shall be made by the Consultant and compensated as Additional Services. The scope of and compensation for such changes shall be mutually agreed upon by the Consultant and City before such changes are initiated.
- 11 Consultant shall submit two (2) sets of 90% Construction Documents for submittal to the Building and Safety Department for review and approval.

- 12 Complete corrections on the 100% Construction Documents as required by the various City departments to obtain final approval of the Construction Documents for bidding purposes
- 13 Provide a final Cost Estimate and Project Schedule to confirm the project is on target
- 14 Submit two (2) sets of approved 100% Construction Documents and Specifications for City's records and electronic copies on a CD along with a flash drive

**E. PERMIT. The work shall be performed by the Consultant, in conjunction with subconsultants KPFF, Englekirk Institutional, NOVUS, and KSA**

- 1 The Construction Documents and Specifications must be in such form as will enable the Consultant and City to secure the required permits and approvals for all federal, state, regional or local agencies concerned with the Project

**F BIDDING. The work shall be performed by Consultant, in conjunction with subconsultants KPFF, Englekirk Institutional, NOVUS, and KSA.**

- 1 Assist in the submittal of the Bid Drawings (100% Construction Documents) and Specifications to the City's Project Manager
- 2 Respond to all Requests for Information (RFIs) working with the City's Project Manager
- 3 Assist the City's Project Manager in reviewing and evaluating the bids and related documents for contract award to the lowest responsive and responsible bidder

**II Exclusions**

See Exhibit "A-1"

**III. As part of the Services, Consultant will prepare and deliver the following tangible work products to the City**

- 1 Models and drawings
- 2 Schematic Design Documents
- 3 Preliminary site development package
- 4 Estimated Project Construction Cost Estimates
- 5 Presentation files
- 6 Design Development documents
- 7 Storm Water Pollution Prevention Plan (SWPPP)
- 8 Construction Documents

**IV.** In addition to the requirements of Section 6.2, during performance of the Services, Consultant will keep the City apprised of the status of performance by delivering the following status reports

**NOT APPLICABLE**

**V.** All work product is subject to review and acceptance by the City, and must be revised by the Consultant without additional charge to the City until found satisfactory and accepted by City

**VI** Consultant will utilize the following personnel to accomplish the Services

- A** Jim Favaro, Steve Johnson, Brian Davis and Kathy Williams
- B** KSA Katherine Spitz, Jake Patton
- C** KPFF Tom Gsell
- D** MGAC Rick Lloyd
- E** Englekirk Institutional , Tom Sabol and Diana Nishi
- F** NOVUS Michael Leung
- G** Darkhorse Lightworks TRC Dawn Hollingsworth

**EXHIBIT "C"****SCHEDULE OF COMPENSATION****I. Consultant and subconsultants shall perform the following tasks at the following rates**

Discipline/Firm	Predesign	Schematic design	Design Development	Construction Documents	Permit	Bid	Sub-Budget
<b>Architecture/ Johnson Favaro</b>	\$45,000	\$45,000	\$74,740	\$125,000	\$5,000	\$3,500	\$298,240
<b>Cost Planning/ MGAC</b>	\$0	\$3,000	\$6,000	\$4,500	\$0	\$0	\$13,500
<b>Civil Engineering/ KPFF</b>	\$0	\$19,360	\$20,240	\$35,200	\$10,200	\$3,000	\$88,000
<b>Structural Engineering/ Englekirk</b>	\$0	\$2,750	\$6,300	\$24,000	\$500	\$500	\$34,050
<b>MEP, FLS/ Novus</b>	\$0	\$10,000	\$13,000	\$22,500	\$3,000	\$1,500	\$50,000
<b>Lighting/ Darkhorse Lighting</b>	\$0	\$0	\$4,500	\$7,500	\$0	\$0	\$12,000
<b>Landscape Architecture/ KSA</b>	\$0	\$10,520	\$9,800	\$18,000	\$590	\$500	\$39,410
<b>Specifications/TRC</b>	\$0	\$0	\$5,000	\$2,000	\$1,000	\$0	\$8,000
<b>Reimbursable Expenses*</b>							\$10,000
<b>TOTALS</b>	<b>\$45,000</b>	<b>\$90,630</b>	<b>\$139,580</b>	<b>\$238,700</b>	<b>\$20,290</b>	<b>\$9,000</b>	<b>\$553,200</b>

\*Reimbursable expenses shall include reasonable out of pocket expenses that are incurred and paid by Consultant and subconsultants in furtherance of this Agreement. Reimbursable expenses shall include

- Printing and reproduction costs
- Project-related mileage
- Shipping, overnight mail, postage, messenger and other handling of drawings and documents
- Presentation models
- Fees paid to third parties for securing approval of authorities having jurisdiction over the Project

Additional consultants not included in this Agreement, subject to the City's Contract Officer's prior written approval

**II. A retention of ten percent (10%) shall be held from each payment as a contract retention to be paid as part of the final payment upon satisfactory completion of services.**

NOT APPLICABLE

**III. Within the budgeted amounts for each Task, and with the approval of the Contract Officer, funds may be shifted from one Task subbudget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Services are approved per Section 1.9.**

**IV. The City will compensate Consultant for the Services performed upon submission of a valid invoice. Each invoice is to include:**

- A Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate**
- B Line items for all materials and equipment properly charged to the Services**
- C Line items for all other approved reimbursable expenses claimed, with supporting documentation**
- D Line items for all approved subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services**

**V. The total compensation for the Services shall not exceed the Contract Sum as provided in Section 2.1 of this Agreement.**

**VI. The billing rates for Consultant's and subconsultants' personnel are attached as Exhibit C-1.**

**EXHIBIT "D"****SCHEDULE OF PERFORMANCE**

**I. Consultant shall perform all Services timely in accordance with the following schedule. Some portions of the Phases may be conducted concurrently.**

	Phase	Duration (Calendar Days)	Start	Finish
A.	Pre-Design	45	2 21 19	5 31 19
	RPV Review and NTP	15	6 1 19	6 15 19
B.	Schematic Design	45	6 3 19	7 25 19
	RPV Review and NTP	15	7 25 19	9 16 19
C.	Design Development	45	9 16 19	11 22 19
	RPV Review and NTP	15	11 23 19	12 22 19
	CUP/CEQA Review Process	180	12 18 19	6 15 20
D	Construction Documents	180	12 22 19	6 15 20
	RPV Review and NTP	110	3 15 20	7 1 20
E	Permit	45	7 1 20	8 15 20
F	Bid	15	8 15 20	11 1 20

**II Consultant shall deliver the following tangible work products to the City by the following dates.**

Per Section I, above

**III. The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.**