

DESIGN SERVICES AGREEMENT

This Design Services Agreement ("Agreement") is dated March 2, 2021 ("Effective Date") and is between the City of Manhattan Beach, a California municipal corporation ("City") and Rak Development, Inc., DBA Kreuzer Consulting Group 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. E1253-20S on October 29, 2020, titled "Design Services for the Street Resurfacing Project". Consultant submitted a proposal dated December 14, 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 Engineering Design Services for the Street Resurfacing Project, 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 Rick Kreuzer, President (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 in conformance with the project timeline set forth in Exhibit A.

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, 2023, 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 \$118,550.00 (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 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. Any additional expenses authorized by the City Council, or (where authorized) the City Manager shall be reimbursed in the amounts authorized by the City Council or the City Manager. 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, surveys, studies, drawings, plans, maps, models, photographs, discussion, or other information (collectively "Data and Documents") 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 and Documents 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 Data and Documents, including computer files containing Data and Documents generated for the Services, 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. Indemnity for Design Professional Services. To the fullest extent permitted by law, Consultant shall, at its sole cost and expense, protect, indemnify, and hold harmless 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, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith, and reimbursement of attorney's fees and costs of defense (collectively "Liabilities"), whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to, in whole or in part, the negligence, recklessness or willful misconduct of Consultant, its officers, agents, servants, employees, subcontractors, material men, contractors or their officers, agents, servants or employees (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of design professional services under this Agreement by a

“design professional,” as the term is defined under California Civil Code Section 2782.8(c).

B. Other Indemnities.

1) Other than in the performance of design professional services, and to the fullest extent permitted by law, Consultant shall, at its sole cost and expense, defend, hold harmless and indemnify the Indemnitees from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, 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 “Claims”), 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, contractors 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 Claims 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 Claim 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 the 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 B.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 indemnities, Consultant shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from and against any and all Claims 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’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 Claims arising from the sole negligence or

willful misconduct of the Indemnitees, as determined by court decision or by the agreement of the Parties.

C. Workers' Compensation Acts not Limiting. Consultant's 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.

D. 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 hold harmless and indemnification provisions in this Section shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liabilities, Claims, tax, assessment, penalty or interest asserted against City.

E. Survival of Terms. The indemnification in this Section shall survive the expiration or termination of 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: Adilia Miller, Sr. Civil Engr.
1400 Highland Avenue
Manhattan Beach, California 90266
Email: amiller@citymb.info
Telephone: 310.802.5362

TO CONSULTANT:

Kreuzer Consulting Group
Rick Kreuzer
320 Main Street Unit D
Seal beach, California 90740
Email: rick@kreuzerconsulting.com
Telephone: 714.656.0160

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 and B 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:

Rak Development, Inc., DBA Kreuzer
Consulting Group,
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:

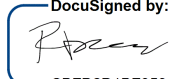
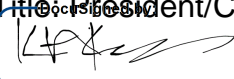
By: _____

Name: Steve S. Charelian
Title: Finance Director

APPROVED AS TO CONTENT:

By: _____

Name: Carrie Tai
Title: Acting Public Works Director

DocuSigned by: _____ 2/23/2021
By:  _____
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Name: Rick Kreuzer
Title: President/CEO
DocuSigned by: _____ 2/23/2021
By:  _____
9B6CE47711734EE
Name: Kelsey Kreuzer
Title: Secretary

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

EXHIBIT A SCOPE OF SERVICES

Overall Scope of Work Description

The project design will address the following key elements:

- Street rehabilitation and/or reconstruction improvements. These street improvement options will be developed through a comprehensive field review and recommendations put forth by Harrington Geotechnical Engineering Inc. field based upon geotechnical data collected.
- Reconstruct damaged concrete improvements including cross gutters, spandrels, curb and gutter, driveways and sidewalks. These removals will be identified via thorough field reviews by Kreuzer Consulting Group (KCG) with concurrence on remove and reconstruction (R&R) limits by City staff.
- Upgrade all deficient access ramps and driveways to full ADA compliance. The quantities of these project elements are identified below.

Kreuzer Consulting has completed a thorough field review of the project. The project includes 5 street segments with a total length of approximately 4,680 lineal feet. In total, there are currently 5 ramps and 11 driveways that are not ADA compliant within the project limits. Most of these locations will require customized design efforts and site specific details in the project plan set. The following table provides a summary of the project street segments and their existing features.

							Concrete Imps	
No.	Street	From	To	Length	Area(SF)	PCI	Ramps	Dwy's
1	27 th St	Laurel	Pacific	270'	4,899	15	0	0
2	Agnes Rd	29 th	Marine	870'	21,128	18	0	0
3	Flournoy Rd	Ardmore	19 th	380'	12,161	16	3	11
4	29 th St	Blanche	Agnes	1,130'	20,282	29	0	0
5	Flournoy Rd	Valley	33 rd	2,030'	37,457	41	2	0
TOTALS				4,680	95,927		5	11

Generally, these 5 street segments are in poor condition based upon the documented PCI's and confirmed by KCG's visual review in the field. The following pages provide a brief overview of each of the project street segments.

Segment #1 – 27th Street from Laurel to Pacific

This stretch of 27th street is 270 feet in length and consist of 4,899 square feet of pavement. As depicted in Photo A at right, the street has a fairly steep grade and does not have any curb, gutter or sidewalk. There are 6 existing driveways access points to the roadway along this stretch of 29th street. The existing pavement condition is generally in poor condition and will likely require total removal and reconstruction.



Photo A – 27th looking east

Segment #2 – Agnes Road from 29th to Marine

This stretch of Agnes Road is approximately 870 feet long and consists of 21,728 square feet of pavement. Like 27th Street, this road does not have any curb, gutter or sidewalk on either side of the street. There are a total of 7 driveways that connect to the road. As identified in the City's Pavement ratings, this segment has a PCI of 18 which dictates full removal and reconstruction. This remedy is confirmed by visual observation in the field. As shown in Photo B, there are large areas of significant alligator cracking. This condition is fairly commonplace along this stretch of Agnes Road.



Photo B – Agnes looking north

Segment #3 – Flournoy Road from Ardmore to 19th

This stretch of Flournoy Road is 380 feet along and consists of approximately 12,161 square feet of pavement surface. As depicted in photo C at right this street has existing curb, gutter and sidewalk on both sides of the street. In general, these concrete improvements are in good condition and there is sufficient grade such that there are no bird bath ponding areas. There are a total of 11 existing driveways along this stretch, all of which are not ADA compliant and will require reconstruction. There are 3 existing access ramps that are also non-compliant and will require reconstruction. The existing pavement can be classified as poor to very poor which is confirmed by the existing PCI value of 16. This street will likely require full reconstruction.



Photo C – Agnes looking north

Segment #4 – 29th Street from Blanche to Agnes

This stretch of 29th Street is 1,130 feet long and consists of approximately 20,282 square feet of pavement surface. As depicted in photo D at right, this street segment does not have existing curb, gutter or sidewalk. There are numerous driveways, many of which are quite steep.

There are 2 existing access ramps at the Blanche intersection that are non-compliant with ADA and will require modification. The City's pavement report shows a PCI of 29 which would normally imply total reconstruction. However, based on our field review, KCG feels this street may be a candidate for a combination of mill and overlay with localized digouts in the poorer areas.

Segment #5 – Flournoy Rd from Valley to 33rd

This street segment is the longest of the proposed project with a length of 2,030 feet. The pavement area is approximately 37,457 square feet. This street also does not have existing curb, gutter or sidewalk on either side of the street. As depicted in Photo E at right, the pavement surface is in much better condition than the other 4 segments. This is confirmed by the documented PCI of 41 which makes this stretch of Flournoy Road a good candidate for a mill and overlay strategy with some localized R&R in the more distressed areas. There are 2 existing access ramps at the Valley intersection that are non-compliant with ADA and will require modification.



Photo D – 29th looking east



Photo E – Flournoy looking north

Detail Scope of Work

Task 1.0 – Project Management and Meetings: Under this task, KCG will oversee all aspects of the project and will attend all project related meetings, including a kickoff meeting with City Staff.

Task 2.0 – Data Collection: KCG shall collect and review all record information including, but not necessarily limited to, the following:

- As-built drawings
- Utility record drawings
- Right-of-way record maps
- Assessor's parcel maps
- Google Earth Aerial Images

Task 3.0 – Utility Coordination: Utility coordination will be ongoing throughout the duration of this project and will consist of the following tasks:

- Obtain plans showing location and size of all utility lines and appurtenances within the project area.
- Plot utility lines on Base Map (Task 5.0).
- Cross check plotted locations above with field review information to insure that existing lines are shown in the proper location.
- Upon finalizing the proposed improvements, determine where potential utility conflicts exist and where utility modifications are warranted.
- Coordinate with affected utility companies regarding conflicts, relocations and improvements. Two (2) full sets of plans will be submitted for comment to each utility agency concurrent with all KCG submittals to the City for plan check.
- Prepare and send 1st, 2nd, 3rd and final utility notices as summarized in the RFP.

Task 4.0 – Field Survey: Field survey efforts on this project will consist of comprehensive topographic survey and street cross sections at 50 foot intervals for all 5 project segments. This survey data will be utilized to develop an existing 3-D surface using Civil 3D software.

Task 5.0 – Base Mapping: The field survey will be for the basis for the development of the street base sheets. Utility drawings and right of way record maps gathered under Task 2 above will be utilized to plot existing underground utility and street right of way lines. Base maps for the street work will be developed at a scale of 1"=20'. KCG is proposing using a 20 scale base to insure the level of detail regarding existing site features is adequately represented. All existing site features will be shown on the base maps and will be verified in the field (see task 6.0).

Task 6.0 – Field Reviews: Conducting thorough field reviews on this project will be key. KCG believes very strongly in walking our projects in the field throughout the base mapping and design stages of a project to insure all design issues are considered. This task will be particularly important due to the variety of conditions which exist along the various street segments that constitute the project segments. The visual observation

and documentation of existing pavement conditions along with the recommendation put forth in the Geotechnical Report (Task 7.0), will form the basis for development of the Project Concept Plans (Task 9.0).

Task 7.0 – Geotechnical Report: Of the project, pavement coring information is available for 4 of the 5 street segments. Only 29th street lacks coring data. That said, KCG is proposing to utilize the services of Harrington Geotechnical to provide a comprehensive geotechnical scope of work by coring 29th street but also supplementing the existing borings on the other segments with additional bores to insure that the pavement recommendations made are fully substantiated with enough existing data. Harrington Geotechnical will collect field borings, summarized as follows:

#1 – 29 th Street	1 boring
#2 – Agnes Road	1 boring
#3 – Flourney Road (South)	1 boring
#4 – 29 th Street	1 boring
#5 - Flourney Road (North)	3 borings
TOTAL	7 borings

The efforts under this task will consist of the following:

- Mark boring locations and notify USA;
- Obtain no-fee permit; if required by City;
- Provide traffic control as necessary;
- Excavate borings per above.
- Measure the existing roadways structural pavement sections at each boring.
- Backfill the excavations and patch the surface with cold patch;
- Prepare a geotechnical report presenting all findings and presenting pavement remediation/reconstruction improvement recommendations.

Task 8.0 – Potholing: In conformance with the requirements of the RFP, KCG has included a budget of \$10,000 for this task only to be utilized upon approval by the City.

Task 9.0 – Concept Plans/Estimates: Under this task, KCG will prepare concept plans for all streets depicting proposed pavement remediation strategies including, but not limited to, grind/overlay and remove and reconstruction (R&R) limits. These plans will also identify all access ramp and driveway improvements required to satisfy current ADA requirements and will delineate areas of damaged curb and gutter and sidewalk needing replacement.

A preliminary construction cost estimate will accompany the Concept Plans. KCG will sit down with City staff and present the proposed improvements/costs. Based upon comments received, KCG will revise the plans/estimates. The Concept Plans, once approved, will form the basis for final design and construction documents will be initiated.

Task 10.0 – Final PS&E: KCG will prepare final plans, specifications and estimates. We envision the following plan set will be developed:

Sheet No.	Description	Scale
1	Title Sheet	NTS
2-3	Typical Sections	NTS
4	27 th St – Laurel Ave to Pacific Ave	1"=20'H; 1"=4'V
5-6	Agnes Rd – 29 th St to Marine Ave	1"=20'H; 1"=4'V
7	Flournoy Rd – Ardmore Ave to 19 th St	1"=20'H; 1"=4'V
8-9	29 th St – Blanche Rd to Agnes Rd	1"=20'H; 1"=4'V
10-13	Flournoy Rd – Valley Dr to 33 rd St	1"=20'H; 1"=4'V
14-18	Construction Details	1"=10'
X1-X16	Cross Sections	1"=10'H; 1"=1'V

Street plan and profile sheets will be prepared at 1"=20' in horizontal 1"=4' vertical scale. 20 scale is proposed to adequately represent the level of detail required for each street. These plans will depict all proposed improvements including pavement/stripping improvements, as required. All localized digouts will be stationed and dimensioned. The various type of treatments (i.e. milling, overlay, etc.) will have different patterns for clarity. Profiles will depict the existing and proposed elevations for street centerline and both edge conditions (edge of pavement and/or curb and gutter).

Access ramp and driveway details will be prepared at 1"=10' and will depict all existing and proposed improvements and join elevations. Any right of way and/or Temporary Construction Easements (TCE's) required to facilitate ramp and/or roadway construction will also be delineated. As stated in the RFP, there might be locations where a non-compliant curb ramp cannot not be reconstructed to be totally ADA-compliant but could be improved to be more compliant. For these cases, KCG will prepare a Curb Ramp Memo that documents the before and after conditions for the City's records. These memos will be signed and stamped by the KCG Project Manager.

To support the vertical design of the project. KCG will prepare roadway cross sections at 50 foot intervals for each street segment. These cross sections will depict existing and proposed surfaces, elevations and crossfalls. The cross sections will not be a part of the final plan bid set but will be made available for contractor review prior to bidding.

Project specifications will be provided in Word format utilizing City provided front end boiler plate information.

Detailed quantity calculations and a construction cost estimate will be provided with all project submittals.

Final PS&E submittals will be made at the 60%, 90% and 100% completion stages.

Task 11.0 Additional Design Efforts: This task will include additional design activities, only as approved by the City Engineer, to address unanticipated additional design features due to utility conflicts, accommodations and adjustments to adjacent private property features and other right of way issues.

Task 12.0 – Right of Way Documents: The project may require construction on private property to facilitate smooth joins from new street construction.

There is no way to know the extent of right of way required, whether permanent or Temporary (TCE). As such, and in conformance with the RFP, KCG has included provisions for preparing a total of 10 legals and plats for the project.

Task 13.0 – Public Outreach: In conformance with the RFP, KCG will attend two community meetings. The initial meeting will take place after the Concept Plans are completed and the second meeting will take place at the 90% submittal stage. KCG will prepare all materials and handouts required to facilitate these meetings.

Task 14.0 – Bidding Assistance: Bid services will consist of responding to bidders' questions, preparing addenda as necessary, reviewing and evaluating bids and attending pre-construction meeting

Task 15.0 – Construction Assistance: Construction assistance services will consist of reviewing shop drawings and submittals and responding to contractor's requests for information (RFI's)

Task 16.0 – As-Built Plans: At the end of the project, KCG will provide a complete set of as-built/record drawings on mylar sheets. The as-built drawings shall be provided to the City and approved prior to the release of the final progress payment. The City will be the owner of all original drawings, documents and digital information. All digital and/or computer generated drawings shall be the property of the City and a copy shall be submitted to the City on a CD-RW disk in AutoCAD and PDF formats.

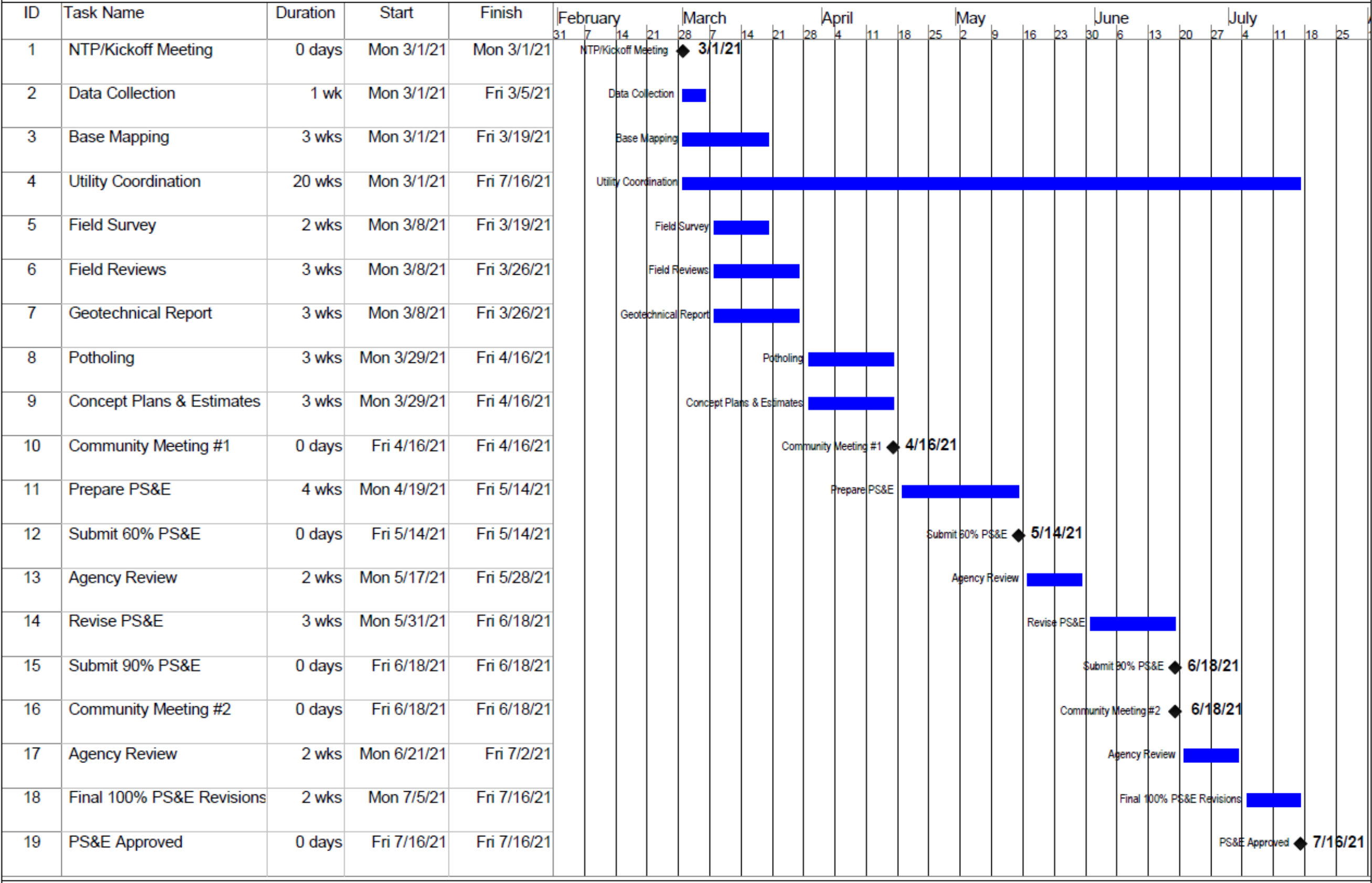
Resource Allocation

In conformance with the RFP, the following is KCG's Resource Allocation Matrix to complete the design of the project street segments:

RESOURCE ALLOCATION MATRIX					Subs	
Task	PROJECT MANAGER	PROJECT ENGINEER	SURVEY CREW	KCG TOTAL	HARRINGTON	TOTAL
	hr.	hr.	hr.			
1.0 Project Management & Meetings	12	8		20		20
2.0 Data Collection	2	4		6		6
3.0 Utility Coordination	8	12		20		20
4.0 Field Survey	1	2	32	35		35
5.0 Base Mapping	4	16		20		20
6.0 Field Reviews	8	8		16		16
7.0 Geotechnical Report	1			1	40	41
8.0 Potholing						
9.0 Concept Plans & Estimates	12	16		28		28
10.0 Final PS & E						
-Title Sheet (1)	2	6		8		8
-Typical Sections & Details (2)	4	16		20		20
-Street Plan & Profile (10)	24	120		144		144
-Construction Details (5)	10	30		40		40
-Cross Sections (16)	8	24		32		32
-Specifications	8			8		8
-Quantities & Estimates	1	4		5		5
11.0 Additional Design Efforts	32.5	100		133		133
12.0 Right of Way Documents (10 Legals/Plats)	10	40		50		50
13.0 Public Outreach	12	12		24		24
14.0 Bidding Assistance	2	4		6		6
15.0 Construction Assistance	4	8		12		12
16.0 As-Built Plans	1	4		5		5
<i>Reimbursables</i>						
Total Hours	167	434	32	633	40	673

CITY OF MANHATTAN BEACH
YEAR 1 STREET REHABILITATION IMPROVEMENTS

PROJECT SCHEDULE



Organizational Chart

KCG's project team will be structured as follows:

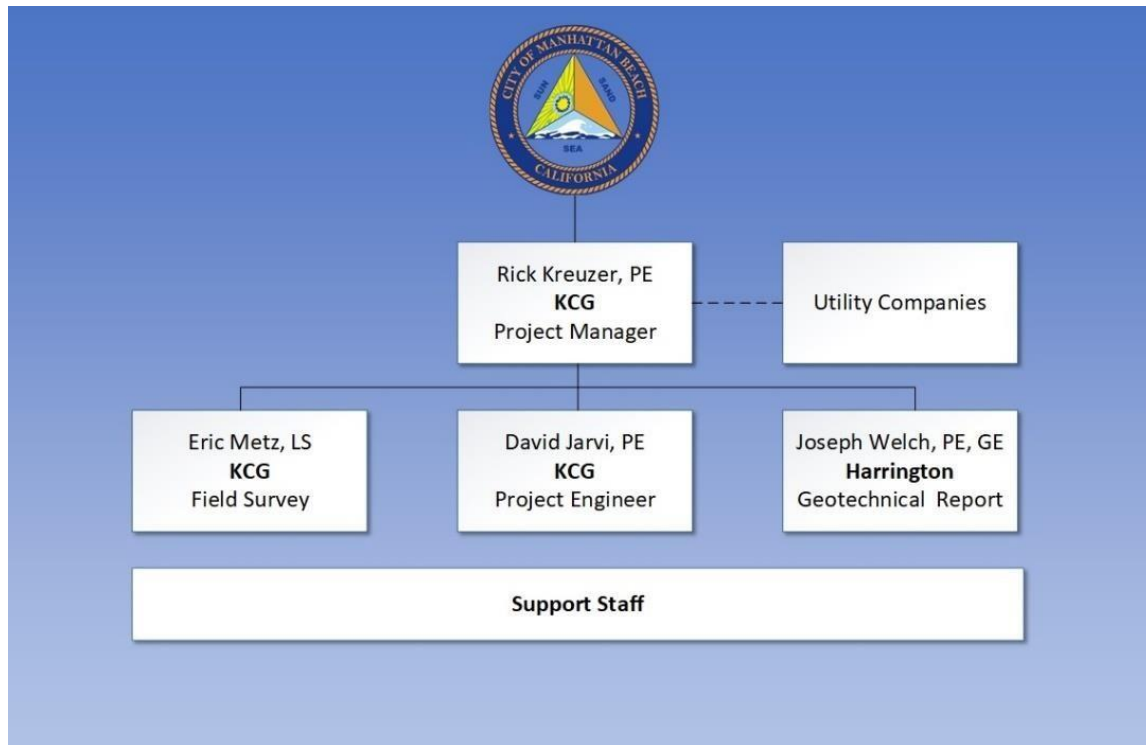


EXHIBIT B APPROVED FEE SCHEDULE

KCG's proposed fee to complete the project design is **\$118,550**. The Fee Schedule below provides a task by task breakdown of the fee.

FEE SCHEDULE						Subs	
Task	PROJECT MANAGER	PROJECT ENGINEER	SURVEY CREW	LUMP SUM	KCG TOTAL	HARRINGTON	TOTAL
	hr.	hr.	hr.				
	\$200	\$135	\$255				
1.0 Project Management & Meetings	12	8			\$3,480		\$3,480
2.0 Data Collection	2	4			\$940		\$940
3.0 Utility Coordination	8	12			\$3,220		\$3,220
4.0 Field Survey	1	2	32		\$8,630		\$8,630
5.0 Base Mapping	4	16			\$2,960		\$2,960
6.0 Field Reviews	8	8			\$2,680		\$2,680
7.0 Geotechnical Report	1				\$200	\$7,000	\$7,200
8.0 Potholing				\$10,000	\$10,000		\$10,000
9.0 Concept Plans & Estimates	12	16			\$4,560		\$4,560
10.0 Final PS & E							
-Title Sheet (1)	2	6			\$1,210		\$1,210
-Typical Sections & Details (2)	4	16			\$2,960		\$2,960
-Street Plan & Profile (10)	24	120			\$21,000		\$21,000
-Construction Details (5)	10	30			\$6,050		\$6,050
-Cross Sections (16)	8	24			\$4,840		\$4,840
-Specifications	8				\$1,600		\$1,600
-Quantities & Estimates	1	4			\$740		\$740
11.0 Additional Design Efforts	32.5	100			\$20,000		\$20,000
12.0 Right of Way Documents (10 Legals/Plats)	10	40			\$7,400		\$7,400
13.0 Public Outreach	12	12			\$4,020		\$4,020
14.0 Bidding Assistance	2	4			\$940		\$940
15.0 Construction Assistance	4	8			\$1,880		\$1,880
16.0 As-Built Plans	1	4			\$740		\$740
<i>Reimbursables</i>				\$1,500	\$1,500		\$1,500
Total Hours	167	434	32				
Total Cost	\$33,300	\$58,590	\$8,160	\$11,500	\$111,550	\$7,000	\$118,550

SCHEDULE OF HOURLY BILLING RATES
Rates Effective through December 31, 2021

OFFICE PERSONNEL:

Typists, Word Processors	\$50
Technician	\$75
Design Engineer / CADD	\$105
Project Engineer	\$135
Principal / Project Manager.....	\$200

FIELD PERSONNEL:

Survey Crew, including Truck and Equipment.....	\$255
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SUPPORT & MISCELLANEOUS COSTS:

Other Vehicles	\$0.55/mi.
Copies – Black & White	\$0.10/pg.
Copies – Color	\$0.50/pg.
Plotting – Black & White	\$2.00/ft ²
Plotting – Color	\$4.00/ft ²

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, Contractor 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”, Contractor 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. Contractor 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. Contractor shall not perform work with any subcontractor that is not registered with DIR pursuant to Section 1725.5. Contractor and subcontractors shall maintain their registration with the DIR in effect throughout the duration of this Agreement. If the Contractor or any subcontractor ceases to be registered with DIR at any time during the duration of the project, Contractor shall immediately notify City.

4. Pursuant to Labor Code Section 1771.4, Contractor’s Services are subject to compliance monitoring and enforcement by DIR. Contractor 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. Contractor acknowledges receipt of a copy of the DIR determination of such prevailing rate of per diem wages, and Contractor shall post such rates at each job site covered by this Agreement.

6. 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 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 Contractor or by any subcontractor.

7. 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 City of the location of the records. Pursuant to Labor Code Section 1771.4, Contractor and each subcontractor shall furnish such records to the Labor Commissioner, at least monthly, in the form specified by the Labor Commissioner.

8. Contractor shall comply with and be bound by the provisions of Labor Code Sections 1777.5, 1777.6 and 1777.7 and California Administrative Code 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 60 days after concluding work pursuant to this Agreement, Contractor and each of its subcontractors shall submit to City a verified statement of the journeyman and apprentice hours performed under this Agreement.

9. The Contractor 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 contractors from public works. The Contractor 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 contractors from public works. If the Contractor or any subcontractor becomes debarred or suspended during the duration of the project, the Contractor shall immediately notify City.

10. Contractor acknowledges that eight hours labor constitutes a legal day's work. Contractor shall comply with and be bound by Labor Code Section 1810. 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 City, forfeit \$25.00 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 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 Contractor 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, Contractor 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, Contractor shall be responsible for such subcontractor’s compliance with Chapter 1 and Labor Code Sections 1860 and 3700, and Contractor 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. Contractor 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. Contractor shall diligently take corrective action to halt or rectify any failure.

13. To the maximum extent permitted by law, Contractor shall indemnify, hold harmless and defend (at Contractor’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 Contractor, 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 Contractor under this Section shall survive the termination of the Agreement.