

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT FOR CONTRACT SERVICES ("Agreement") is made and entered into as of _____, **2022**, by and between the CITY OF YORBA LINDA, a municipal organization organized under the laws of the State of California ("City"), and **NV5, Inc.**, "*a California corporation*") ("Consultant").

NOW THEREFORE, the parties hereto agree as follows:

SECTION ONE: SERVICES OF CONSULTANT

1.1 Scope of Services. In compliance with all terms and conditions of this Agreement, Consultant shall provide those services related to **Construction Management and Inspection Services for Bastanchury Road Widening from Casa Loma Ave. to Eureka Ave.**, as specified in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by this reference (the "services" or "work"). Consultant warrants that all services will be performed in a competent, professional, and satisfactory manner in accordance with the standards prevalent in the industry for such services.

1.2 Changes and Additions to Scope of Services. City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to, or deducting from said work. No such work shall be undertaken unless a written order is first given by City to Consultant, incorporating therein any adjustment in (i) the Schedule of Compensation, and/or (ii) the Schedule of Performance, which adjustments are subject to the written approval of the Consultant. It is expressly understood by Consultant that the provisions of this Section 1.2 shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant anticipates, and that Consultant shall not be entitled to additional compensation therefor.

1.3 Familiarity with Work. By executing this Agreement, Consultant warrants that (a) it has thoroughly investigated and considered the work to be performed, (b) it has investigated the nature and factual context of the work and fully acquainted itself with the conditions pertaining to it, (c) it has carefully considered how the work should be performed, and (d) it fully understands the facilities, difficulties and restrictions attending performance of the work under this Agreement. Should Consultant discover any latent or unknown conditions materially differing from those inherent in the work or as represented by City, and such latent or unknown condition affects Consultant's ability to perform the Work for the Contract Sum (as defined in Section 2.1 below) Consultant shall immediately inform City of such fact and shall not proceed except at Consultant's risk until written instructions are received from the Contract Officer (as defined in Section 4.2 hereof).

1.4 Standard of Performance. Consultant agrees that all services shall be performed in a competent, professional, and satisfactory manner in accordance with the standards prevalent

in the industry, and that all goods, materials, equipment, or personal property included within the services herein shall be of good quality, fit for the purpose intended.

1.5 Performance to Satisfaction of City. Consultant shall perform all work and tasks comprising the Services to the satisfaction of City within the time specified. If City reasonably determines that any portion of the services is not satisfactory, City shall have the right to take appropriate action, including but not limited to: (a) meeting with Consultant to review the quality of the work and resolve matters of concern; (b) requiring Consultant to repeat unsatisfactory work at no additional charge until they are satisfactory; (c) suspending the delivery of work to Consultant for an indefinite time; (d) withholding payment; and (e) terminating this Agreement as hereinafter set forth.

1.6 Prohibition Against Subcontracting or Assignment. Consultant shall not contract with any entity to perform in whole or in part the work and services required of Consultant herein without the prior express written approval of the City. Neither this Agreement nor any interest herein may be assigned or transferred, voluntarily or by operation of law, without the prior written approval of the City. Any such prohibited assignment or transfer shall be void.

SECTION TWO: COMPENSATION

2.1 Contract Sum. For the services rendered pursuant to this Agreement, Consultant shall be compensated in accordance with Exhibit "B" (the "Schedule of Compensation") in a total amount not to exceed **Three Hundred Sixty-Six Thousand Four Hundred Eighty Thousand Dollars (\$366,480.00)** (the "Contract Sum"), except as provided in Section 1.2. The method of compensation set forth in the Schedule of Compensation may include a lump sum payment upon completion, payment in accordance with the percentage of completion of the services, payment for time and materials based upon Consultant's rate schedule, but not exceeding the Contract Sum, or such other methods as may be specified in the Schedule of Compensation. Compensation may include reimbursement at Consultant's actual cost, without additional overhead or services charge, for actual and necessary expenditures for reproduction costs, transportation expense, telephone expense, and similar costs and expenses when and if specified in the Schedule of Compensation.

2.2 Method of Payment. Unless otherwise provided in the Schedule of Compensation, Consultant shall submit to City no later than the tenth (10th) working day of each month, in the form approved by City, an invoice for services rendered prior to the date of the invoice. Such invoice shall (1) describe in detail the services provided, including time and materials, and (2) specify each staff member who has provided services and the number of hours assigned to each such staff member. Such invoice shall contain a certification by a principal member of Consultant specifying that the payment requested is for work performed in accordance with the terms of this Agreement. City will pay Consultant for all expenses stated thereon which are approved by City pursuant to this Agreement no later than forty-five (45) days after invoices are received by the City.

SECTION THREE: PERFORMANCE SCHEDULE

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

3.2 Schedule of Performance. All services rendered pursuant to this Agreement shall be performed diligently and within the time period established in Exhibit "C" (the "Schedule of Performance"). Extensions to the time period specified in the Schedule of Performance may be approved in writing by the Contract Officer.

3.3 Force Majeure. The time period specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of Consultant, including, but not restricted to, acts of God or of the public enemy, fires, earthquakes, floods, epidemic, quarantine restrictions, riots, strikes, freight embargoes, acts of any governmental agency other than City, and unusually severe weather, if Consultant shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the forced delay when and if in his or her judgment such delay is justified, and the Contract Officer's determination shall be final and conclusive upon the parties to this Agreement.

3.4 Term. The term of this agreement shall commence upon execution of the agreement on _____, _____, 2022 and terminate upon completion of the project. This agreement may be extended upon mutual agreement by both parties (extended term). Unless earlier terminated in accordance with Sections 8.11 or 8.12 of this Agreement, this Agreement shall continue in full force and effect until completion of the services, except as otherwise provided in the Schedule of Performance.

SECTION FOUR: COORDINATION OF WORK

4.1 Representative of Consultant. David Niknafs, Project Director, is hereby designated as the principal representative of the Consultant, authorized to act in its behalf with respect to the work and services specified herein and to make all decisions in connection therewith. A substitution of the designated representative must be approved in advance by the City.

4.2 Contract Officer. The Contract Officer shall be Rick Yee, Deputy Director of Public Works/Assistant City Engineer, or such other person as may be designated by the City Manager of City. It shall be Consultant's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and Consultant shall refer any decisions, which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer.

SECTION FIVE: INSURANCE AND INDEMNIFICATION

5.1 Without limiting Consultant's indemnification obligations, Consultant shall not undertake the services contemplated hereunder until Consultant has obtained all of the insurance required herein from a company or companies acceptable to City, and Consultant shall maintain all such insurance in full force and effect at all times during the term of this License and any extension or renewal thereof. Insurance shall be placed with insurers having a current A.M. Best rating of no less than A-: VII or equivalent or as otherwise approved by City.

5.2 Consultant shall take out and maintain the following insurance:

5.2.1. Workers' Compensation and Employer's Liability Insurance: Consultant shall cover or insure as required by applicable laws relating to workers' compensation insurance all of its employees performing the services contemplated hereunder, in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any Acts amendatory thereof. Consultant shall provide worker's compensation insurance and employer's liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence, One Million Dollars (\$1,000,000) disease policy limit, and One Million Dollars (\$1,000,000) disease each employee. Such policy of workers compensation insurance shall contain the following separate endorsements:

(a) "Insurer waives all rights of subrogation against the City of Yorba Linda, its officers, directors, employees, representatives and volunteers."

(b) "This insurance policy shall not be suspended, voided, reduced in coverage or in limits, cancelled, limited, non-renewed or materially changed for any reason by the insurer until thirty (30) days after receipt by the City of Yorba Linda of a written notice of such cancellation, limitation or reduction of coverage."

5.2.2. Commercial General Liability Insurance providing coverage in the following minimum limits:

(a) Combined single limit of One Million Dollars (\$1,000,000) per occurrence for Bodily Injury, Personal Injury or Death and Property.

(b) Damage Coverage shall be at least as broad as Insurance Services Office (ISO) Commercial General Liability coverage (occurrence Form CG 0001).

(c) If Commercial General Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the project/location (with the ISO CG 2503 or ISO CG 2504, or insurer's equivalent endorsement provided to City), or the general aggregate limit shall be twice the required occurrence limit.

5.2.3. Comprehensive Automobile Liability Insurance, including owned, non-owned, leased, hired, and borrowed automobiles and similar vehicles, providing the following minimum limits:

(a) Combined single limit of One Million Dollars (\$1,000,000) per occurrence for Bodily Injury or Death and Property Damage.

(b) Coverage shall be at least as broad as Insurance Services Office (ISO) Business and Auto Coverage (Form CA 0001) covering any auto.

5.2.4. Professional Liability: Consultant shall provide coverage appropriate to the Consultant's profession covering Consultant's wrongful acts, negligent actions, errors, or omissions. The retroactive date (if any) is to be no later than the effective date of this Agreement.

Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the contract work. Consultant shall purchase a one-year extended reporting period i) if the retroactive date is advanced past the effective date of this Agreement; ii) if the policy is canceled or not renewed; or iii) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement. The limits shall be no less than \$1,000,000 per claim and annual aggregate.

5.3 Endorsements: The policies of liability insurance provided for in Paragraphs 5.2.2 through 5.2.4 shall specify that this specific Agreement is insured and that coverage for injury to participants resulting from Consultant's activities is not excluded, and shall be in a form satisfactory to City and contain the following separate endorsements:

(a) "The City of Yorba Linda, its officers, directors, employees, representatives and volunteers, are declared to be additional insureds on all of the above policies with respects to the operations and activities of the named insured at or from the premises of the City of Yorba Linda. The coverage shall contain no special limitations on the scope of protection afforded to the City of Yorba Linda, its officers, directors, employees, representatives and volunteers."

(b) "This insurance policy shall not be suspended, voided, reduced in coverage or in limits, canceled, limited, non-renewed, or materially changed for any reason until thirty (30) days after receipt by the City of Yorba Linda of a written notice of such cancellation, limitation or reduction of coverage."

(c) "This insurance policy is primary insurance and no insurance held or owned by the designated additional insureds shall be called upon or looked to cover a loss under said policy; the City of Yorba Linda shall not be liable for the payment of premiums or assessments on this policy."

(d) "Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of Yorba Linda, its officers, directors, employees, representatives, or volunteers."

(e) "This insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability."

5.4 Evidence of Coverage: Consultant shall at the time of the execution of the Agreement present to City the original policies of insurance required by this Section 5 or a certificate of the insurance, with separate endorsements (Insurance Services Office Form CG 2026, or equivalent), showing the issuance of such insurance and the additional insured and other provisions and endorsements required herein, and copies of all endorsements signed by the insurer's representative. All policies shall contain the Consultant's name and location of the Premises on the certificate. At least thirty (30) days prior to the expiration of any such policy, a signed complete certificate of insurance, with all endorsements provided herein, showing that such insurance coverage has been renewed or extended, shall be filed with City. Consultant's

insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5.5 Review of Coverage: City shall have the right at any time to review the coverage, form, and limits of insurance required under this Agreement. If, in the sole and absolute discretion of City, the insurance provisions in this Agreement do not provide adequate protection for City, City shall have the right to require Consultant to obtain insurance sufficient in coverage, form and limits to provide adequate protection and Consultant shall promptly comply with any such requirement. City's requirements shall not be unreasonable but shall be adequate in the sole opinion of City to protect against the kind and extent of risks which may exist at the time a change of insurance is required, or thereafter.

5.6 Deductibles: Any and all deductibles must be declared and approved by City prior to execution of this Agreement.

5.7 Agreement Contingent Upon Coverage: Notwithstanding any other provision of this Agreement, this Agreement shall be null and void at all times when the above-referenced original policies of insurance or Certificate of Insurance or Renewal Certificates or Endorsements are not on file with City.

5.8 Workers' Compensation Insurance. By his/her signature hereunder, Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing the performance of the work of this Agreement. To the extent required by law, Consultants and subcontractors will keep Workers' Compensation Insurance for their employees in effect during all work covered by this Agreement. In the event Consultant has no employees requiring Consultant to provide Workers' Compensation Insurance, Consultant shall so certify to the City in writing prior to the City's execution of this Agreement. The City shall not be responsible for any claims in law or equity occasioned by failure of the Consultant to comply with this section or with the provisions of law relating to Worker's Compensation.

5.9 Indemnification. Consultant shall indemnify, defend, and hold City and City's agents, officers, and employees ("City Personnel") harmless from and against any and all actions, suits, claims, demands, judgments, attorney's fees, costs, damages to persons or property, losses, penalties, obligations, expenses or liabilities (herein "claims" or "liabilities") that may be asserted or claimed by any person or entity arising out of the negligence, recklessness, or willful misconduct of Consultant, its employees, agents, representatives or subcontractors in the performance of any tasks or services for or on behalf of City, whether or not there is concurrent active or passive negligence on the part of City and/or City Personnel, but excluding such claims or liabilities arising from the sole active negligence or willful misconduct of City or City Personnel. In connection therewith:

5.9.1. Consultant shall defend any action or actions filed in connection with any such claims or liabilities, and shall pay all costs and expenses, including attorney's fees incurred

in connection therewith, to the maximum extent allowed under California law including but not limited to Civil Code section 2782.8.

5.9.2. Consultant shall promptly pay any judgment rendered against City or any City Personnel for any such claims or liabilities, to the maximum extent allowed under California law including but not limited to Civil Code section 2782.8..

5.9.3. In the event City and/or any City Personnel is made a party to any action or proceeding filed or prosecuted for any such damages or other claims arising out of or in connection with the negligence, recklessness, or willful misconduct of Consultant, Consultant shall pay to City any and all costs and expenses incurred by City or City Personnel in such action or proceeding, together with reasonable attorney's fees and expert witness fees, to the maximum extent allowed under California law including but not limited to Civil Code section 2782.8..

SECTION SIX: RECORDS, REPORTS, AND INTELLECTUAL PROPERTY.

6.1 Reports. Consultant shall periodically prepare and submit to the Contract Officer such reports concerning Consultant's performance of the services required by this Agreement as the Contract Officer shall require.

6.2 Records. Consultant shall keep such books and records as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the cost and the performance of such services. Books and records pertaining to costs shall be kept and prepared in accordance with generally accepted accounting principles. The Contract Officer shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit, and make records and transcripts from such records.

6.3 Ownership of Documents and Data. All original drawings, specifications, reports, records, data, documents and other materials, whether in hard copy or electronic form, which are prepared by Consultant, its employees, subcontractors and agents in the performance of this Agreement, shall be the property of City and shall be delivered to City upon termination of this Agreement or upon the earlier request of the Contract Officer, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership of the documents and materials hereunder. Consultant shall cause all subcontractors to assign to City any documents or materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages suffered thereby.

6.4 In the event City or any person, firm or corporation authorized by City reuses said documents and materials without written verification or adaptation by Consultant for the specific purpose intended and causes to be made or makes any changes or alterations in said documents and materials, City hereby releases, discharges, and exonerates Consultant from liability resulting from said change. The provisions of this clause shall survive the completion of this Contract and shall thereafter remain in full force and effect.

6.5 Intellectual Property and Proprietary Information.

6.5.1. Proprietary Information. All proprietary information developed specifically for City by Consultant in connection with, or resulting from, this Agreement, including but not limited to inventions, discoveries, improvements, copyrights, patents, maps, reports, textual material, or software programs, but not including Consultant's underlying materials, software, or know-how, shall be the sole and exclusive property of City, and are confidential and shall not be made available to any person or entity without the prior written approval of City. Consultant agrees that the compensation to be paid pursuant to this Agreement includes adequate and sufficient compensation for any proprietary information developed in connection with or resulting from the performance of Consultant's services under this Agreement. Consultant further understands and agrees that full disclosure of all proprietary information developed in connection with, or resulting from, the performance of Services by Consultant under this Agreement shall be made to City, and that Consultant shall do all things necessary and proper to perfect and maintain ownership of such proprietary information by City.

6.5.2. Reproduction Rights. Any and all patents and copyrights that arise from the services or the creation of work in carrying out this Agreement shall be vested in City, and Consultant hereby agrees to relinquish all claims to such copyrights in favor of City.

6.5.3. Use of Patented Materials. Consultant shall assume all costs arising from the use of patented or copyrighted materials, including but not limited to equipment, devices, processes, and software programs, used, or incorporated in the Services performed by Consultant under this Agreement. Consultant shall indemnify, defend, and save City harmless from any and all suits, actions, or proceedings of every nature for or on account of the use of any patented or copyrighted materials.

SECTION SEVEN: RELEASE OF INFORMATION/CONFLICTS OF INTEREST.

7.1 Confidentiality. All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization. Consultant, its officers, employees, agents, or subcontractors, shall not without written authorization from the City Manager or unless requested 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.

7.2 Release of Confidential Information. 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 person or party regarding this Agreement and the work performed hereunder or with respect to any project or property located within the City. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding. Consultant agrees to cooperate fully with City and to provide 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 said response.

7.3 Conflicts of Interest Prohibited. Consultant covenants that neither he/she nor any officer or principal of their firm have any interest in, or shall acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of their services hereunder. Consultant further covenants that in the performance of this Agreement, no person having such interest shall be employed by them as an officer, employee, agent, or subcontractor. Consultant further covenants that Consultant has not contracted with nor is performing any services, directly or indirectly, with any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the study area and further covenants and agrees that Consultant and/or its subcontractors shall provide no service or enter into any agreement or agreements with a/any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the study area prior to the completion of the work under this Agreement.

7.4 Covenant Against Contingent Fee. Consultant covenants that neither it nor any of its officers, employees, agents, or representatives employed or retained any company or person, other than a bona fide employee working for Consultant, to solicit or secure this Agreement. Consultant further covenants that neither it nor any of its officers, employees, agents, or representatives has paid or agreed to pay any company or person, other than a bona fide employee of Consultant, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this Agreement. For breach or violation of this provision, City shall have the right to annul this agreement without liability, or, at its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fees, gift, or contingent fee.

SECTION EIGHT: LEGAL RELATIONS AND RESPONSIBILITIES.

8.1 Compliance with Law. Consultant shall keep itself fully informed of all existing and future state and federal laws and all county and city ordinances and regulations which in any manner affect those employed by it or in any way affect the performance of services pursuant to this Agreement. Consultant shall at all times observe and comply with all such laws, ordinances, and regulations and shall be responsible for the compliance of all work and services performed by or on behalf of Consultant.

8.2 Licenses, Permits, Fees and Assessments. Except as otherwise specified herein, Consultant shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties, and interest, which may be imposed by law and arise from or are necessary for the performance of the services required by this Agreement.

8.3 Covenant Against Discrimination. The Consultant covenants that, by and for itself, its heirs, executors, assigns and all persons claiming under or through them, that there shall be no discrimination against, or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement.

8.4 Independent Contractor. Consultant shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor. City shall not in any way or for any purpose become or be deemed to be a partner of Consultant in its business or otherwise, or a joint venturer, or a member of any joint enterprise with Consultant. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. Neither Consultant nor any of Consultant's employees shall, at any time, or in any way, be entitled to any sick leave, vacation, retirement, or other fringe benefits from City; and neither Consultant nor any of its employees shall be paid by City time and one-half for working in excess of forty (40) hours in any one week. City is under no obligation to withhold State and Federal tax deductions from Consultant's compensation. Neither Consultant nor any of Consultant's employees shall have any property right to any position, or any of the rights an employee may have in the event of termination of this Agreement.

8.5 Non-liability of City Officers and Employees. No officer or employee of the City shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount that may become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

8.6 California Law. This Agreement shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Orange, State of California, or any other appropriate court in such county, and Consultant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

8.7 Disputes. In the event of any dispute arising under this Agreement, the injured party shall notify the injuring party in writing of its contentions by submitting a claim therefor. The injured party shall continue performing its obligations hereunder so long as the injuring party commences to cure such default within ten (10) days of service of such notice and completes the cure of such default within forty-five (45) days after service of the notice, or such longer period as may be permitted by the Contract Officer; provided that if the default is an immediate danger to the health, safety and general welfare, City may take such immediate action as City deems warranted. Compliance with the provisions of this section shall be a condition precedent to termination of this Agreement for cause and to any legal action, and such compliance shall not be a waiver of any party's right to take legal action in the event that the dispute is not cured, provided that nothing herein shall limit City's right to terminate this Agreement without cause pursuant to Section 8.11.

8.8 Retention of Funds. City may withhold from any monies payable to Consultant sufficient funds to compensate City for any losses, costs, liabilities, or damages it reasonably believes were suffered by City due to the default of Consultant in the performance of the services required by this Agreement.

8.9 Waiver. No delay or omission in the exercise of any right or remedy of a non defaulting party on any default shall impair such right or remedy or be construed as a waiver. City's consent or approval of any act by Consultant requiring City's consent or approval shall not

be deemed to waive or render unnecessary City's consent to or approval of any subsequent act of Consultant. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

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

8.11 Termination Prior To Expiration of Term. This section shall govern any termination of this Agreement, except as specifically provided in the following Section 8.12 for termination for cause. City reserves the right to terminate this Agreement at any time, with or without cause, upon ten (10) days' written notice to Consultant. Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Consultant shall be entitled to compensation for all services rendered prior to receipt of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 8.8.

8.12 Termination for Default of Consultant. If termination is due to the failure of Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 8.7, take over work and prosecute the same to completion by contract or otherwise, and Consultant shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to Consultant for the purpose of setoff or partial payment of the amounts owed City as previously stated in Section 8.8.

8.13 Attorney's Fees. If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees, whether or not the matter proceeds to judgment.

8.14 Safety. The Consultant shall execute and maintain his/her work so as to avoid injury or damage to any person or property. The Consultant shall comply with the requirements of the specifications relating to safety measures applicable in particular operations or kinds of work. In carrying out his/her work, the Consultant shall at all times exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed, and be in compliance with all applicable federal, state, and local statutory and regulatory requirements including California Department of Industrial Relations (Cal/OSHA) regulations; and the U.S. Department of Transportation Omnibus Transportation Employee Testing Act.

8.15 Compliance with California Unemployment Insurance Code Section 1088.8. If Consultant is a sole proprietor, then prior to signing the Agreement, Consultant shall provide to

City a completed and signed Form W-9, Request for Taxpayer Identification Number and Certification. Consultant understands that pursuant to California Unemployment Insurance Code section 1088.8, City will report the information from Form W-9 to the State of California Employment Development Department, and that the information may be used for the purposes of establishing, modifying, or enforcing child support obligations, including collections, or reported to the Franchise Tax Board for tax enforcement purposes.

8.16 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, *et seq.*, and 1770, *et seq.*, as well as California Code of Regulations, Title 8, Section 16000, *et seq.*, (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on “public works” and “maintenance” projects. If the services are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

8.17 Unauthorized Use of City's Name. Except as required by law or with the prior written consent of City (which consent may be withheld in city's sole and absolute discretion), Consultant shall not use City's name, seal or logo in any marketing materials, magazine, trade paper, newspaper, television or radio production or other similar medium, nor shall Consultant state, imply or in any way represent to any third party that City has endorsed or approved Consultant or any of its services or products.

SECTION NINE: MISCELLANEOUS

9.1 Notices. Any notice, demand, request, consent, approval, communication either party desires or is required to give the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail to the address set forth below. Either party may change its address by notifying the other party of the change of address in writing. Notices personally delivered or delivered by a document delivery service shall be effective upon receipt. Notices delivered by mail shall be effective at 5:00 p.m. on the second calendar day following dispatch.

To City: CITY OF YORBA LINDA
Attention: Rick Yee, Deputy Director of Public Works/City
Engineer
4845 Casa Loma Avenue
Yorba Linda, CA 92886

To Consultant: NV5, INC.
Attention: David Niknafs, Project Director
163 Technology Drive
Suite 100
Irvine, CA 92618

9.2 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement.

9.3 Integration; Amendment. This Agreement contains the entire understanding of the parties herein and supersedes any and all other written or oral understandings as to those matters contained herein, and no prior oral or written understanding shall be of any force or effect with respect to those matters covered thereby. No amendment, change or modification of this Agreement shall be valid unless in writing, stating that it amends, changes or modifies this Agreement, and signed by all the parties hereto.

9.4 Severability. In the event that part of this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or inability to enforce shall not affect any of the remaining portions of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

9.5 Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties.

9.6 Statutory References. All references in this Agreement to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, or the County of Orange shall be deemed to include the same statute, regulation, ordinance or resolution as hereafter amended or renumbered, or if repealed, to such other provisions as may thereafter govern the same subject.

9.7 Special Provisions. Any additional or supplementary provisions or modifications or alterations of this Agreement, if any, shall be set forth in an additional Exhibit "D" ("Special Provisions") if any such Special Provisions exist. In the event of any discrepancy between the provisions of this Agreement and the Special Provisions, Special Provisions shall take precedence and prevail.

9.8 Contract Documents. The Agreement between the Parties shall consist of the following: (1) this Agreement, (2) the Consultant's signed, original Proposal dated XXx,xx,xxxx ("Consultant's Proposal"), and (3) the City's Request for Proposals, dated XXx,xx,xxxx ("City's RFP"), which shall all be referred to collectively hereinafter as the "Contract Documents". The Consultant's Proposal and the City's RFP, which are both attached hereto as Exhibits "A" and "B", are hereby incorporated by reference, and are made a part of this Agreement. All provisions of this Agreement, the Consultant's Proposal, and the City's RFP shall be binding on the Parties. Should any conflict or inconsistency exist in the Contract Documents, the conflict or inconsistency shall be resolved by applying the provisions in the highest priority document, which shall be determined in the following order of priority, (1st) the terms and conditions of this Agreement, (2nd) the provisions of the City's RFP (Exhibit "B") and (3rd) the provisions of the Consultant's Proposal (Exhibit "A").

[SIGNATURES BEGIN ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first written above.

CITY:

CITY OF YORBA LINDA

CONSULTANT:

NV5, INC.

By: _____

Its: _____

By: _____

Name: _____

Title: _____

By: _____

Dianna Honeywell, Finance Director

ATTEST:

By: _____

Name: _____

Title: _____

By: _____

Marcia Brown, City Clerk

APPROVED AS TO FORM
RUTAN & TUCKER, LLP

By: _____

City Attorney, City of Yorba Linda

EXHIBIT A

SCOPE OF SERVICES



Bastanchury Road at Eureka Avenue

SCOPE OF WORK

The following is the Scope of Services for Construction Management and Inspection Services.

Project Background

Currently, Bastanchury Road between Casa Loma Avenue and Eureka Avenue consists of a single lane in each direction. The project improvement will add a second travel lane in each direction along with a two-way turn lane in the median. The aforementioned improvements will allow re-classification of the roadway to a Modified Primary Arterial.

The scope of improvements also includes significant modification to the vertical curve of the roadway to improve sight distance for motorists traveling along Bastanchury Road. Portions of the roadway centerline will be elevated up to 6-feet and retaining walls/structures will need to be constructed to accommodate the raised street elevation. In addition, the project will include the installation of traffic signals at the intersections of Bastanchury Road/Casa Loma Avenue and Bastanchury Road/Eureka Avenue. Lastly, the project includes new bike lanes, a multi-purpose trail, and sidewalk/parkway improvements with new irrigation and landscaping. Temporary construction easements have been obtained from affected properties.

Important highlights on the project include, but not limited to:

- The project will need to be coordinated with the adjacent tract home development from Shea Homes to the north. The roughly 13 acre tract is currently underway with rough grading operations and it is highly anticipated that on-site improvements will be under construction at the same time as the City's Bastanchury Road Widening Project.
- The project also includes a water main relocation segment that is being funded by the Yorba Linda Water District. This water main relocation will be subject to additional inspection by the YLWD and will need to be tracked to ensure any additional costs directly related to the water main are accounted for reimbursement purposes.
- Utility relocations (specifically Southern California Edison power poles and streetlights) will be relocated prior to the Bastanchury Road widening. Coordination with SCE and other utilities (i.e. Time Warner Cable, AT&T) will be required.
- Funding for the project is through a combination of OCTA Competitive Grant Funds and the City's Gas Tax.

The estimated construction cost for the project is \$5.3M with an approximate 10 month time frame for completion of the work (assumes a two-phased approach where a single lane in each direction of travel is maintained on

Bastanchury Road as well as continuous access to the Shea Homes development). In addition, an assumed pre/post construction closeout period of 1 month should also be included for a grand total of 11 months of services.

See attached Exhibit A – Final Design Plans for Bastanchury Road Widening (Casa Loma Avenue to Eureka Avenue).

A. Project Coordination and Correspondence

- Plan, schedule, and conduct a pre-construction meeting to review issues pertaining to project implementation and administration. Prepare and distribute meeting minutes within five calendar days of the meeting.
- Document existing site conditions prior to construction. Keep a running log that is specific to each of the properties directly adjacent to the project limits. Document any damage to public and private improvements incurred during construction operations and meet with owners immediately following discovery of damage to resolve repair requirements and responsibilities.
- Communicate and coordinate with surrounding property owners by creating written notifications and responding to questions and/or concerns.
- Receive, log, track, and respond to all claims
- Ensure that all Requests for Information, Change Order Requests and other similar inquiries are processed and coordinated in a timely manner.
- Identify if office space is needed on site

B. Schedule Management, Progress Meetings, and Reports

- Schedule and conduct weekly construction project progress meetings. Provide meeting agendas and discuss the schedule, near-term activities, clarifications and problems which need resolution, coordination, status of change orders, submittals and RFIs, safety issues, and other topics. Identify action items and assign responsibility for the action and date action is to be completed. Prepare minutes of the meetings and include identified action items. Review the meeting minutes with the Contractor and obtain the Contractor's concurrence with the content. Distribute the minutes to the attendees within five calendar days of the meeting.
- Oversee the schedule including review of contractor's schedule and provide a weekly statement of working days. Make suggestions to get the contractor back on schedule as necessary.

- Coordinate with the Yorba Linda Water District, Shea Homes Development, and SCE in addition to other activities and utility works as necessary.

C. Progress Payments and Change Orders

- Coordinate the review of the Contractor's monthly progress payment request with City staff and prepare a recommendation stating the proper amount of payment. Prepare detailed monthly progress reports to the satisfaction of the City. On a monthly basis, review the Contractor's updated progress payment as compared to the progress reports. Submit for the City's final approval.
- Prepare, log, and monitor Contractor or City initiated changes to the work, extra work and change orders. Request cost proposals from the Contractor for extra work and negotiate a cost for City's approval. Prepare written justification and cost estimates for each extra work or change item. Justification shall include a statement of the extra work or change; schedule impacts; background leading to the issue; resolution alternatives and resolution recommendation for action by the City. Prepare and submit change orders in the City's format to the City for written approval within seven calendar days of the finalization of negotiations. In addition, identify which project change orders are due to design errors and omissions, unforeseen conditions, and owner related changes. Ensure that everything is processed in a timely manner.
- Conduct monthly schedule and progress payment meetings with the Contractor and coordinate and verify the updated record drawings at this meeting. The construction progress shall be based on an agreement between the Construction Manager and the Contractor of the physically installed bid item quantities. The result of these meetings shall be the update of the construction schedule and the progress payment estimate.
- Ensure that contractors submit certified payroll reports with monthly progress payment requests. Review reports as applicable for compliance with federal and state prevailing wage regulations. Ensure that labor and hours reported by contractor's match inspector's daily diaries and inspection reports. Take employee interviews for verification of payroll compliance as applicable with state and federal regulations.

D. Material and Shop Drawing Submittals

- Review each submittal received from the Contractor for conformance with the requirements of the

drawings and specifications. Check each submittal against the Contractor's schedule for potential resubmittals that may cause schedule impacts. Coordinate required reviews of submittals with the design engineer and the City. Respond to non-design team related submittals (e.g. schedule, schedule of values, traffic management plan).

- Log, track, and monitor shop drawings, calculations, data samples, submittals, and manuals from the Contractor. Update the submittal log as items are received and responses given. Prepare weekly exception reports identifying outstanding submittals and reviews. Review with the Contractor the status of submittals at the weekly construction meeting using the submittal log and the master submittal list.
- Ensure timely response of submittals including corrections and resubmittals.
- Coordinate evaluation of "or-equal" or product substitution requests with the design engineer, the City, vendors, manufacturers, and others. Prepare evaluation and recommendation for "or-equal" or product substitution request.

E. Request for Information (RFI)

- Develop and maintain the RFI log. Track, review and respond to the Contractor RFI. Distribute RFI to appropriate staff and/or architect and coordinate timely response. Review answers and prepare formal response to Contractor within five calendar days of receipt of response, or as needed to meet the schedule requirements. Respond in writing to Contractor questions from a reasonable review of drawings and specifications for clarification items. Validate changes in the record specifications and plans.
- Review and respond to requests for design revisions by the Contractor. Responses to requests for design revisions require prior approval from the City and/or engineer of record. Revisions in design may take the form of value engineering and shall require extensive research, evaluation, and recommendation from the design engineer. Provide written recommendations, as required.
- Initiate and review field orders and schedule requirements when a change in the work is required. Issue the field order to the contractor and monitor the work for compliance. Track the issued field orders in a log. Validate the changes in the record specifications and plans. If required, follow-up with a change order within seven calendar days of mutual agreement with Contractor on pricing and conditions.

F. Construction Observation/Inspection Services

- Provide inspection personnel to ensure that materials and workmanship are in compliance with the contract documents. Review reports prepared by the contractor for construction activities including weather conditions, Contractor's equipment and manpower, work performed, materials used, site visitors, noting delays in work and reasons for delays, and deficiencies, which may impact the schedule.
- Prepare daily inspection records and weekly status reports. Prepare reports of deviations and non-conformance to specifications and provide responses in accordance with the specification requirements. Advise the City and the Contractor of deviations in the work and document any deviations. Record deviations that are not corrected and immediately deliver a Notice of Non-Compliance to the Contractor. Perform necessary follow-up to resolve Notices of Non-Compliance. Include unresolved Notice of Non-Compliance on substantial completion punch lists.
- Consultant shall propose a combination of inspection and construction management level of effort that will provide sufficiency in overseeing the daily construction activity while at the same time demonstrating efficiency and maximizing the complementary efforts of the two (2) positions.
- Consultant shall provide inspection of water quality best management practices (BMPs) for the project. Responsibilities shall include but not be limited to coordination with Qualified SWPPP Practitioner or Developer (QSP/QSD) to ensure that BMPs are installed correctly, in good repair, and functional in conformance with the Storm Water Pollution Prevention Plan (SWPPP), Erosion and Sediment Control Plan, and all General Construction Permit requirements. The consultant shall inform the City of any potential violations and coordinate with the QSP/QSD to correct all deficiencies to ensure that the project is in compliance with all water quality regulations.

G. Pre/Post Construction Services

- Provide other pre-construction coordination tasks needed among affected stakeholders and provide assistance with on-boarding of the contractor.
- Deliver the Operations and Maintenance Manuals and any spare parts and equipment upon acceptance of the project by the City.
- Recommend final payment in the form of a release of retention to the Contractor in accordance with the contract requirements. Verify that the Contractor

has made all payments to the subcontractors and vendors and that any stop notices or liens have been released. Obtain a Conditional Waiver of Lien from the Contractor prior to recommending final payment. Certify final payrolls as needed.

- Provide Contractor's red-lines to the City for as-builts.

Materials Testing/Special Inspection

Per Addendum No. 1, NV5 will provide materials testing services for this project. Based on our review of the project documents, we anticipate the following scope of work for this task:

- **Task 1: Soils, Aggregate Base, and Asphalt Concrete Pavement Inspection**
 - We are assuming two (2) days for subgrade soils
 - We are assuming two (2) days for aggregate base
 - We are assuming two (2) days for asphalt pavement
- **Task 2: Concrete Retaining wall and Drainage Structure Inspection**
 - We are assuming three (3) days of concrete placement requiring sampling and testing during placement.
 - We are assuming the requirement for batch plant inspection is not required.
 - We are assuming the requirement for testing steel reinforcement is not required.
- **Task 3: On-site Welding Inspection of Waterline**
 - We are assuming ten days (10) days for on-site welding.
 - We are assuming fabrication shop is not required.

NV5 PROJECT UNDERSTANDING

NV5 agrees to the Scope of Work detailed in the RFP. Based on a review of the RFP and a site visit, we understand the scope of work to include the widening of Bastanchury Road as well as street, and parkway improvements between Casa Loma Avenue and Eureka Avenue. Specifically, improvements may include:

1. Rough/Finish Grading
2. PCC Parkway Improvements:
 - a. Sidewalks
 - b. Driveways
 - c. Curb and Gutter
 - d. ADA Curb Ramps
3. Street Improvements:
 - a. Rough/Finish Grading
 - b. AC Pavement Construction
 - c. AC Pavement Resurfacing



- d. Utility Adjustments
 - e. Traffic Signage and Striping
4. Drainage Improvements:
 - a. 18" and 24" RCP
 - b. PCC Junction Structures
 - c. PCC Inlets and Collars
 - d. Catch Basins and PCC Local Depression
 - e. Drain Filters
 - f. PCC Saddle
 - g. Ancillary Improvements including PVC piping
 5. Waterline Improvements
 - a. 16" and 10" CML and C Water Main
 - b. 8" PVC water main
 - c. Air Vac and Air Release Valve
 - d. All Appurtenant Valves and Fittings
 - e. Fire Hydrants and Laterals
 - f. New CP Test Station
 - g. Water Service and Meter
 - h. All Appurtenant Site Improvements
 6. Traffic Signal and Street Lighting Improvements
 7. CMU Retaining/Property Wall Construction
 8. Equestrian Trail Improvements
 9. Landscaping and Irrigation

Bastanchury Road between the project limits is an arterial roadway with one travel lane in each direction. The roadway is in rolling terrain and is separated by a painted median. The surrounding area is residential. There is an ongoing residential development (Shea Homes) fronting the north side of the roadway.

PROJECT-SPECIFIC ISSUES

Traffic Control

If not done so already, given the project location and proposed scope of work, we recommend that contract provisions be included to require the Contractor to submit for review and approval, both traffic control and construction staging plans. We will work closely with the Contractor to ensure the plans are submitted and approved in a timely manner, and that the plans are implemented properly.

To minimize the potential for any issues, well-before the beginning of each shift, our Inspector will review with the Contractor the day's planned activities and make sure that before the first cone or k-rail is set, that both the Contractor and our Inspector are on the same page in terms of the day's traffic control set up and staging. Taper lengths and advance warning signage for lane closures are especially critical given the rolling terrain. Our inspectors have a razor-sharp knowledge and understanding of the latest WATCH manual and CA MUTCD requirements. They are experienced in reviewing traffic control and staging plans and can immediately confirm if the Contractor's traffic control setup meets both the requirements of approved plans as well as established standards. The work requires 24-hour lane closures with k-rail. At the end of each shift, we will ensure that the work areas are secured, and properly blocked off to vehicular and pedestrian traffic.

Should there be any questions or if a modification to the traffic control plans is required, we will work closely with the Contractor as well as City staff to resolve these issues and provide the necessary supplemental direction to the Contractor. If need be, we have an in-house Traffic Engineer and Traffic Engineering design team that can readily provide assistance and technical support.

Pedestrian/Equestrian Trail Access

The project includes significant parkway construction work including rough grading, retaining wall construction, sidewalks, driveways, ADA curb ramps and curb and gutter. This work will impact pedestrian as well as equestrian trail access on the south side of Bastanchury. We will work with the Contractor to sequence and phase the work so as not to create significant impacts to pedestrian and equestrian trail access. One consideration is to phase the work such that parkway improvements on the south side of Bastanchury commence only after the north side parkway improvements are constructed. This will allow for the temporary diversion of both pedestrian and equestrian trail traffic to the north side, completely out of the way of the construction activities on the south side.



If this is not feasible, then at a minimum, we will ensure that a clear and safe path of travel for pedestrian traffic, with proper signage is provided on the south side at all times. Unfortunately, with the construction of the proposed retaining wall, the equestrian trail may need to be temporarily closed.

As with vehicular traffic control, we will meet with the Contractor at the beginning of each shift to ensure all potential issues related to pedestrian and equestrian trail traffic are addressed.

Waterline Improvements

Installation of the proposed water main will require tie-ins with existing system. We will work closely with the Contractor as well as City and Water District staff to schedule and coordinate required shut-downs in advance of tie-ins. We will work with the Contractor to provide sufficient advanced notification to affected properties. We will ensure that all valve assemblies are completed and inspected prior to tie-in, to minimize shut-down durations. Also, we will provide all required deputy inspection for welding, and ensure that all pressure testing and disinfection meets State Division of Drinking Water standards.

Both our design and construction support teams have worked with Water District staff on several previous City projects. We are familiar with the design and construction practices and standards. This in turn will help facilitate any construction and/or coordination issues we may encounter.

Storm Drain Improvements (Shoring)

Installation of some segments will require deep excavation and shoring. We will work closely with the Contractor, the engineering design team, as well as the geotechnical

engineer to ensure that engineering shoring plans are submitted, reviewed and approved in a timely manner, and that the approved shoring system is properly installed and maintained during construction. Once work is completed, we will work with the Contractor to ensure that both pits are backfilled to the satisfaction of the geotechnical engineer.

Utility Conflicts

The drainage plans note an existing underground line labeled “E”, running parallel to RCP Line A-1c. The City has stated this is an underground electrical line and anticipates this line will be relocated prior to start of construction. Should relocation not occur in due time and depending upon actual alignment and elevation, this line may potentially pose a conflict with the proposed RCP line and junction structure (~STA 2+46). We recommend this potential conflict be resolved prior to start of construction.

The drainage plans also note existing 8” and 12” sewers running underneath the proposed RCP Line A-1a. We will work closely with the Contractor to ensure these facilities are protected in place as the proposed RCP is constructed.

The water improvement plans note an existing 79” water main with a nominal (1.39’) clearance from the proposed PVC main as well as an existing 24” RCP with a nominal (1’) clearance from the proposed CML and C main. Given the water improvement plans have not been finalized, we recommend the proposed water main alignment be re-evaluated by the engineering team to provide more clearance. This in turn minimizes the potential for conflicts as well as facilitates the protection of these existing lines during construction.

If unforeseen conflicts do arise during construction, our team will work closely with the Contractor and the engineering design team to develop the most cost-effective and cost-efficient solution. Our construction management and inspection team has had extensive experience in resolving utility conflicts, and working in concert with our in-house engineering design team, have devised both creative and practical solutions.

We will ensure that all stakeholders and potentially affected utilities are invited to the pre-construction meeting and, if necessary, separate focus groups are conducted with these utilities so their concerns can be noted and addressed accordingly.

Traffic Signal Equipment – Procurement/Testing

We understand traffic signal poles, cabinets and controllers are long-lead time items. We will work closely with the Contractor, City staff and engineering team



to ensure material submittals and shop drawings are submitted, reviewed, and approved in a timely manner. Once approvals are received, we will follow up with the Contractor on a regular basis to ensure fabrication is on schedule.

We will also work closely with the Contractor, City staff and engineering team to coordinate the testing and programming of the new controller, signal turn-on, and interconnection work.

Coordination with Residential Development

As mentioned earlier, there is an ongoing residential development (Shea Homes) fronting the north side of Bastanchury Road. Construction of the proposed improvements on Bastanchury will require close coordination with the developers.

Our team has recent experience in coordinating on-site and off-site improvements associated with a proposed residential development. We served as Project Manager/ Owner Representative for Kennedy-Wilson (Partner) on the **Saddle Crest Development** project off of Santiago Canyon Road in Lake Forest/Unincorporated Orange County. Our team was involved in the coordination of off-site improvements including: the widening of Santiago Canyon Road; associated parkway improvements (PCC sidewalk, driveway/entrance, curb gutter, and ADA curb ramps); water, sewer and storm drain improvements; and, the removal of existing overhead power and telecommunication lines. These are the very same elements involved in this project.

Public Notification and Public Relations

As mentioned earlier, the surrounding development is residential. And while no private properties front the project area, residents will still experience impacts from

the proposed construction work. Typically, the contract documents require the Contractor provide advance notification to all affected properties. We will ensure the formatting and language of the notification is reviewed and approved by the City and that it is issued in a timely manner. Our Inspector will also ensure that verbal follow-ups are made prior to and during construction so as to minimize complaints. Indeed all of our Inspectors and Construction Managers are adept at responding to public complaints and concerns.

If necessary, our team can track project-related public correspondence to make sure complaints and concerns are addressed. On recent citywide street improvement projects for the City, we maintained a Public Correspondence Log that facilitated our efforts to respond and address public complaints and concerns in a timely manner.

NV5 PROJECT APPROACH

Our approach to construction support services is centered on our established policy of consistent and effective employee oversight. The Project Manager will closely monitor projects to verify that our construction managers and inspectors are performing within the guidelines of our established management and inspection procedures, which are patterned after the Caltrans Construction Manual. NV5 takes this a step further by formulating and implementing a proactive public relations program and a concerted effort to identify previously unforeseen potential claims.

COVID-19 Safety Procedures

We take the health and safety of our employees and those that they come into contact with high importance. NV5 has instituted field safety protocols based on guidelines from the CDC, WHO and OSHA to help reduce our staff's risk of exposure to COVID-19.

Communication

Our construction support team will be the point of contact for all project correspondence and communication between the City, the Contractor, the design team and other project stakeholders. Our team will be in constant communication with the City's project manager, making sure he or she has updated information on project status, as well as any on-site or any contractual issues.

Staying Connected

Our staff is equipped with the technology to work efficiently and stay organized and connected with our clients. NV5 utilizes Microsoft Teams to efficiently collaborate; easily



find, share and edit files in real time; meet virtually; and streamline workflows all on one single platform. NV5 is committed to maintaining a safe and productive workplace environment while following COVID-19 guidelines and has access to several virtual meeting platforms in addition to Microsoft Teams, including GoToMeeting and Zoom.

Best Management Practices

Our construction support services team is well-versed in National Pollutant Discharge Elimination System (NPDES) requirements and experienced in implementing best management practices. We will monitor the implementation, maintenance and any required modification of the approved Stormwater Pollution Prevention Plan (SWPPP) and Water Quality Management Plan (WQMP). In the event that the project specifications for developing the SWPPP or WQMP are inadequate and cannot support the project needs or meet current NPDES requirements, we will work closely with the design consultants to incorporate the required provisions into the project specifications to meet these goals.

Mobility

Each member of our construction support services team has access to a mobile office that includes a laptop, internet/email access, mobile phone, mobile project files, digital cameras and other required materials. Our team members are always available via mobile phone and email for easy access and continuous communication.

Web-based Document Control System

Our web-based CMIS software is designed to provide the Construction Manager the capability to manage project information efficiently and effectively while maintaining full transparency with the City and the design engineer in managing the construction Contractor. The City, as well as NV5's Construction Manager and inspectors, have real-time CMIS web-based software installed on an iPad or computer to record inspectors' daily reports and can be utilized on any device with internet access including iPhone and Android mobile devices. The City can log-in and view at any time the submittals, RFIs, correspondence, WSWD, Contractor's Pay Apps with DIR submissions and apprentice requirements documentation, and NV5 Inspection reports from any laptop, computer, or mobile device at any time.

Additionally, our inspectors send out supplementary email blasts noting elements of significance performed, along with photographs for a quick glance of work, enabling all City staff to immediately be up to date. At the end of the project, the data within the CMIS platform will be downloaded for archival with the City within 60 calendar days of the Notice of Completion.

Labor Compliance and Wage Monitoring

We will review funding with the City to confirm any special requirements affecting the work, and identify accounting and reporting requirements. We will enforce any applicable Labor Compliance requirements and assure all certified payroll reports are submitted each month with the payment applications. Our trusted subconsultant **Pacific Resources Services** will review these reports, verify payroll amounts against wage reports and then submit to the City for filing. They can also perform monthly EEO interviews if necessary, and complete the required forms. NV5 and Pacific Resources Services will work with the Contractor to maintain adequate project files and to correct any and all labor compliance violations.

Customer Service and Public Outreach

Our first line of customer service comes from our inspectors. Our inspectors know the value of maintaining great relations with residents, business owners and anyone affected by a project, and they have proven to be a valuable resource in appeasing public concerns and resolving field issues.

An effective and informative public outreach program that informs all affected residents, property owners and motorists about construction impacts and possible traffic delays is critical to the success of any project.

Key elements of our public outreach program include:

- Verbal and written notifications
- Informational flyers about the project
- Advanced written notices about upcoming work
- Verbal communication follow-up to ease public concerns, enabling residents and business to prepare for any anticipated impacts

PROJECT CONTROLS

Schedule Control

Our construction support services team gives considerable attention to monitoring project schedules. We will coordinate, review and make recommendations for changes to the Critical Path Method (CPM) schedule generated by the Contractor. As changes or discrepancies occur between the CPM schedule and as-built conditions, the project schedule and cost estimates will be updated. We will review the Contractor's schedule on a weekly basis and will maintain an as-built/working schedule to reflect as-built conditions to date.

Cost Control and Reporting

Cost control is a key element to successfully delivering a project and must be thoroughly integrated with other control methods (scope change control, schedule control and quality control) to assure that the City receives full value for all funds earmarked for the project. Key elements of our cost control program include establishment and maintenance of a project budget; value engineering and constructability reviews of project plans and specifications; sufficient vetting of owner-requested or contractor-generated changes; thorough review and evaluation of change order cost proposals; close monitoring of force account work; and regular maintenance of a change order log. NV5 provides a monthly status report that includes work accomplished during the reporting period, work to be completed during the next reporting period, budget and schedule status, and a summary of issues and concerns pending resolution.

QUALITY ASSURANCE AND QUALITY CONTROL

To assure compliance with the plans and specifications, we will implement a comprehensive quality assurance and quality control (QA/QC) program involving the following steps:

- We will perform a thorough review of the contract documents. This responsibility will include the following tasks:

- Checking plans and specifications against requirements that have been associated with issues that occurred on similar jobs.
- Comparing existing elevations, grades and details, etc., shown on plans with those at the actual site.
- Reporting all errors, omissions and deficiencies, etc., to the City and engineering design team.
- Keeping a marked-up set of plans and specifications for quick reference.
- Anticipating the Contractor's operations by reviewing the plans and specifications for each one before it begins.
- Before start of construction, we will discuss with the Contractor the definable features of work to assure that documentation is complete, materials are on hand and those who are to perform the work understand the scope in its entirety.
- At the onset of the work, we will perform an initial inspection to determine whether the Contractor thoroughly understands and is capable of accomplishing the work as specified.
- We will assure that the Contractor has an established safety program and that regular safety meetings are conducted. We will also assure that the Contractor meets all OSHA safety requirements.
- The construction inspector will perform follow-up inspections on a daily basis for the purpose of assuring that the controls established during the initial inspection continue to provide work that conforms to the contract requirements and all applicable standards. Unsatisfactory workmanship, materials and construction deficiencies will be documented and reported for future identification and traceability. Notices of non-compliance will be issued to the Contractor and corrective and preventive action will be taken to assure compliance with the contract documents.
- We will conduct a monthly review of the as-built drawings and assure that all items are considered in the changes of the record drawings, including:
 - The size, type and location of existing and new utility lines
 - The layout and schematic drawings of electrical circuits and piping
 - Verification of alignment and cross sections
 - Changes in the location of equipment, etc.
- Finally, we will review and approve the as-built drawings to complete the project turnover and begin the warranty period.

ANTICIPATED SERVICES

None.

ADDITIONAL SERVICES

None.

EXHIBIT B

SCHEDULE OF COMPENSATION

Payment shall be on a “Fixed Fee” basis in accordance with the Consultants Schedule of Compensation attached herewith as Exhibit "B-2" for the work tasks performed in conformance with Section 2.2 of the Agreement. Total compensation for all work under this contract shall not exceed **Three Hundred Sixty-Six Thousand Four Hundred Eighty Thousand Dollars (\$366,480.00)** except as specified in Section 1.2 - Changes and Additions to Scope of Services of the Agreement.

EXHIBIT B-2

FEE SCHEDULE

CITY OF YORBA LINDA

BASTANCHURY ROAD WIDENING FROM CASA LOMA AVE TO EUREKA AVE

Construction Management and Inspection

10 Months (200 Working Days)*

TASK						Total Hrs. By Task	Total Fee
Task No.	TASK DESCRIPTION	CM	INS	ADMIN	Hourly Bill Rate		
1.0	Pre-Construction Phase						
	Review PSE/Field Review	6	16			22	\$3,040
	Preconstruction Meeting	4	2			6	\$900
	Set-up Project Files	2	1	2		5	\$630
	Subtotal Pre-Construction Phase	\$1,920	\$2,470	\$180			\$4,570
2.0	Inspection Services						
	Provide on site inspection services		1600			1,600	\$208,000
	Subtotal Inspection Services	0	\$208,000	\$0			\$208,000
3.0	Construction Management						
	Quality Control	100				100	\$16,000
	Progress meetings	80				80	\$12,800
	Coordinate and Process RFI	100				100	\$16,000
	Coordinate Contractors Submittal Review	32				32	\$5,120
	Coordinate, review, and recommend for approval the contractor's CPM schedule	35				35	\$5,600
	Monitor contractor's maintenance of copies of all contacts, drawings, addenda, change orders, and other documents on site	35				35	\$5,600
	Monitor, evaluate, report and ensure compliance for Water Quality Pollution Prevention	20				20	\$3,200
	Review and evaluate change orders, negotiate on behalf of the City	100				100	\$16,000
	Contract Administration	60		20		80	\$11,400
	Review Contractor's progress payment and recommend for approval	35				35	\$5,600
	Coordinate Testing	35				35	\$5,600
	Subtotal Construction Management	\$101,120	\$0	\$1,800			\$102,920
4.0	Close Out						
	Compile Detail Punch List Items	4	8			12	\$1,680
	Coordinate Close Out Procedures	12	4	12		28	\$3,520
	Monitor completion of project records and as-built	4	4			8	\$1,160
	Oversee completion of the punch list items and final clean up before contractors demobilization	20	40			60	\$8,400
	Coordinate final testing and documentation of regulatory inspections for conformance with the specification	4	8			12	\$1,680
	Final Progress Payment	3	2			5	\$740
	Subtotal Close Out	\$7,520	\$8,580	\$1,080			\$17,180
	Total Hours	691	1685	34		2,410	
	TOTAL FEE CONSTRUCTION MANAGEMENT and INSPECTION	\$110,560	\$219,050	\$3,060			\$332,670
5.0	Construction Support Services						
5.1	Labor Compliance Services (breakdown attached)						\$13,550
5.2	Materials Testing Services (breakdown attached)						\$20,260
NOT TO EXCEED AGGREGATE CONTRACT AMOUNT:							\$366,480

LEGEND

* Based on Construction Duration Outlined in RFP (10 months)

CM = Construction Manager

INS = Inspector

Admin = Admin

EXHIBIT B-2

SUB-TASK 5.1 FEE TABLE



LABOR COMPLIANCE FEE BREAKDOWN

FEES AND RATES

The following hours and rates are proposed based on additional information received.

PACIFIC RESOURCES SERVICES – LABOR RATES 2022				
Staff	Hours Per Month	Burdened Hourly Rate	Monthly Sub-Total	Total for 10 Month Period
Principal	4	\$146.80	\$587.20	\$5,872.00
Senior Analyst	0	\$124.21	0	-0-
Analyst	6	\$101.63	\$609.78	\$6,097.8
Staff Support	2	\$79.05	\$158.10	\$1,581.00
			Total	\$13,550.00

All hourly costs are fully burdened. There are no additional costs (such as mileage, communication, etc.) to our client.

The expected fee for labor compliance monitoring services for the project is based on additional information on the nature and project schedule.

Based on an construction budget of \$5.3 million and construction schedule of 10 months, the proposed a fee is \$13,550.00 **(Thirteen-thousand five-hundred fifty dollars and no cents)**

EXHIBIT B-2

SUB-TASK 5.2 FEE TABLE

MATERIALS TESTING FEE BREAKDOWN

Task 5.2.1: Soils, Aggregate Base & Asphalt Concrete Pavement Inspection					
Senior Soils Field Technician	48	hrs	@	\$110.00	\$5,280.00
Proctor (per curve)	1	ea	@	\$200.00	\$200.00
Expansion Index	1	ea	@	\$160.00	\$160.00
Sieve Analysis	1	ea	@	\$130.00	\$130.00
Hveem Stability & Unit Weight	1	ea	@	\$190.00	\$190.00
Extraction - Ignition Oven (including gradation)	1	ea	@	\$200.00	\$200.00
Senior Engineer/Project Manager	4	hrs	@	\$160.00	\$640.00
				Subtotal:	\$6,800.00
Task 5.2.2: Concrete Retaining Wall and Drainage Structure Inspection					
Special Inspector, Concrete	24	hrs	@	\$110.00	\$2,640.00
Compression Test, 4x8 or 6x12 Cylinder	15	ea	@	\$29.00	\$435.00
Pick Up/Delivery	3	ea	@	\$75.00	\$225.00
Senior Engineer/Project Manager	2	hrs	@	\$160.00	\$320.00
				Subtotal:	\$3,620.00
Task 5.3.3: On-site Welding Inspection of Waterline					
Senior Special Inspector, Welding, ICC	80	hrs	@	\$115.00	\$9,200.00
Senior Engineer/Project Manager	4	hrs	@	\$160.00	\$640.00
				Subtotal:	\$9,840.00
-					
TOTAL PROJECT ESTIMATE:					\$20,260.00

EXHIBIT C

SCHEDULE OF PERFORMANCE

Consultants Project Schedule is made a part of this agreement. Consultant shall complete services presented within the scope of work contained within Exhibit “A” in accordance with the sub-task project schedules included within Exhibit "A".

Consultant shall perform all Services timely in accordance with to be determined construction schedules. Finalized task deliverable dates will be contingent upon actualized schedules, which shall be approved by the Project Managers. Consultant will coordinate with City and Project staff to ensure timely completion of services and adherence to approved task schedules.