

**CITY OF WESTMINSTER
PROFESSIONAL SERVICES AGREEMENT
WITH PARTNERS ENGINEERING AND SCIENCE, INC.**

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is made and entered into this 10th day of June 2026 (“Effective Date”), by and between the CITY OF WESTMINSTER, a municipal corporation (“City”), and Partners Engineering and Science, Inc., a Corporation (“Consultant”).

RECITALS

A. City proposes to utilize the services of Consultant as an independent contractor to perform services on an as needed basis, as more fully described herein.

B. Consultant represents that it has that degree of specialized training and experience contemplated within California Government Code section 37103 and holds all necessary licenses to practice and perform the services herein contemplated.

C. City and Consultant desire to contract for the specific services described in Exhibit “A” and desire to set forth their rights, duties and liabilities in connection with the services to be performed.

D. No official or employee of City has a financial interest, within the provisions of sections 1090-1092 of the California Government Code, in the subject matter of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

1.0 SERVICES PROVIDED BY CONSULTANT

1.1 Scope of Services. City hereby retains Consultant to provide the professional services more particularly described in the Scope of Services and Fee Schedule attached hereto as Exhibit “A” and incorporated herein by reference.

1.2 Professional Practices. All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise City of any changes in any laws that may affect Consultant’s performance of this Agreement.

1.3 Performance to Satisfaction of City. Consultant agrees to perform all the work to the complete satisfaction of the City. Evaluations of the work will be done by the City Manager or his or her designee. If the quality of work is not satisfactory, City in its discretion has the right to:

- a. Meet with Consultant to review the quality of the work and resolve the matters of concern;
- b. Require Consultant to repeat the work at no additional fee until it is satisfactory; and/or
- c. Terminate the Agreement as hereinafter set forth.

1.4 Warranty. Consultant warrants that it shall perform the services required by this Agreement in compliance with all applicable Federal, State and local laws and ordinances applicable to the services required under this Agreement including all employment laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment. Consultant shall indemnify and hold harmless City from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against City for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of Consultant's performance under this Agreement.

1.5 Non-Discrimination. In performing this Agreement, Consultant shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military or veteran status, except as permitted pursuant to section 12940 of the Government Code. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training, including apprenticeship. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, a notice setting forth provisions of this non-discrimination clause.

Consultant shall, in all solicitations and advertisements for employees placed by, or on behalf of Consultant shall state that all qualified applicants will receive consideration for employment without regard to age, race, color, religion, sex, marital status, national origin, or mental or physical disability. Consultant shall cause the paragraphs contained in this Section to be inserted in all subcontracts for any work covered by the Agreement, provided that the foregoing provisions shall not apply to subcontracts for standard commercial supplies or raw materials.

1.6 Non-Exclusive Agreement. Consultant acknowledges that City may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

1.7 Delegation and Assignment. This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of City. Consultant recognizes that the qualifications and experience of the personnel to

be used are vital to professional and timely completion of the services. The key personnel assigned to perform portions of the services shall remain assigned through completion of the Services, unless otherwise mutually agreed by the parties in writing, or caused by hardship or resignation in which case substitutes shall be subject to City approval.

1.8 Subcontracting. Consultant shall not subcontract any portion of the work required by this Agreement without prior written approval by the City. Subcontracts, if any, shall contain a provision making them subject to all provisions of this Agreement, including without limitation, the indemnity and insurance obligations. Consultant acknowledges and agrees that the City is an intended beneficiary of any work performed by any subconsultant for purposes of establishing a duty of care between any subconsultant and the City.

1.9 Confidentiality. Employees of Consultant in the course of their duties may have access to financial, accounting, statistical, and personnel data of private individuals and employees of City. Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without written authorization by City. City shall grant such authorization if disclosure is required by law. All City data shall be returned to City upon the termination of this Agreement. Consultant's covenant under this Section shall survive the termination of this Agreement.

2.0 COMPENSATION AND BILLING

2.1 Compensation. Consultant shall be paid in accordance with the fee schedule set forth in Exhibit "A" attached hereto and made a part of this Agreement. Consultant's total compensation shall not exceed one hundred forty-two thousand, six hundred one dollars and eighty cents (\$142,601.80).

2.2 Additional Services. Consultant shall not receive compensation for any services provided outside the scope of services in Exhibit "A" unless the City Manager or designee, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable. Should Consultant perform any additional services which have not been approved, in writing, by the City, Consultant does so at its own risk and costs.

2.3 Method of Billing. Consultant may submit invoices to the City for approval on a progress basis, but no more often than once a month. Said invoice shall be based on the total of all Consultant's services which have been completed to City's sole satisfaction. City shall pay Consultant's invoice within forty-five (45) days from the date City receives said invoice. Each invoice shall describe in detail the services performed, the date of performance, and the associated time for completion. Any additional services approved and performed pursuant to this Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

2.4 Records and Audits. Consultant shall maintain complete and accurate records with respect to costs incurred under this Agreement. All such records shall be clearly identifiable as relating to this Agreement and shall be maintained in accordance with generally recognized accounting principles. Consultant shall allow a representative of the City (including the California State Auditor if requested by the City pursuant to Government Code § 8546.7) during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall retain and allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement. and shall be made available to City or its Project Manager for inspection and/or audit at mutually convenient times from the Effective Date until three (3) years after termination of this Agreement.

3.0. TIME OF PERFORMANCE

3.1 Commencement and Completion of Work. Unless otherwise agreed to in writing by the parties, the professional services to be performed under this Agreement shall commence within five (5) days from the Effective Date of this Agreement. Said services shall be performed in strict compliance with the Project Schedule approved by City as set forth in attached Exhibit “A” hereto and incorporated herein. The Project Schedule may be amended by mutual agreement of the parties. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

3.2 Excusable Delays. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, pandemics, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party. If a delay beyond the control of the Consultant is encountered, a time extension may be mutually agreed upon in writing by the City and the Consultant. The Consultant shall present documentation satisfactory to the City to substantiate any request for a time extension.

4.0 TERM AND TERMINATION

4.1 Term. This Agreement shall commence on the Effective Date and continue for a period of 12 months, ending on June 10, 2027, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.

4.2 Notice of Termination. The City has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing written notice to Consultant. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the City.

4.3 Termination.

4.3.1 Termination Without Cause. In the event of termination without cause, City shall pay Consultant for reasonable costs incurred and professional services satisfactorily performed up to and including the date of City's written notice of termination. Compensation for work in progress shall be prorated based on the percentage of work completed as of the effective date of termination in accordance with the fees set forth herein. In ascertaining the professional services actually rendered hereunder up to the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents pertaining to the services contemplated herein whether delivered to the City or in the possession of the Consultant.

4.3.2 Termination for Cause. In the event of termination for cause, Consultant will be liable to City for all costs to cure the deficiencies, and all loss, cost, expense, damage, and liability resulting from such breach and termination. The City is entitled to withhold any payments otherwise owed to Consultant to the extent of such costs, losses, expenses, damages, and liability.

4.4 Documents. In the event of termination of this Agreement, all documents prepared by Consultant in its performance of this Agreement including, but not limited to, finished or unfinished design, development and construction documents, data studies, drawings, maps and reports, shall be delivered to the City within ten (10) days of delivery of termination notice to Consultant, at no cost to City. Any use of uncompleted documents without specific written authorization from Consultant shall be at City's sole risk and without liability or legal expense to Consultant.

5.0 **INSURANCE**

5.1 Minimum Scope. Prior to City's execution of this Agreement and Consultant's commencement of the services, Consultant shall secure, submit proof of, and shall thereafter maintain without interruption, until completion of and acceptance by the City of the services, such workers' compensation, commercial general and automobile liability insurance as shall protect Consultant, its subconsultants and the Additional Insured's herein, from any and all claims for damages for personal injury, including accidental death, as well as any and all claims for property damage which may arise from or which may concern operations under this Agreement, whether such operations be by or on behalf of Consultant, any subconsultant or anyone directly or indirectly employed by, connected with or acting for or on behalf of any of them.

5.2 Carrier Ratings. All liability insurance shall be issued by an insurance company or companies authorized to transact liability insurance business in the State of California with a policy holder's rating of A or higher and a Financial Class of VII or larger.

5.3 Minimum Limits. Consultant shall maintain minimum limits of insurance as follows:

5.3.1 Commercial General Liability. Consultant's commercial general liability insurance policy shall cover both bodily injury (including death) and property damage (including,

but not limited to, premises operations liability, products-completed operations liability, independent contractor's liability, personal injury liability, and contractual liability) in an amount not less than \$1,000,000 per occurrence, an aggregate limit for products/completed operations in the amount not less than \$2,000,000.

5.3.2 Automobile Liability Insurance. Consultant's automobile liability policy shall cover both bodily injury and property damage in an amount not less than \$1,000,000 per occurrence and an aggregate limit of not less than \$1,000,000. All of Consultant's automobile and/or commercial general liability insurance policies shall cover all vehicles used in connection with Consultant's performance of this Agreement, which vehicles shall include, but are not limited to, Consultant owned vehicles, Consultant leased vehicles, Consultant's employee vehicles, non-Consultant-owned vehicles and hired vehicles.

5.3.3 Workers' Compensation. The following is required in connection with the Worker's Compensation insurance:

- a. Workers Compensation insurance with statutory limits as required by the Labor Code of the State of California.
- b. Employers Liability with limits of \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.
- c. The policy shall include a written waiver of the insurer's right to subrogate against the City.

5.3.4 Professional Liability. Consultant shall maintain professional liability insurance appropriate to Consultant's profession with a limit of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate. The retroactive date of the policy, if any, shall be prior to the start of the services. This insurance shall be maintained during the term of this Agreement and for at least three consecutive years following the completion of the services.

5.3.5. Additional Insurance. If the Consultant maintains broader coverage and/or higher coverage limits than the minimum amounts shown above, then the City requires and shall be entitled to the broader coverage for and/or the higher coverage limits maintained by the Consultant. Any available insurance proceeds exceeding the specified minimum limits of insurance and coverage shall be available to the City.

5.4 Notice of Cancellation and Renewals. The policies shall not be canceled unless thirty (30) days prior written notification of intended cancellation has been given to City by certified or registered mail (this obligation may be satisfied in the alternative by requiring such notice to be provided by Consultant's insurance broker and set forth on its Certificate of Insurance provided to City). Consultant agrees that upon receipt of any notice of cancellation or alteration of the policies, Consultant shall, within five (5) days, procure other policies of insurance similar in all respects to the policy or policies to be cancelled or altered. Consultant shall furnish to the City copies of any endorsements that are subsequently issued amending coverage or limits within fourteen (14) days of the amendment.

5.5 All Coverages. The insurance policy or policies shall also comply with the following provisions:

5.5.1 Scope of Insurances. Policies shall include premises/operations, products completed operations, independent contractors, owners and contractors' protection, explosion, collapse, underground hazard, broad form contractual, personal injury with employment exclusion deleted, and broad form property damage.

5.5.2 Waiver of Subrogation. The policy shall be endorsed to waive any right of subrogation against the City and its subconsultants, employees, officers, agents and directors for work performed under this Agreement.

5.5.3 Claims Made Basis. If policies are written on a claims made basis, the certificate should so specify and the policy must continue in force for one (1) year after completion of the services. The retroactive date of the coverage must also be listed.

5.5.4 Primary, Not Contributory. The policy shall specify that the insurance provided by Consultant will be considered primary and not contributory to any other insurance available to the City.

5.5.5 City Named Additional Insured. All policies, except Worker' Compensation and Professional Liability, shall name the City as an Additional Insured and shall contain the following language: "Solely with respect to work done by and on behalf of the name insured for the City of Westminster, the City of Westminster, and its officers, officials, employees and agents are added as additional insureds under this policy."

5.5.6 Combination of Insurances is Acceptable. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

5.5.7 Deductibles Exceeding \$25K. Any deductible or self-insured retention shall be shown on the certificate of insurance. If the deductible or self-insured retention exceeds \$25,000.00, it shall be approved in advance by City. Consultant is responsible for any deductible or self-insured retention and shall fund it upon City written request, regardless of whether Consultant has a claim against the insurance or is named as a party in any action involving City.

5.6 Certificates of Insurance, Additional Insured Endorsements and Deductibles. Prior to execution of the Agreement, and thereafter upon City's request, Consultant shall furnish City with original certificates of insurance and additional insured endorsements setting forth evidence of all insurance coverage required by this Article. Each certificate and endorsement shall be signed by a person authorized by that insurer to bind coverage on its behalf. The City shall continue to be an additional insured for completed operations for (1) year after completion of the work.

5.7 Consultant's Failure to Provide Required Insurance. Failure to maintain required insurance at all times shall constitute a default and material breach. In such event, Consultant shall immediately notify City and cease all performance under this Agreement until further directed by the City. In the absence of satisfactory insurance coverage, City may, at its discretion and sole option: (a) procure insurance with collection rights for premiums, attorneys' fees and costs against Consultant by way of set-off or recoupment from sums due Consultant; (b) immediately terminate or suspend Consultant's performance of the Agreement; (c) pay Consultant's premiums for renewal of Consultant's coverage; or (d) self-insure the risk, with all damages and costs incurred, by judgment, settlement or otherwise, including attorneys' fees and costs, being collectible from Consultant, by way of set-off or recoupment from any sums due Consultant. Upon demand, Consultant shall repay City for all sums that City paid to obtain, renew, reinstate, or replace the insurance, or City may offset the cost against any monies that the City may owe Consultant.

5.8 Verification of Coverage. City shall have the right to obtain complete and certified copies of Consultant's and subconsultants' insurance policies (including, but not limited to, the declarations page, form list and riders), endorsements or certificates required this Agreement, upon request (including, but not limited to, the declarations page, form list and riders).

5.9 No Limitation. Consultant's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of the Consultant or its subconsultants to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

5.10 Subconsultants Insurance. The Consultant shall include in all subcontracts a requirement that its subconsultants obtain and maintain, at a minimum, all insurance required by this Agreement. The City reserves the right to request certificates of insurance from the Consultant for its subconsultants. The Consultant acknowledges that regardless of insurance obtained by its subconsultants, the Consultant will be responsible to the City for any and all acts of its subconsultants.

6.0 INDEMNIFICATION

6.1 Indemnification and Hold Harmless. If Consultant is not a "design professional" under Civil Code 2782.8, then the requirements of this section 6.1 shall apply instead of the requirements of section 6.2, below. Consultant agrees to defend, indemnify, hold free and harmless the City, its elected officials, officers, agents and employees, at Consultant's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the City, its elected officials, officers, agents and employees arising out of the performance of the Consultant, its employees, and/or subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Consultant, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the Consultant, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected officials, officers, agents and employees based upon the work performed by the Consultant, its employees, and/or authorized subcontractors under this

Agreement, whether or not the Consultant, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Consultant's Proposal, which shall be of no force and effect.

6.2 Indemnification and Hold Harmless for Design Professionals. If Consultant is a "design professional" under Civil Code 2782.8, then the requirements of this section 6.2 shall apply instead of the requirements of section 6.1, above. Consultant agrees to defend, indemnify, hold free and harmless the City, its elected officials, officers, agents and employees, at Consultant's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the City, its elected officials, officers, agents and employees arising out of the negligence, recklessness, or willful misconduct of the Consultant, its employees, and/or subconsultants, in the performance of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Consultant, its employees, and/or authorized subconsultants, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the Consultant, its employees, and/or authorized subconsultants, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected officials, officers, agents and employees based upon negligence, recklessness, or willful misconduct in the work performed by the Consultant, its employees, and/or authorized subconsultants under this Agreement, whether or not the Consultant, its employees, and/or authorized subconsultants are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City. In no event shall the cost to defend charged to Consultant exceed Consultant's proportionate percentage of fault. However, notwithstanding the previous sentence, in the event one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, Consultant shall meet and confer with other parties regarding unpaid defense costs. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Consultant's Proposal, which shall be of no force and effect.

7.0 GENERAL PROVISIONS

7.1 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations.

7.2. Amendments in Writing. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification.

7.3. Priority of Documents. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement. Any term in an exhibit that proposes obligations on the City not contained in this Agreement shall be void.

7.4 Representatives. The City Manager or his or her designee shall be the representative of City for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the City, called for by this Agreement, except as otherwise expressly provided in this Agreement. Consultant shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of Consultant called for by this Agreement, except as otherwise expressly provided in this Agreement.

7.5 Project Managers. Consultant shall designate a Project Manager who shall represent it and be its agent in all consultations with City during the term of this Agreement. Consultant or its Project Manager shall attend and assist in all coordination meetings called by City.

7.6 Notices. Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: (a) at the time of delivery if such communication is sent by personal delivery, and (b) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CONSULTANT:

Partner Engineering & Science
2154 West Torrance Blvd.,
Suite 200
Torrance, CA 90501
Tel: (310) 765-7243
Attn: Jenny Redlin

IF TO CITY:

City of Westminster
8200 Westminster Blvd.
Westminster, CA 92683
Tel: (714) 548-3456
Attn: Tuan Pham

7.7 Attorneys' Fees. If litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

7.8 Governing Law. This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws.

7.9 Venue. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California.

7.10 Assignment. Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without

City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement.

7.11 Independent Contractor. Consultant is and shall be acting at all times as an independent contractor and not as an employee of City. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. 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 agents or employees are in any manner agents or employees of City. Consultant shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Consultant shall 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 further agrees to indemnify and hold City harmless from any failure of Consultant to comply with the applicable worker's compensation laws. City shall have the right to 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 paragraph.

7.12 Conflicts with Independent Contractor. Consultant/consultant's duties and services under this Agreement shall not include preparing or assisting the public entity with any portion of the public entity's preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with the public entity. The public entity entering into this Agreement shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of this project. Consultant/consultant's participation in the planning, discussions, or drawing of project plans or specifications shall be limited to conceptual, preliminary, or initial plans or specifications. Consultant/consultant shall cooperate with the public entity to ensure that all bidders for a subsequent contract on any subsequent phase of this project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by Consultant pursuant to this Agreement.

7.13 PERS Eligibility Indemnification. If Consultant or any employee, agent, or subconsultant of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subconsultants, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subconsultants providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

7.14 Cooperation. If any claim or action is brought against City relating to Consultant's performance or services rendered under this Agreement, Consultant shall render any reasonable assistance and cooperation which City might require.

7.15 Ownership of Documents. All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, files and tapes furnished or prepared by Consultant or any of its subconsultants in the course of performance of this Agreement, shall be and remain the sole property of City. Consultant agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of City. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of City and without liability or legal exposure to Consultant. City shall indemnify and hold harmless Consultant from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from City's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by Consultant. Consultant shall deliver to City any findings, reports, documents, information, data, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other Project related items as requested by City or its authorized representative, at no additional cost to the City.

7.16 Public Records Act Disclosure. Consultant has been advised and is aware that this Agreement and all reports, documents, information and data, including, but not limited to, computer tapes, discs or files furnished or prepared by Consultant, or any of its subconsultants, pursuant to this Agreement and provided to City may be subject to public disclosure as required by the California Public Records Act (California Government Code section 7920.000 *et seq.*). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in the California Government Code section 7924.510, and of which Consultant informs City of such trade secret. The City will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The City shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

7.17 Conflict of Interest. Consultant and its officers, employees, associates and subconsultants, if any, will comply with all conflict of interest statutes of the State of California applicable to Consultant's services under this agreement, including, but not limited to, the Political Reform Act (Government Code sections 81000, *et seq.*) and Government Code section 1090. During the term of this Agreement, Consultant and its officers, employees, associates and subconsultants shall not, without the prior written approval of the City Representative, 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 subconsultants to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

7.18 Responsibility for Errors. Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall provide clarification and/or explanation as may be required by the City's representative, regarding any services rendered under this Agreement at no additional cost to City. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to City, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of City and to participate in any meeting required with regard to the correction.

7.19 Prohibited Employment. Consultant shall not directly solicit for employment nor hire any employee of City while this Agreement is in effect. Notwithstanding the above, this provision shall not apply to any publicly advertised position to which an employee, without enticement or promises by Consultant, applies.

7.20 Order of Precedence. In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of any document, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over the document referenced.

7.21 Costs. Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

7.22 Binding Effect. This Agreement binds and benefits the parties and their respective permitted successors and assigns.

7.23 No Third-Party Beneficiary Rights. This Agreement is entered into for the sole benefit of City and Consultant and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

7.24 Headings. Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

7.25 Construction. The parties have participated jointly in the negotiation and drafting of this Agreement and have had an adequate opportunity to review each and every provision of the Agreement and submit the same to counsel or other consultants for review and comment. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by

virtue of the authorship of any of the provisions of this Agreement.

7.26 Amendments. Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

7.27 Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

7.28 Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

7.29 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

7.30 Signing 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 and that by doing so the parties hereto are formally bound to the provisions of this Agreement.

[Signatures appear on following page.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CONSULTANT

[Name and Title]

Date: _____

[Name and Title]

Date: _____

CITY OF WESTMINSTER

Christine Cordon, City Manager

Date: _____

ATTEST:

Sandra Escudero, Interim City Clerk

APPROVED AS TO FORM:

Scott Porter, City Attorney

Date: _____

APPROVED AS TO INSURANCE:

Jodie Griner, Risk Manager

Date: _____

EXHIBIT "A"

SCOPE OF SERVICES