

## PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") is dated March 17, 2020 ("Effective Date") and is between the City of Manhattan Beach, a California municipal corporation ("City") and NV5, Inc., a California corporation ("Consultant"). City and Consultant are sometimes referred to herein as the "Parties", and individually as a "Party".

### RECITALS

A. City issued Request for Proposals No. 1232-20 on January 2, 2020, titled "Construction Management and Construction Inspection Services for Underground Utility Assessment District No. 19-4". Consultant submitted a proposal dated January 30, 2020 in response to the RFP.

B. Consultant represents that it is fully qualified to perform such services by virtue of its experience and the training, education and expertise of its principals and employees.

C. City desires to retain Consultant as an independent contractor and Consultant desires to serve City to perform these services in accordance with the terms and conditions of this Agreement.

The Parties therefore agree as follows:

#### 1. Consultant's Services.

A. Scope of Services. Consultant shall perform the services described in the Scope of Services (the "Services") for construction management oversight, public outreach, and construction inspection services, attached as **Exhibit A**. City may request, in writing, changes in the Scope of Services to be performed. Any changes mutually agreed upon by the Parties, and any increase or decrease in compensation, shall be incorporated by written amendments to this Agreement.

B. Party Representatives. For the purposes of this Agreement, the City Representative shall be the City Manager, or such other person designated in writing by the City Manager (the "City Representative"). For the purposes of this Agreement, the Consultant Representative shall be Jeff Cooper, Director of Municipal Services (the "Consultant Representative"). The Consultant Representative shall directly manage Consultant's Services under this Agreement. Consultant shall not change the Consultant Representative without City's prior written consent.

C. Time for Performance. Consultant shall commence the Services on the Effective Date and shall perform all Services by the deadline established by the City Representative or, if no deadline is established, with reasonable diligence.

Approved for Use 2/15/20

D. Standard of Performance. Consultant shall perform all Services under this Agreement in accordance with the standard of care generally exercised by like professionals under similar circumstances and in a manner reasonably satisfactory to City.

E. Personnel. Consultant has, or will secure at its own expense, all personnel required to perform the Services required under this Agreement. All of the Services required under this Agreement shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such Services.

F. Compliance with Laws. Consultant shall comply with all applicable federal, state and local laws, ordinances, codes, regulations and requirements.

G. Permits and Licenses. Consultant shall obtain and maintain during the Agreement term all necessary licenses, permits and certificates required by law for the provision of Services under this Agreement, including a business license.

H. Prevailing Wages. This Agreement calls for services that, in whole or in part, constitute “public works” as defined in the California Labor Code. Therefore, as to those services that are “public works”, Consultant shall comply in all respects with all applicable provisions of the California Labor Code, including those set forth in **Exhibit C** hereto.

**2. Term of Agreement.** The term of this Agreement shall be from the Effective Date through June 30, 2022, unless sooner terminated as provided in Section 12 of this Agreement or extended.

### **3. Compensation.**

A. Compensation. As full compensation for Services satisfactorily rendered, City shall pay Consultant at the hourly rates set forth in the Approved Fee Schedule attached hereto as **Exhibit B**. In no event shall Consultant be paid more than \$336,950.00 (the “Maximum Compensation”) for such Services.

B. Expenses. The amount set forth in paragraph 3.A. above includes reimbursement for all expenditures incurred in the performance of this Agreement.

C. Unauthorized Services and Expenses. City will not pay for any services not specified in the Scope of Services, unless the City Council or the City Representative, if applicable, and the Consultant Representative authorize such services in writing prior to Consultant’s performance of those services or incurrence of additional expenses. Any additional services or expenses authorized by the City Council, or (where authorized) the City Manager shall be compensated at the rates set forth in **Exhibit B**, or, if not specified, at a rate mutually agreed to by the Parties. City shall make payment for additional services and expenses in accordance with Section 4 of this Agreement.

#### **4. Method of Payment.**

A. Invoices. Consultant shall submit to City an invoice, on a monthly basis, for the Services performed pursuant to this Agreement. Each invoice shall itemize the Services rendered during the billing period, hourly rates charged, if applicable, and the amount due. City shall review each invoice and notify Consultant in writing within ten Business days of receipt of any disputed invoice amounts.

B. Payment. City shall pay all undisputed invoice amounts within 30 calendar days after receipt up to the Maximum Compensation set forth in Section 3 of this Agreement. City does not pay interest on past due amounts. City shall not withhold federal payroll, state payroll or other taxes, or other similar deductions, from payments made to Consultant. Notwithstanding the preceding sentence, if Consultant is a nonresident of California, City will withhold the amount required by the Franchise Tax Board pursuant to Revenue and Taxation Code Section 18662 and applicable regulations.

C. Audit of Records. Consultant shall make all records, invoices, time cards, cost control sheets and other records maintained by Consultant in connection with this Agreement available during Consultant's regular working hours to City for review and audit by City.

**5. Independent contractor.** Consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its officers, agents or employees are in any manner employees of City.

#### **6. Information and Documents.**

A. Consultant covenants that all data, reports, documents, discussion, or other information (collectively "Data") developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed or released by Consultant without prior written authorization by City. City shall grant such authorization if applicable law requires disclosure. Consultant, its officers, employees, agents, or subcontractors shall not without written authorization from the City Manager or unless requested in writing by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary," provided Consultant gives City notice of such court order or subpoena.

B. 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 thereunder or with respect to any project or property located within the City. City may, 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, City's right to review any such response does not imply or mean the right by City to control, direct or rewrite the response.

C. All Data required to be furnished to City in connection with this Agreement shall become City's property, and City may use all or any portion of the Data submitted by Consultant as City deems appropriate. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files containing data generated for the Services, surveys, notes, and other documents prepared in the course of providing the Services shall become City's sole property and may be used, reused or otherwise disposed of by City without Consultant's permission. Consultant may take and retain copies of the written products as desired, but the written products shall not be the subject of a copyright application by Consultant.

D. Consultant's covenants under this Section shall survive the expiration or termination of this Agreement.

**7. Conflicts of Interest.** Consultant and its officers, employees, associates and subcontractors, if any, shall comply with all conflict of interest statutes of the State of California applicable to Consultant's Services under this Agreement, including the Political Reform Act (Gov. Code § 81000, *et seq.*) and Government Code Section 1090. During the term of this Agreement, Consultant may perform similar Services for other clients, but Consultant and its officers, employees, associates and subcontractors shall not, without the City Representative's prior written approval, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute. Consultant shall incorporate a clause substantially similar to this Section into any subcontract that Consultant executes in connection with the performance of this Agreement.

**8. Indemnification, Hold Harmless, and Duty to Defend.**

A. Indemnities.

1) To the fullest extent permitted by law, Consultant shall, at its sole cost and expense, defend, hold harmless and indemnify City and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees"), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments,

penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith and the payment of all consequential damages (collectively "Liabilities"), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Consultant, its officers, agents, servants, employees, subcontractors, materialmen, consultants or their officers, agents, servants or employees (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties. Consultant shall defend the Indemnitees in any action or actions filed in connection with any Liabilities with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. Consultant shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith.

2) Consultant shall pay all required taxes on amounts paid to Consultant under this Agreement, and indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant shall fully comply with the workers' compensation law regarding Consultant and Consultant's employees. Consultant shall indemnify and hold City harmless from any failure of Consultant to comply with applicable workers' compensation laws. City may offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this subparagraph A.2).

3) Consultant shall obtain executed indemnity agreements with provisions identical to those in this Section from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity obligations, Consultant shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from and against any and all Liabilities at law or in equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Consultant's subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, consultants or their officers, agents, servants or employees (or any entity or individual that Consultant's subcontractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties.

B. Workers' Compensation Acts not Limiting. Consultant's indemnifications and obligations under this Section, or any other provision of this Agreement, shall not be limited by the provisions of any workers' compensation act or similar act. Consultant

expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.

C. Insurance Requirements not Limiting. City does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. The indemnities in this Section shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liabilities, tax, assessment, penalty or interest asserted against City.

D. Survival of Terms. Consultant's indemnifications and obligations under this Section shall survive the expiration or termination of this Agreement.

E. No Design Services. Consultant acknowledges that the Services to be provided pursuant to this Agreement do not require the services of a "design professional," as the term is defined in California Civil Code Section 2782.8(c), and that therefore the provisions of California Civil Code Section 2782.8 do not apply to this Agreement.

## **9. Insurance.**

A. Minimum Scope and Limits of Insurance. Consultant shall procure and at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

1) Commercial General Liability Insurance with a minimum limit of \$2,000,000.00 per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of \$2,000,000.00 per project or location. If Consultant is a limited liability company, the commercial general liability coverage shall be amended so that Consultant and its managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.

2) Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with a combined single limit of \$2,000,000.00 per accident for bodily injury and property damage. If Consultant does not use any owned, non-owned or hired vehicles in the performance of Services under this Agreement, Consultant shall obtain a non-owned auto endorsement to the Commercial General Liability policy required under subparagraph A.1) of this Section.

3) Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance with a minimum limit of \$1,000,000.00 per accident for bodily injury or disease. If Consultant has no employees while performing Services under this Agreement, workers' compensation policy is not required, but Consultant shall execute a declaration that it has no employees.

4) Professional Liability/Errors and Omissions Insurance with minimum limits of \$2,000,000.00 per claim and in aggregate.

B. Acceptability of Insurers. The insurance policies required under this Section shall be issued by an insurer admitted to write insurance in the State of California with a rating of A:VII or better in the latest edition of the A.M. Best Insurance Rating Guide. Self-insurance shall not be considered to comply with the insurance requirements under this Section.

C. Additional Insured. The commercial general and automobile liability policies shall contain an endorsement naming City and its elected and appointed officials, officers, employees, agents and volunteers as additional insureds. This provision shall also apply to any excess/umbrella liability policies.

D. Primary and Non-Contributing. The insurance policies required under this Section shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance available to City. Any insurance or self-insurance maintained by City, its elected and appointed officials, officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.

E. Consultant's Waiver of Subrogation. The insurance policies required under this Section shall not prohibit Consultant and Consultant's employees, agents or subcontractors from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against City.

F. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by City. At City's option, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond guaranteeing payment of losses and expenses.

G. Cancellations or Modifications to Coverage. Consultant shall not cancel, reduce or otherwise modify the insurance policies required by this Section during the term of this Agreement. The commercial general and automobile liability policies required under this Agreement shall be endorsed to state that should the issuing insurer cancel the policy before the expiration date, the issuing insurer will endeavor to mail 30 days' prior written notice to City. If any insurance policy required under this Section is canceled or reduced in coverage or limits, Consultant shall, within two Business Days of notice from the insurer, phone, fax or notify City via certified mail, return receipt requested, of the cancellation of or changes to the policy.

H. City Remedy for Noncompliance. If Consultant does not maintain the policies of insurance required under this Section in full force and effect during the term of this Agreement, or in the event any of Consultant's policies do not comply with the requirements under this Section, City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may, but has no duty to, take out the necessary insurance and pay, at Consultant's expense, the premium thereon.

Consultant shall promptly reimburse City for any premium paid by City or City may withhold amounts sufficient to pay the premiums from payments due to Consultant.

I. Evidence of Insurance. Prior to the performance of Services under this Agreement, Consultant shall furnish City's Risk Manager with a certificate or certificates of insurance and all original endorsements evidencing and effecting the coverages required under this Section. The endorsements are subject to City's approval. Consultant may provide complete, certified copies of all required insurance policies to City. Consultant shall maintain current endorsements on file with City's Risk Manager. Consultant shall provide proof to City's Risk Manager that insurance policies expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Consultant shall furnish such proof at least two weeks prior to the expiration of the coverages.

J. Indemnity Requirements not Limiting. Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duty to indemnify City under Section 8 of this Agreement.

K. Broader Coverage/Higher Limits. If Consultant maintains broader coverage and/or higher limits than the minimums required above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

L. Subcontractor Insurance Requirements. Consultant shall require each of its subcontractors that perform Services under this Agreement to maintain insurance coverage that meets all of the requirements of this Section.

## **10. Mutual Cooperation.**

A. City's Cooperation. City shall provide Consultant with all pertinent Data, documents and other requested information as is reasonably available for Consultant's proper performance of the Services required under this Agreement.

B. Consultant's Cooperation. In the event any claim or action is brought against City relating to Consultant's performance of Services rendered under this Agreement, Consultant shall render any reasonable assistance that City requires.

**11. Records and Inspections.** Consultant shall maintain complete and accurate records with respect to time, costs, expenses, receipts, correspondence, and other such information required by City that relate to the performance of the Services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to City, its designees and representatives at reasonable times, and shall allow City to examine and audit the books and records, to make transcripts therefrom as necessary, and to inspect all work, data, documents, proceedings and activities related to this

Agreement. Such records, together with supporting documents, shall be maintained for a period of three years after receipt of final payment.

## **12. Termination of Agreement.**

A. Right to Terminate. City may terminate this Agreement at any time, at will, for any reason or no reason, after giving written notice to Consultant at least five calendar days before the termination is to be effective. Consultant may terminate this Agreement at any time, at will, for any reason or no reason, after giving written notice to City at least 60 calendar days before the termination is to be effective.

B. Obligations upon Termination. Consultant shall cease all work under this Agreement on or before the effective date of termination specified in the notice of termination. In the event of City's termination of this Agreement due to no fault or failure of performance by Consultant, City shall pay Consultant based on the percentage of work satisfactorily performed up to the effective date of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the Services required by this Agreement. Consultant shall have no other claim against City by reason of such termination, including any claim for compensation.

**13. Force Majeure.** Consultant shall not be liable for any failure to perform its obligations under this Agreement if Consultant presents acceptable evidence, in City's sole judgment, that such failure was due to acts of God, embargoes, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond Consultant's reasonable control and not due to any act by Consultant.

## **14. Default.**

A. Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default.

B. In addition to the right to terminate pursuant to Section 12, if the City Manager determines that Consultant is in default in the performance of any of the terms or conditions of this Agreement, City shall serve Consultant with written notice of the default. Consultant shall have ten calendar days after service upon it of the notice in which to cure the default by rendering a satisfactory performance. In the event that Consultant fails to cure its default within such period of time, City may, notwithstanding any other provision of this Agreement, terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

**15. Notices.** Any notice, consent, request, demand, bill, invoice, report or other communication required or permitted under this Agreement shall be in writing and conclusively deemed effective: (a) on personal delivery, (b) on confirmed delivery by courier service during Consultant's and City's regular business hours, or (c) three Business Days after deposit in the United States mail, by first class mail, postage prepaid, and addressed to the Party to be notified as set forth below:

**TO CITY:**

City of Manhattan Beach  
Public Works  
Attn: Anastasia Seims, Sr. Civil Engr  
1400 Highland Avenue  
Manhattan Beach, California 90266  
Telephone: (310) 802-5361  
Email: aseims@citymb.info

**TO CONSULTANT:**

NV5, Inc.  
Attn: Jeff Cooper  
9890 Irvine Center Drive  
Irvine, California 92618  
Telephone: (949) 585-0477  
Email: jeff.cooper@nv5.com

**COPY TO CITY ATTORNEY:**

City of Manhattan Beach  
Attn: City Attorney  
1400 Highland Avenue  
Manhattan Beach, CA 90266

**16. Non-Discrimination and Equal Employment Opportunity.** In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information, sexual orientation or other basis prohibited by law. Consultant will take affirmative action to ensure that subcontractors and applicants are employed, and that employees are treated during employment, without regard to their race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information or sexual orientation.

**17. Prohibition of Assignment and Delegation.** Consultant shall not assign any of its rights or delegate any of its duties under this Agreement, either in whole or in part, without City's prior written consent. City's consent to an assignment of rights under this Agreement shall not release Consultant from any of its obligations or alter any of its primary obligations to be performed under this Agreement. Any attempted assignment or delegation in violation of this Section shall be void and of no effect and shall entitle City to terminate this Agreement. As used in this Section, "assignment" and "delegation" means any sale, gift, pledge, hypothecation, encumbrance or other transfer of all or any portion of the rights, obligations, or liabilities in or arising from this Agreement to any

person or entity, whether by operation of law or otherwise, and regardless of the legal form of the transaction in which the attempted transfer occurs.

**18. No Third Party Beneficiaries Intended.** This Agreement is made solely for the benefit of the Parties to this Agreement and their respective successors and assigns, and no other person or entity may have or acquire a right by virtue of this Agreement.

**19. Waiver.** No delay or omission to exercise any right, power or remedy accruing to City under this Agreement shall impair any right, power or remedy of City, nor shall it be construed as a waiver of, or consent to, any breach or default. No waiver of any breach, any failure of a condition, or any right or remedy under this Agreement shall be (1) effective unless it is in writing and signed by the Party making the waiver, (2) deemed to be a waiver of, or consent to, any other breach, failure of a condition, or right or remedy, or (3) deemed to constitute a continuing waiver unless the writing expressly so states.

**20. Final Payment Acceptance Constitutes Release.** The acceptance by Consultant of the final payment made under this Agreement shall operate as and be a release of City from all claims and liabilities for compensation to Consultant for anything done, furnished or relating to Consultant's work or services. Acceptance of payment shall be any negotiation of City's check or the failure to make a written extra compensation claim within ten calendar days of the receipt of that check. However, approval or payment by City shall not constitute, nor be deemed, a release of the responsibility and liability of Consultant, its employees, subcontractors and agents for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by City for any defect or error in the work prepared by Consultant, its employees, subcontractors and agents.

**21. Corrections.** In addition to the above indemnification obligations, Consultant shall correct, at its expense, all errors in the work which may be disclosed during City's review of Consultant's report or plans. Should Consultant fail to make such correction in a reasonably timely manner, such correction may be made by City, and the cost thereof shall be charged to Consultant. In addition to all other available remedies, City may deduct the cost of such correction from any retention amount held by City or may withhold payment otherwise owed Consultant under this Agreement up to the amount of the cost of correction.

**22. Non-Appropriation of Funds.** Payments to be made to Consultant by City for services performed within the current fiscal year are within the current fiscal budget and within an available, unexhausted fund. In the event that City does not appropriate sufficient funds for payment of Consultant's services beyond the current fiscal year, this Agreement shall cover payment for Consultant's services only to the conclusion of the last fiscal year in which City appropriates sufficient funds and shall automatically terminate at the conclusion of such fiscal year.

**23. Exhibits.** Exhibits A, B and C constitute a part of this Agreement and are incorporated into this Agreement by this reference. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, or between a provision of this Agreement and a provision of Consultant's proposal, the provisions of this Agreement shall control.

**24. Entire Agreement and Modification of Agreement.** This Agreement and all exhibits referred to in this Agreement constitute the final, complete and exclusive statement of the terms of the agreement between the Parties pertaining to the subject matter of this Agreement and supersede all other prior or contemporaneous oral or written understandings and agreements of the Parties. No Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation or warranty except those expressly set forth in this Agreement. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by both Parties.

**25. Headings.** The headings in this Agreement are included solely for convenience of reference and shall not affect the interpretation of any provision of this Agreement or any of the rights or obligations of the Parties to this Agreement.

**26. Word Usage.** Unless the context clearly requires otherwise, (a) the words "shall," "will" and "agrees" are mandatory and "may" is permissive; (b) "or" is not exclusive; and (c) "includes" or "including" are not limiting.

**27. Time of the Essence.** Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a Party of the benefits of any grace or use period allowed in this Agreement.

**28. Business Days.** "Business days" means days Manhattan Beach City Hall is open for business.

**29. Governing Law and Choice of Forum.** This Agreement, and any dispute arising from the relationship between the Parties to this Agreement, shall be governed by and construed in accordance with the laws of the State of California, except that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Agreement. Any dispute that arises under or relates to this Agreement (whether contract, tort or both) shall be resolved in a superior court with geographic jurisdiction over the City of Manhattan Beach.

**30. Attorneys' Fees.** In any litigation or other proceeding by which a Party seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing Party shall be entitled to recover all attorneys' fees, experts' fees, and other costs actually incurred in connection with such litigation or other proceeding, in addition to all other relief to which that Party may be entitled.

**31. Severability.** If a court of competent jurisdiction holds any provision of this Agreement to be illegal, invalid or unenforceable for any reason, the validity of and enforceability of the remaining provisions of this Agreement shall not be affected and continue in full force and effect.

**32. Counterparts.** This Agreement may be executed in multiple counterparts, all of which shall be deemed an original, and all of which will constitute one and the same instrument.

**33. Corporate Authority.** Each person executing this Agreement on behalf of his or her Party warrants that he or she is duly authorized to execute this Agreement on behalf of that Party and that by such execution, that Party is formally bound to the provisions of this Agreement.

*[SIGNATURE PAGE FOLLOWS]*

The Parties, through their duly authorized representatives are signing this Agreement on the date stated in the introductory clause.

City:

City of Manhattan Beach,  
a California municipal corporation

Consultant:

NV5, Inc.,  
a California Corporation

By: \_\_\_\_\_  
Name: Bruce Moe  
Title: City Manager

ATTEST:

By: \_\_\_\_\_  
Name: Liza Tamura  
Title: City Clerk

APPROVED AS TO FORM:

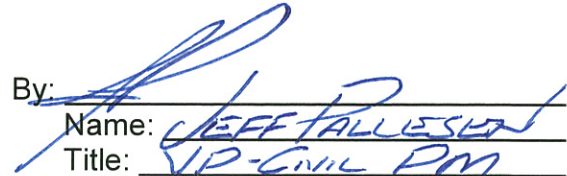
By: \_\_\_\_\_  
Name: Quinn M. Barrow  
Title: City Attorney

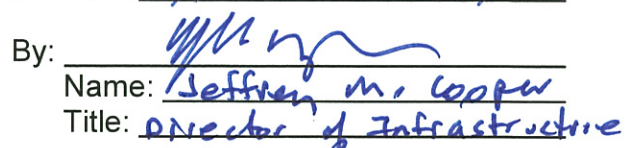
APPROVED AS TO FISCAL IMPACT:

By: \_\_\_\_\_  
Name: Steve S. Charelian  
Title: Finance Director

APPROVED AS TO CONTENT:

By: \_\_\_\_\_  
Name: Stephanie Katsouleas  
Title: Public Works Director

By:   
Name: JEFF FALLESON  
Title: VP-Civil PM

By:   
Name: Jeffrey M. Cooper  
Title: Director of Infrastructure

**PROOF OF AUTHORITY TO BIND  
CONTRACTING PARTY REQUIRED**

## **EXHIBIT A SCOPE OF SERVICES**

NV5's duties and responsibilities include the following:

### **Task 1          Preconstruction Services**

This task includes the following preconstruction services:

- 1.1 Review contract plans, specifications, quantities, permits, and agreements.
- 1.2 Review and maintain construction phase project files.
- 1.3 Analyze Project Traffic Management Plan(s) during pre-construction reviews.
- 1.4 Review project staging plans and propose revisions as necessary for construction.
- 1.5 Schedule, coordinate, and host a preconstruction meeting with the Contractor, City, SCE, Charter, Verizon, etc.
- 1.6 Development of contractor payment schedules and other procedural items.

### **Task 2          Construction Services**

This task includes construction management oversight and project observation/inspection during construction. The Consultant shall have the necessary experience and know-how of construction equipment, materials, methods, and workmanship for the specific work to be performed on the projects. The Consultant shall be able to understand and interpret Plans and Specifications and shall be familiar with the Standard Specifications for Public Works Construction (Greenbook), SCE, Verizon, and Frontier standards, City Standards, and OSHA Construction Safety Orders. The Consultant shall be able to interact professionally with contractors, engineers, property owners, business owners, and the public at large; coordinate with other City personnel; promote quality customer service; and respond promptly and courteously to requests. The Consultant shall be able to follow verbal and written instructions, communicate clearly and concisely, both orally and in writing.

Services include the following:

#### **2.1 Project Coordination and Correspondence**

- Coordinate and assist as necessary with contractors, surveyors, material testers, SCE, Charter, Frontier, other agencies, other utility companies, and other parties
- Maintain close contact with the City Project Manager and Project Managers for all applicable utility companies on all correspondence.

- Review all City Project Manager, SCE, Charter, Frontier, and Contractor correspondence as necessary. Coordinate with applicable parties, as required, to assist in developing responses as necessary.
- Schedule, coordinate, and attend weekly, or as necessary, construction contract coordination meetings with the Contractor, SCE, Charter, Frontier, and City Project Manager.
- Schedule, coordinate, and attend as necessary, construction contract coordination meetings with the other project and construction managers in the vicinity of project.
- Coordinate the timely ordering and receiving of materials furnished by SCE, Charter, or Frontier. Coordinate payment of materials furnished by SCE, Charter, or Frontier. Coordinate any source inspection performed by SCE, Charter, or Frontier.

## 2.2 Schedule Management

- Review and provide feedback on the Project Baseline Schedule submitted by Contractor for conformance with the specifications, for reasonableness of the sequence and duration of the activities, and for conflicts with staging and traffic management plans. The Project Baseline Schedule shall include all project tasks, including but not limited to all project submittals (submission and review deadlines), materials procurement (order dates, material lead times, and shipping times), inspection requests, and construction, installation, and inspection activities, and the Schedule shall clearly identify the critical path of the project prior to approving the schedule.
- Review work progress as compared to the Project Baseline Schedule and inform the City Project Manager and advise the City upon request of schedule slippage. Analyze schedule to determine impact of weather and change orders. Obtain from Contractor two-week look-aheads, monthly updates of construction schedule incorporating actual progress, weather delays, and change order impacts. Analyze and negotiate time extensions due to change orders and other delays, and report these findings to the City Project Manager.
- Prepare the weekly statement of working days and send to the Contractor on a weekly basis. The Weekly statement of working days shall include all of the information that is included in the Caltrans template. Consultant to provide example of form to be used to City for review and approval prior to start of construction.

## 2.3 Payment Recommendations

- Review Contractor's initial schedule of values for reasonableness and ease of monitoring.
- Review quantities submitted with monthly progress payment requests and analyze differences over amount.
- Prepare and submit monthly progress payment spreadsheet to the City Project Manager for payment processing with supporting documents, including quantity verification sheets.

## 2.4 Requests for Information (RFI) and Material Submittals

- Review and monitor all Requests for Information (RFI) from Contractor.
- Review, respond, and/or track responses to RFI related to construction issues.
- Relay design-related RFI to applicable utility Project Manager and Design Engineer. Process response to contractor in a timely manner.
- Attend meetings with the City Project Manager, Contractor and other parties, as needed, to discuss and resolve any outstanding RFIs.
- Collect, log, review, distribute, track, and respond to all material submittals submitted by the contractor.

## 2.5 Contract Change Orders (CCOs)

- Review ALL change orders related to construction issues based on drawings, specifications, and other design information from all utility companies or other project Consultants.
- Review additional compensation claims that are submitted during the construction period.
- Perform change order analysis, including reviewing: logs of proposed change orders, change order quotations from Contractor, negotiated change order costs, time extensions, processing final negotiated change orders, and effect of approved change orders in progress payment breakdowns.
- Prepare CCOs and recommendations to accompany change order documents and forward to the City Project Manager for review and approval.

## 2.6 Construction Observation/Inspection Services

- Provide day-to-day on-the-job observation/inspection of all construction work on the project. Consultant inspectors shall make reasonable efforts to guard the City, SCE, Charter, and Frontier against defects and deficiencies in the work of the Contractor and to ensure provisions of the contract documents are being fulfilled; prepare daily inspection reports documenting observed construction activities; document the names, classifications, tasks completed, and hours worked of all contractor crew members completing work onsite; take progress photographs (digital) of all work and project locations and log and label in specific logical electronic folders; and assist with all other matters relating to construction of the project. Daily Inspection Reports shall be submitted to the City's Project Manager on the next business day for review and filing. Consultant to provide example of form to be used to City for review and approval prior to start of construction.
- Provide all photographs of the project to the City's Project Manager electronically in ".jpg" format. The photographs shall be submitted at the time of and with the submission of the associated Daily Inspection Report.
- Verify layout of work prior to the beginning of the permanent work, including prior to conduit being installed, backfill being placed, asphalt being placed, concrete being poured, etc.

- Prepare monthly progress payment recommendations by measuring and tabulating contract quantities, reviewing the Contractor's invoices, verifying completed work, approving all quantities, and assisting with Contractor meetings to resolve any differences in percent complete.
- Ensure that the Project meets all environmental requirements, including review and acceptance of the Contractor's submitted Storm Water Pollution Prevention Plan (SWPPP) or Water Pollution Control Plan (WPCP).
- Review execution and completion of the Work and ensure compliance with the Plans, Specifications, and other requirements, such as, but not limited to, the Contract, Traffic Control, Cal/OSHA Standards, CCO, Permits, Standard Plans, environmental requirements, and checking line, grade, size, elevation, and location of improvements.
- Perform project oversight for the monitoring of traffic control, damage to infrastructure, and replacement of infrastructure to City and any other applicable Standards.
- Document all Contractor delays, reasons for delay, length of time for delay, and phases of work.
- Monitor extra work, and provide supporting documentation on the personnel and equipment that is involved with any extra work performed by the Contractor. Determine whether the work of the Contractor is being performed in accordance with the requirements of the contract documents, and endeavor to guard the City against defects and deficiencies in such work. Extra work personnel and equipment shall be documented separately of contract work and included in the Daily Inspection Reports submitted to the City. It shall be clear in this documentation which equipment and personnel (name and title) worked on extra work or disputed work versus contract work and for what durations.
- Identify and report potential contractor claims and recommend resolution.
- During the course of inspection and monitoring of the work, if the Consultant observes an unsafe situation, he shall notify the Contractor of the violation and provide written notification of such infraction to the Contractor. If the Contractor refuses to comply, the Consultant shall notify the City and Cal/OSHA.
- Coordinate with City Project Manager, SCE, Charter, and Frontier for any issues that arise in the field that require deviations from the Contract Plans and Specifications. The Consultant does not have the authority to allow deviations from the Contract Plans and Specifications and shall receive authorization for any deviations from the City Project Manager and any impacted utility (SCE, Charter, and/or Frontier).
- Possess a vehicle and a mobile phone for immediate contact by the City, and show proof of valid California driver's license and auto insurance.
- Normal working hours are from 7:30 a.m. to 5:30 p.m. with a one-hour lunch break, but working hours may need to be adjusted to 7:00 a.m. to 4:30 p.m. with a one-half hour lunch due to construction activities.
- Perform other related duties as required.
- Ensure review of the Contractor's Daily Reports, including review of listed quantities, tasks worked on, crew member names, titles, and hours, etc., is included in the scope of services. The Contractor's Daily Reports will

be reviewed and compared to the Inspector's Daily Reports to ensure accuracy and to ensure that everyone is on the same page.

#### 2.7 Utility Coordination

- Include the City Project Manager on all correspondence.
- Coordinate with the Contractor, SCE, Charter, and Frontier to ensure the Contractor is requesting utility observation, inspection, and approval of all work and that SCE, Charter, and Frontier are responding to the Contractor's requests and are completing the observation, inspection, and approval of all work that is necessary for each utility company to accept the Work. SCE, Charter, and Frontier must accept all work for the work to be considered complete.

#### 2.8 Punch List

- Create a list of items for correction (punch list), and monitor and review completion of punch list tasks.
- Coordinate with the City Project Manager for final inspection.

#### 2.9 Record Drawings

- Confirm on a monthly basis that the Contractor is maintaining up-to-date marked up prints of construction drawings and documents showing all field changes and as-built conditions.
- At the completion of the work, review the Contractor's redline as-builts to ensure all field changes and as-built conditions are identified.

#### 2.10 Public Outreach

- Include the City Project Manager on all correspondence and include SCE, Charter, and Frontier on correspondence as needed.
- Establish effective communications with the Contractor, other agencies, utilities, business, and property owners.

### **Task 3 Post Construction Services (Close Out)**

The post construction services task includes project closeout after issuance of substantial completion for the construction Contractor.

3.1 Review closeout submittals.

3.2 Resolve outstanding contract change orders.

3.3 Review and process the final payment.

3.4 Prepare status report for project close-out and all project documents as "closeout" file package.

**ORGANIZATION CHART**

Shown below are team roles and responsibilities. All key personnel will be available for the duration of the project and will not be replaced without written approval from the City.



# **EXHIBIT B** **APPROVED FEE SCHEDULE**

TASK NO.	WORK DESCRIPTION	PROJECT DIRECTOR \$225		CONSTRUCTION MANAGER \$160		CONSTRUCTION INSPECTOR \$130		OVERTIME CONSTRUCTION INSPECTOR \$195		ADMIN \$90		TOTAL FEE
		HOURS	\$	HOURS	\$	HOURS	\$	HOURS	\$	HOURS	\$	
<b>1.0</b>	<b>Pre-Construction Services</b>											
1.1	Review contract plans, specifications, quantities, permits, and agreements		\$0	4	\$640	16	\$2,080		\$0		\$0	\$2,720
1.2	Set up project files		\$0	4	\$640	2	\$260		\$0	4	\$360	\$1,260
1.3	Analyze Project Traffic Management Plan(s) during pre-construction reviews		\$0	4	\$640	4	\$520		\$0		\$0	\$1,160
1.4	Review project staging plans and propose revisions as necessary for construction		\$0	4	\$640	4	\$520		\$0		\$0	\$1,160
1.5	Schedule, coordinate, and host a preconstruction meeting with the Contractor, City, SCE, Charter, Verizon, etc.		\$0	8	\$1,280	4	\$520		\$0	2	\$180	\$1,960
1.6	Development of contractor payment schedules and other procedural items		\$0	4	\$640		\$0		\$0		\$0	\$640
<b>2.0</b>	<b>Construction Services</b>											
2.1	Project Coordination and Correspondence	10	\$2,250	80	\$12,800		\$0		\$0	48	\$4,320	\$19,370
2.2	Schedule Management		\$0	20	\$3,200		\$0		\$0		\$0	\$3,200
2.3	Payment Recommendations		\$0	20	\$3,200		\$0		\$0		\$0	\$3,200
2.4	RFI and Material Submittals		\$0	100	\$16,000		\$0		\$0		\$0	\$16,000
2.5	Contract Change Orders		\$0	120	\$19,200		\$0		\$0		\$0	\$19,200
2.6	Construction Observation/Inspection Services		\$0		\$0	1600	\$208,000	40	\$7,800		\$0	\$215,800
2.7	Utility Coordination		\$0	100	\$16,000		\$0		\$0		\$0	\$16,000
2.9	Record Drawings		\$0	40	\$6,400		\$0		\$0		\$0	\$6,400
2.10	Public Outreach		\$0	40	\$6,400		\$0		\$0		\$0	\$6,400
<b>3.0</b>	<b>Post-Construction Services (Close Out)</b>											
3.1	Develop and Oversee Completion of Punchlist Items		\$0	24	\$3,840	60	\$7,800		\$0		\$0	\$11,640
3.2	Resolve outstanding contract change orders		\$0	24	\$3,840	12	\$1,560		\$0		\$0	\$5,400
3.3	Review and process the final payment		\$0	4	\$640	2	\$260		\$0		\$0	\$900
3.4	Prepare status report for project close-out and all project documents as "closeout" file package		\$0	16	\$2,560	4	\$520		\$0	16	\$1,440	\$4,520
	<b>Subtotal</b>	<b>10</b>	<b>\$2,250</b>	<b>616</b>	<b>\$98,560</b>	<b>1708</b>	<b>\$222,040</b>	<b>40</b>	<b>\$7,800</b>	<b>70</b>	<b>\$6,300</b>	<b>\$336,950</b>
<b>TOTAL FEE</b>												<b>\$336,950</b>

**EXHIBIT C**  
**TERMS FOR COMPLIANCE WITH CALIFORNIA LABOR LAW REQUIREMENTS**

1. This Agreement calls for services that, in whole or in part, constitute "public works" as defined in Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code ("Chapter 1"). Further, Consultant acknowledges that this Agreement is subject to (a) Chapter 1 and (b) the rules and regulations established by the Department of Industrial Relations ("DIR") implementing such statutes. Therefore, as to those Services that are "public works", Consultant shall comply with and be bound by all the terms, rules and regulations described in 1(a) and 1(b) as though set forth in full herein.

2. California law requires the inclusion of specific Labor Code provisions in certain contracts. The inclusion of such specific provisions below, whether or not required by California law, does not alter the meaning or scope of Section 1 above.

3. Consultant shall be registered with the Department of Industrial Relations in accordance with California Labor Code Section 1725.5, and has provided proof of registration to City prior to the Effective Date of this Agreement. Consultant shall not perform work with any subcontractor that is not registered with DIR pursuant to Section 1725.5. Consultant and subcontractors shall maintain their registration with the DIR in effect throughout the duration of this Agreement. If the Consultant or any subcontractor ceases to be registered with DIR at any time during the duration of the project, Consultant shall immediately notify City.

4. Pursuant to Labor Code Section 1771.4, Consultant's Services are subject to compliance monitoring and enforcement by DIR. Consultant shall post job site notices, as prescribed by DIR regulations.

5. Pursuant to Labor Code Section 1773.2, copies of the prevailing rate of per diem wages for each craft, classification, or type of worker needed to perform the Agreement are on file at City Hall and will be made available to any interested party on request. Consultant acknowledges receipt of a copy of the DIR determination of such prevailing rate of per diem wages, and Consultant shall post such rates at each job site covered by this Agreement.

6. Consultant 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 Consultant shall, as a penalty to City, forfeit \$200.00 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 Consultant or by any subcontractor.

7. Consultant shall comply with and be bound by the provisions of Labor Code Section 1776, which requires Consultant 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 City of the location of the records. Pursuant to Labor Code Section 1771.4, Consultant and each subcontractor shall furnish such records to the Labor Commissioner, at least monthly, in the form specified by the Labor Commissioner.

8. Consultant shall comply with and be bound by the provisions of Labor Code seq. concerning the employment of apprentices on public works projects. Consultant shall be responsible for compliance with these aforementioned Sections for all apprenticeable occupations. Prior to commencing work under this Agreement, Consultant shall provide City with a copy of the information submitted to any applicable apprenticeship program. Within 60 days after concluding work pursuant to this Agreement, Consultant and each of its subcontractors shall submit to City a verified statement of the journeyman and apprentice hours performed under this Agreement.

9. The Consultant shall not perform Work with any Subcontractor that has been debarred or suspended pursuant to California Labor Code Section 1777.1 or any other federal or state law providing for the debarment of consultants from public works. The Consultant and Subcontractors shall not be debarred or suspended throughout the duration of this Contract pursuant to Labor Code Section 1777.1 or any other federal or state law providing for the debarment of Consultants from public works. If the Consultant or any subcontractor becomes debarred or suspended during the duration of the project, the Consultant shall immediately notify City.

10. Consultant acknowledges that eight hours labor constitutes a legal day's work. Consultant shall comply with and be bound by Labor Code Section 1810. Consultant shall comply with and be bound by the provisions of Labor Code Section 1813 concerning penalties for workers who work excess hours. The Consultant shall, as a penalty to City, forfeit \$25.00 for each worker employed in the performance of this Agreement by the Consultant or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight hours in any one calendar day and 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 Consultant in excess of eight hours per day, and 40 hours during any one week shall be permitted upon public work upon compensation for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay.

11. California Labor Code Sections 1860 and 3700 provide that every employer will be required to secure the payment of compensation to its employees. In accordance with the provisions of California Labor Code Section 1861, Consultant hereby 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."

12. For every subcontractor who will perform work on the project, Consultant shall be responsible for such subcontractor's compliance with Chapter 1 and Labor Code Sections 1860 and 3700, and Consultant shall include in the written contract between it and each subcontractor a copy of those statutory provisions and a requirement that each subcontractor shall comply with those statutory provisions. Consultant shall be required to take all actions necessary to enforce such contractual provisions and ensure subcontractor's compliance, including without limitation, conducting a periodic review of the certified payroll records of the subcontractor and upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages. Consultant shall diligently take corrective action to halt or rectify any failure.

13. To the maximum extent permitted by law, Consultant shall indemnify, hold harmless and defend (at Consultant's expense with counsel reasonably acceptable to City) City, its officials, officers, employees, agents and independent contractors serving in the role of City officials, and volunteers from and against any demand or claim for damages, compensation, fines, penalties or other amounts arising out of or incidental to any acts or omissions listed above by any person or entity (including Consultant, its subcontractors, and each of their officials, officers, employees and agents) in connection with any work undertaken or in connection with the Agreement, including without limitation the payment of all consequential damages, attorneys' fees, and other related costs and expenses. All duties of Consultant under this Section shall survive the termination of the Agreement.