

**CITY OF SAND CITY**

**RESOLUTION SC 20-37, 2020**

**RESOLUTION OF THE CITY COUNCIL OF SAND CITY  
AUTHORIZING THE CITY MAANGER TO RENEW A PROFESSIONAL SERVICE  
AGREEMENT WITH HARRIS & ASSOCIATES IN THE AMOUNT OF \$200,000 TO PROVIDE  
CITY ENGINEERING SERVICES TO THE CITY OF SAND CITY FOR FISCAL YEAR 2020-  
2021**

**WHEREAS**, on August 6, 2019, the City Council of Sand City (the City) approved Resolution 19-61 authorizing the city manager to enter into an agreement with Harris & Associates (Harris) to provide city engineering services to the City for fiscal year 2019-2020; and

**WHEREAS**, on August 20, 2019, the City executed a Professional Service Agreement (PSA) with Harris for city engineering services for the term August 20, 2019 through June 30, 2020, which may be renewed annually, and

**WHEREAS**, Mr. Leon D. Gomez has adequately served as City Engineer since June 2014 per Resolution SC 14-38, and is qualified to continue to provide city engineering services to the City of Sand City; and

**WHEREAS**, since August 2019, Mr. Leon D. Gomez and the Harris team have provided a high level of professional city engineering services to the City and are currently involved in a number of City projects, and;

**WHEREAS**, a renewal of the Professional Service Agreement with Harris, attached as Exhibit A and incorporated herein by reference, is necessary in order for the City to continue to receive city engineering services for fiscal year 2020-2021, and;

**WHEREAS**, the City has budged \$200,000 for city engineering services for fiscal year 2020-2021 and Harris has agreed to this not to exceed amount, unless written authorization is provided by the city manager; and

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of Sand City does hereby authorize the following:


1. The City Manager is authorized to renew the Professional Service Agreement with Harris & Associates for City Engineering Services in the amount of \$200,000 for fiscal year 2020-2021.
2. The term of this renewal shall be from July 1, 2020 and shall expire on June 30, 2021, unless renewed or extended in writing by both parties.

**Resolution SC 20-37, 2020**

**PASSED AND ADOPTED** by the City Council of Sand City this 2<sup>nd</sup> day of June, 2020, by the following vote:

AYES: Council Members Blackwelder, Carbone, Cruz, Hawthorne, Sofer  
NOES: None  
ABSENT: None  
ABSTAIN: None

APPROVED:

  
\_\_\_\_\_  
Mary Ann Carbone, Mayor

ATTEST:

  
\_\_\_\_\_  
Connie Horca, Acting City Clerk

**CITY OF SAND CITY**

**RESOLUTION SC 19-61, 2019**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAND CITY AUTHORIZING THE ACTING CITY MANAGER TO ENTER INTO AN AGREEMENT WITH HARRIS AND ASSOCIATES TO PROVIDE CITY ENGINEERING SERVICES FOR THE CITY OF SAND CITY**

**WHEREAS**, Leon Gomez, P.E., has provided city engineering services through the firm of Creegan & D'Angelo from July 2013 through July 2019 and is now employed with the firm of Harris and Associates; and

**WHEREAS**, during his tenure with Creegan & D'Angelo, Leon Gomez participated in all aspects of Sand City's engineering functions including development of a 5 year capital improvement program (CIP), public works and street rehabilitation projects, development review services, and management of the City's storm water program; and

**WHEREAS**, due to his knowledge and experience with City functions, the City desires to retain Leon Gomez as the City's City Engineer serving as the principal engineer through the firm of Harris and Associates; and

**WHEREAS**, the City finds that Mr. Gomez has the demonstrated competence and necessary professional qualifications as required by Sand City Municipal Code section 12.18.050(F) thus allowing the City to dispense with formal bidding requirements; and

**WHEREAS**, for over 40 years, Harris and Associates has provided communities with solutions to complex challenges in civil engineering, construction management, financing and planning, and focuses on serving clients in the municipal, water, transportation, and educational markets; and

**WHEREAS**, the proposal to provide City Engineering Services by Harris and Associates, attached as Exhibit A is incorporated herein by reference; and

**WHEREAS**, the estimated cost for City Engineering services is not to exceed \$200,000 as approved in the 2019/2020 fiscal year budget adopted at the July 16, 2019 Council meeting, unless written authorization is provided by the Acting City Manager; and

**WHEREAS**, the attached Service Agreement does not constitute a 'project' as defined by the California Environmental Quality Act (CEQA) section 15378 and section 15060 (c)(2)&(3) as it has no direct or indirect physical change to the environment.

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of Sand City does hereby authorize the following:

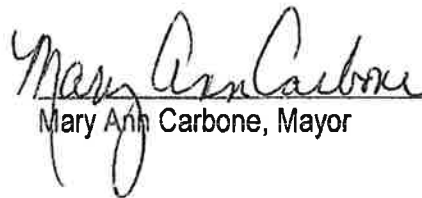
**Sand City Resolution SC 19-61, 2019**

1. The Mayor and Acting City Manager are hereby authorized to enter into a Professional Services Agreement with Harris & Associates based on the attached Proposal to Provide City Engineering Services (Exhibit A), with a cost not to exceed \$200,00 for the 2019-20 fiscal year.
2. The term of the Service Agreement will be annually from July 1, 2019 through June 30, 2020.
3. Harris and Associates will maintain a current Sand City Business License throughout the term of the Service Agreement.

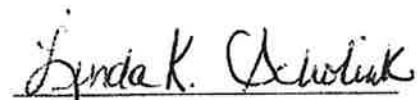
**PASSED AND ADOPTED** by the City Council of Sand City this 6<sup>th</sup> day of August, 2019, by the following vote:

AYES: Council Members Blackwelder, Carbone, Cruz, Sofer  
NOES: None  
ABSENT: Council Member Hawthorne  
ABSTAIN: None

APPROVED:

  
Mary Ann Carbone, Mayor

ATTEST:

  
Linda K. Scholink, City Clerk

**CITY OF SAND CITY**  
**PROFESSIONAL SERVICE AGREEMENT FOR NON-CONSTRUCTION PROJECT**

This AGREEMENT made this 20<sup>th</sup> day of August, 2019 (the "Effective Date"), by and between the CITY OF SAND CITY, a municipal corporation, hereinafter referred to as "CITY", and HARRIS & ASSOCIATES, Inc., a California Corporation, hereinafter referred to as "Consultant" (together referred to the "Parties").

In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

**I. TERM**

The term of the AGREEMENT will begin on the August 20<sup>th</sup>, 2019 and shall end on June 30, 2020, unless sooner terminated pursuant to the provisions of this AGREEMENT. The AGREEMENT may be reviewed and renewed annually. No modification to the terms of this AGREEMENT shall be valid unless made in writing and signed by the parties hereto.

**II. SERVICES**

Subject to the terms and conditions set forth in this AGREEMENT, CONSULTANT shall provide to the CITY the services described in the Scope of Work in Exhibit A, attached hereto and incorporated herein as though set forth in full. To the extent that Exhibit A is a proposal from CONSULTANT, such proposal is incorporated only for the description of the scope of services and no other terms and conditions from any such proposal shall apply to this AGREEMENT unless specifically agreed to in writing. Unless otherwise explicitly stated in Exhibit A, CONSULTANT shall at its sole cost and expense furnish all facilities and equipment which may be required for completing the tasks set forth in Exhibit A. In the event of a conflict in or inconsistency between the terms of this AGREEMENT and Exhibit A, this AGREEMENT shall prevail.

For the purposes of the services provided by this AGREEMENT, CONSULTANT shall report directly to and take assignments from the City Manager. CONSULTANT and City Manager will meet on a weekly basis, at the discretion of the CITY, to discuss and review the progress of services provided under this AGREEMENT.

With respect to claims that may be asserted by third parties arising from CONSULTANT's actions as a City Engineer, CONSULTANT shall be entitled to assert any immunities or similar defenses that would be available to the CITY in defense of such actions against a CITY employee or official and the CITY shall indemnify and defend CONSULTANT in that capacity as provided by law. The City shall use commercially reasonable efforts to include language in third party contracts requiring third party contractors and consultants to provide insurance

and indemnification protection to CITY's agents, including CONSULTANT, to the same extent the City is provided insurance and indemnification protection.

**III. PERFORMANCE**

CONSULTANT shall at all times faithfully, competently and to the best of his/her ability, experience, and talent, perform all tasks described herein. CONSULTANT shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of CONSULTANT hereunder in meeting its obligations under this AGREEMENT.

**IV. TIME**

CONSULTANT shall devote such time to the performance of services pursuant to this AGREEMENT as may be reasonably necessary to meet the standard of performance provided in section III (Performance) and to satisfy CONSULTANT'S obligations hereunder.

**V. ASSIGNMENT OF PERSONNEL**

CONSULTANT shall assign only competent personnel to perform services pursuant to his AGREEMENT. In the event that CITY, in its sole discretion, at any time during the term of the AGREEMENT, desires the reassignment of any such persons, CONSULTANT shall, immediately upon receiving notice from CITY of such desire, reassign such person or persons.

**VI. PAYMENT**

- A. The CITY agrees to pay CONSULTANT monthly for services performed and reimbursable costs, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed TWO HUNDRED THOUSAND DOLLARS (\$200,000) for the total term of the AGREEMENT unless additional payment is approved as provided in this AGREEMENT. Except as specifically authorized by CITY in writing, CONSULTANT shall not bill CITY for duplicative services performed by more than one person. Fees for work performed by CONSULTANT on an hourly basis shall not exceed the amounts shown on the compensation schedule attached hereto as Exhibit A. Reimbursable expenses are included in the total amount of compensation provided under this AGREEMENT that shall not be exceeded.

- B. CONSULTANT shall not be compensated for any services rendered in connection with its performance of this AGREEMENT which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. CONSULTANT shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and CONSULTANT at the time CITY's written authorization is given to CONSULTANT for the performance of said services. The City Manager may approve additional work not to exceed ten percent (10%) of the amount of the AGREEMENT, but in no event shall such sum exceed twenty-thousand dollars (\$20,000.00). Any additional work in excess of this amount shall be approved by the City Council of Sand City.
- C. CONSULTANT will submit invoices monthly for actual services performed. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Invoices shall include a task summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the AGREEMENT. For each work item and task, a copy of the applicable time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense. CONSULTANT shall give separate notice to the CITY when the total number of hours worked by CONSULTANT and any individual employee, agent or subcontractor of CONSULTANT reaches 800 hours within a 12 month period under this AGREEMENT. Such notice shall include an estimate of the time necessary to complete work for the remainder of the fiscal year under this AGREEMENT. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the CITY disputes any of CONSULTANT's fees it shall give written notice to CONSULTANT within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice. Any final payment under this AGREEMENT shall be made within forty-five (45) days of receipt of an invoice. In no event shall CONSULTANT submit an invoice for an amount in excess of the maximum amount of compensation provided above for either a task or the entire AGREEMENT, unless the AGREEMENT is properly modified in writing prior to the submission of such an invoice.

## **VII. SUSPENSION OR TERMINATION OF AGREEMENT**

- A. The CITY may at any time, for any reason, with or without cause, suspend or terminate this AGREEMENT, or any portion hereof, upon written notification to CONSULTANT. Upon receipt of said notice, the CONSULTANT shall immediately cease all work under this AGREEMENT, unless the notice provides otherwise. If the CITY suspends or terminates a portion of this AGREEMENT such suspension or termination shall not make void or invalidate the remainder of this AGREEMENT.

- B. CONSULTANT may cancel this AGREEMENT upon 60 days written notice to CITY and shall include in such notice the reasons for cancellation.
- C. In the event this AGREEMENT is terminated pursuant to this Section, the CITY shall pay to CONSULTANT the actual value of the work performed up to the time of termination, provided that the work performed is of value to the CITY; CITY may however condition payment of such compensation upon CONSULTANT delivering to CITY any and all Documents prepared in connection with this AGREEMENT. Upon termination of the AGREEMENT pursuant to this Section, the CONSULTANT will submit an invoice to the CITY pursuant to Section 6.
- D. The parties may amend this AGREEMENT only by a writing signed by all the parties.
- E. All obligations arising prior to the termination of this AGREEMENT and all provision of this AGREEMENT allocating liability between the CITY and CONSULTANT shall survive the termination of this AGREEMENT.
- F. If CONSULTANT materially breaches any of the terms of this AGREEMENT, CITY's remedies shall include, but not be limited to, the following:
  - a. Immediately terminate the AGREEMENT
  - b. Retain all Documents and other work product prepared by CONSULTANT pursuant to this AGREEMENT
  - c. Retain a different consultant to complete the work described in a given task order not finished by Consultant; and/or
  - d. Charge the consultant the difference between the cost to complete the work described in a given task order that is unfinished at the time of breach and the amount the CITY would have paid CONSULTANT pursuant to section 6 if CONSULTANT had completed the work.

## **VIII. OWNERSHIP OF DOCUMENTS**

- A. CONSULTANT shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by CITY that relate to the performance of services under this AGREEMENT. CONSULTANT shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. CONSULTANT shall provide free access to the representatives of CITY or



its designees at reasonable times to such books and records; shall give CITY the right to examine and audit said books and records; shall permit CITY to make transcripts or copies therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this AGREEMENT. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment. CONSULTANT understands that all such records may be subject to the examination and audit of the State Auditor or as part of any audit of the CITY.

- B. Upon completion of, or in the event of termination or suspension of this AGREEMENT, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents, in electronic or other form, prepared in the course of providing the services to be performed pursuant to this AGREEMENT ("Documents") shall become the sole property of the CITY and may be used, reused, or otherwise disposed of by the CITY in connection with the project for which CONSULTANT'S services are provided under this AGREEMENT and without the permission of the CONSULTANT. With respect to computer files, CONSULTANT shall make available to the CITY, at the CONSULTANT's office and upon reasonable written request by the CITY, the necessary computer software and hardware for purposes of accessing, compiling, transferring, copying and/or printing computer files. CONSULTANT hereby grants to CITY all right, title, and interest, including any copyright, in and to the documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared by CONSULTANT in the course of providing the services under this AGREEMENT.
- C. It is understood and agreed that the Documents prepared by the CONSULTANT under this AGREEMENT are instruments of professional service. Any modifications made by the CITY or any agents of the CITY, to any of the CONSULTANT's Documents or any partial use or reuse of the documents without the express written consent of the CONSULTANT will be at the CITY's sole risk and without liability to the CONSULTANT.

Copies of data exchanged by, through, and between the CITY and CONSULTANT that may be relied upon are limited to the printed copies. Computer-generated Documents that are furnished are only for the mutual convenience of the parties. Any risk of translation or reliance on information obtained or derived from the computer-generated Documents will be at the user's sole risk, and no representations are made, either expressed or implied, as to the long-term performance of data thus transferred.

**IX. INDEMNIFICATION AND DEFENSE**

**A. Indemnity**

To the fullest extent permitted by law, CONSULTANT shall indemnify and hold harmless CITY and any and all of its officials, and employees, ("Indemnified Parties") from and against any and all claims, losses, liabilities, damages, costs and expenses, including reasonable legal counsel's fees and costs, to the extent caused by the negligent, reckless or wrongful act, error or omission of CONSULTANT, its officers, agents, employees or subconsultants (or any agency or individual that CONSULTANT shall bear the legal liability thereof) in the performance of services under this AGREEMENT. CONSULTANT's duty to indemnify and hold harmless CITY shall not extend to the CITY's or any of the Indemnified Parties' negligence or willful misconduct. This indemnification obligation is not limited by any limitation on the amount or type of damages available under any applicable insurance coverage and shall survive the expiration or termination of this AGREEMENT with respect to any liability arising during the term of the AGREEMENT. With respect to third party claims against the CONSULTANT, CONSULTANT waives any and all rights of any type to express or implied indemnity against the Indemnified Parties.

**B. Duty to defend**

In the event the CITY, its officers, and employees, are made a party to any action, lawsuit, or other adversarial proceeding arising from the performance of the services encompassed by this AGREEMENT, CONSULTANT shall defend the CITY at CONSULTANT's cost or at CITY's option, to reimburse CITY for its costs of defense, including reasonable attorney's fees and costs incurred in the defense of such matters to the extent the matters arise from, relate to or are caused by CONSULTANT's negligent acts, errors or omissions. Payment by CITY is not a condition precedent to enforcement of this indemnity.

**C. California Civil Code Section 2782.8**

Notwithstanding the foregoing, to the extent that the CONSULTANT's services are subject to California Civil Code Section 2782.8, the above indemnity, including the cost to defend, shall be limited to the extent required by California Civil Code Section 2782.8.

**X. INSURANCE**

CONSULTANT shall maintain prior to the beginning of and for the duration of this AGREEMENT insurance coverage as specified in Exhibit C attached to and part of this AGREEMENT.

**XI. INDEPENDENT CONSULTANT**

- A. CONSULTANT is and shall at all times remain as to the CITY a wholly independent consultant and/or independent contractor and not an employee of CITY. The personnel performing the services under this AGREEMENT on behalf of CONSULTANT shall at all times be under CONSULTANT's exclusive direction and control. Neither CITY nor any of its officers, employees, or agents shall have control over the conduct of CONSULTANT or any of CONSULTANT's officers, employees, subcontractors or agents, except as set forth in this AGREEMENT. CONSULTANT shall not at any time or in any manner represent that it or any of its officers, employees, subcontractors or agents are in any manner officers, employees, or agents of the CITY. CONSULTANT shall not incur or have the power to incur any debt, obligation, or liability whatever against CITY, or bind CITY in any manner.
- B. No employee benefits shall be available to CONSULTANT in connection with the performance of this AGREEMENT. Except for the fees paid to CONSULTANT as provided in the AGREEMENT, CITY shall not pay salaries, wages, or other compensation to CONSULTANT for performing services hereunder for CITY. CITY shall not be liable for compensation or indemnification to CONSULTANT for injury or sickness arising out of performing services hereunder.

**XII. LEGAL RESPONSIBILITIES**

The CONSULTANT shall keep itself informed of applicable State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this AGREEMENT. The CONSULTANT shall at all times observe and comply with all such laws and regulations. The CITY, and its officers, consultants and employees, shall not be liable at law or in equity occasioned by failure of the CONSULTANT to comply with this Section.

**XIII. UNDUE INFLUENCE/CONFLICT OF INTEREST**

CONSULTANT declares and acknowledges that no undue influence or pressure was used against or in concert with any officer or employee of the CITY in connection with the award, terms or implementation of this AGREEMENT, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the CITY has or will receive compensation, directly or indirectly, from CONSULTANT, or from any officer,

employee or agent of CONSULTANT, in connection with the award of this AGREEMENT or any work to be conducted as a result of this AGREEMENT. Violation of this Section shall be a material breach of this AGREEMENT entitling the CITY to any and all remedies at law or in equity. CONSULTANT may not serve other clients whose activities within the corporate limits of CITY or whose business regardless of location would place CONSULTANT in a "conflict of interest" as that term is defined in the Political Reform Act, California Government Code section 81000 et seq.

**XIV. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES**

No member, officer, or employee of CITY, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Project during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any AGREEMENT or sub-AGREEMENT, or the proceeds thereof, for work to be performed in connection with the Project performed under this AGREEMENT.

**XV. RELEASE OF INFORMATION/CONFLICTS OF INTEREST**

- A. 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 subconsultants, 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.
- B. CONSULTANT shall promptly notify CITY should CONSULTANT, its officers, employees, agents, or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request ("Discovery"), court order, or subpoena from any person or party regarding this AGREEMENT and the work performed there under or with respect to any project or property located within the CITY, unless the CITY is a party to any lawsuit, arbitration, or administrative proceeding connected to such Discovery, or unless CONSULTANT is prohibited by law from informing the CITY of such Discovery. CITY retains the right, but has no obligation, to represent CONSULTANT and/or be present at any deposition, hearing, or similar proceeding as allowed by law. Unless CITY is a party to the lawsuit, arbitration, or administrative proceeding and is adverse to CONSULTANT in such 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.

**XVI. NOTICES**

Any notices which either party may desire to give to the other party under this AGREEMENT must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To CITY: City of Sand City  
1 Pendergrass Way  
Sand City, CA 93955  
Attention: City Clerk

To CONSULTANT: Harris & Associates  
Attention: Frank Lopez  
450 Lincoln Avenue, Suite 103  
Salinas, California 93901

**XVII. ASSIGNMENT**

The CONSULTANT shall not assign the performance of this AGREEMENT, nor any part thereof, nor any monies due hereunder, without prior written consent of the CITY. Because of the personal nature of the services to be rendered pursuant to this AGREEMENT, CONSULTANT shall assign Leon Gomez to perform the services described in this AGREEMENT. Mr. Gomez may use assistants, under his direct supervision, to perform some of the services under this AGREEMENT. CONSULTANT shall provide CITY thirty (30) days' notice prior to the departure of Mr. Gomez from CONSULTANT's employ. Should he leave CONSULTANT's employ, the CITY shall have the option to immediately terminate this AGREEMENT, within three (3) days of the close of said notice period. Upon termination of this AGREEMENT, CONSULTANT's sole compensation shall be payment for actual services performed up to, and including, the date of termination or as may be otherwise agreed to in writing between CITY and the CONSULTANT.

Before CONSULTANT retains or contracts with any subcontractor, CONSULTANT shall provide CITY with the identity of the proposed CONSULTANT, a copy of the proposed written contract between CONSULTANT and such subcontractor which shall include an indemnity provision similar to the

one provided herein and identifying CITY as an indemnified party, or an incorporation of the indemnity provision provided herein, and proof that such proposed subcontractor carries insurance at least equal to that required by this AGREEMENT or obtain a written waiver from CITY for such insurance.

**XVIII. LICENSES**

At all times during the term of this AGREEMENT, CONSULTANT, its employees, agents, and any subcontractors shall have in full force and effect, all licenses, permits, qualifications and approvals required of it by law for the performance of the services described in this AGREEMENT. In addition, CONSULTANT and any subcontractors shall obtain and maintain during the term of this AGREEMENT a valid Sand City business license.

**XIX. GOVERNING LAW**

The CITY and CONSULTANT understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this AGREEMENT and also govern the interpretation of this AGREEMENT. Any litigation concerning this AGREEMENT shall be brought and maintained in the Superior Court of the State of California in and for the County of Monterey or in the United States District Court for the Northern District of California.

**XX. ENTIRE AGREEMENT**

This AGREEMENT contains the entire understanding between the parties relating to the obligations of the parties described in this AGREEMENT. All prior or contemporaneous AGREEMENTs, understandings, representations, and statements, oral or written and pertaining to the subject of this AGREEMENT or with respect to the terms and conditions of this AGREEMENT, are merged into this AGREEMENT and shall be of no further force or effect. Each party is entering into this AGREEMENT based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

**XXI. SEVERABILITY/NO IMPLIED WAIVER OF BREACH**

If a court of competent jurisdiction finds that any provision of this AGREEMENT is invalid, void or unenforceable, the provisions not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this AGREEMENT shall not void or affect the validity of any other provision of this AGREEMENT.

The waiver of any breach of a specific provision of this AGREEMENT does not constitute a waiver of any breach of that term or any other term of this AGREEMENT.

**XXII. ATTORNEYS FEES**

If a party to this AGREEMENT brings any action to enforce or interpret this AGREEMENT, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled.

**XXIII. AUTHORITY TO EXECUTE THIS AGREEMENT**

The person or persons executing this AGREEMENT on behalf of CONSULTANT warrants and represents that he/she has the authority to execute this AGREEMENT on behalf of the CONSULTANT and has the authority to bind CONSULTANT to the performance of its obligations hereunder. This AGREEMENT may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed the day and year first above written.

CONSULTANT


By:   
(Signature)

Frank Lopez P.E.  
(Typed Name)

Senior Director, Engineering Services  
(Title)

CITY OF SAND CITY

  
Linda Scholink, Acting City Manager

ATTEST:  
  
Connie Horca/Deputy City Clerk

**APPROVED AS TO FORM:**  
**City Attorney**

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

<b>Attachments:</b>	<b>Exhibit A</b>	<b>Consultant's Proposal</b>
	<b>Exhibit B</b>	<b>Consultant's Fee Schedule</b>
	<b>Exhibit C</b>	<b>Insurance Requirements</b>





July 31, 2019

P#: 190-0370

Ms. Linda Scholink  
Interim City Manager  
City of Sand City  
1 Pendergrass Way  
Soledad, CA 93955

**Subject: Proposal to provide City Engineering Services to the City of Sand City**

Dear Ms. Scholink:

On behalf of Harris & Associates (Harris), I am pleased to submit this proposal to the City of Sand City (the City) to provide contract City Engineering Services. This proposal includes the following:

- Exhibit A – Proposal and Scope of Work
- Exhibit B – Fee Schedule
- Exhibit C – Professional Services Agreement

For over 40 years, Harris has helped to improve communities and create better places to live through smart, safe, more sustainable planning, design, and construction solutions. Harris is a 100% employee-owned company focused on helping communities solve today's complex challenges in planning, financing, environmental compliance, civil engineering, and construction management. Our offices and project sites span the West Coast in California, Nevada, and Washington with a staff of over 230 employee-owners. We focus on serving clients in the municipal, water, transportation, and education markets. From sustainable planning solutions to innovative design and construction to the long-term management of public resources, Harris & Associates takes an interdisciplinary approach to solving your most complex problems. Our portfolio of services includes:

- Advisory Services
- Asset Management
- Civil Design
- Community Planning
- Construction Management
- Environmental Planning + Compliance
- Infrastructure + Utilities
- Municipal Engineering
- Municipal Finance
- Special District Services

As you know, I recently joined the Harris team as a Senior Project Manager based in the local office located in the City of Salinas, California. Previous to joining Harris, I had been acting as the contract City Engineer for Sand City from 2013 thru July 2019. In that role, I have participated in almost all aspects of the City's day to day function including; Capital Improvement Program (CIP), public works and street rehabilitation projects, development review services, management of the City's municipal storm water program, preparation of reports to City council members and City staff, regular attendance at department head meetings, preparation of grant applications and management of grant awards, and coordination with local and state agencies. I also served as the City's designated representative on the Monterey Regional Storm Water Management Program (MRSWMP) Management Committee (MC), Transportation Agency for Monterey County (TAMC) Technical Advisory Committee (TAC) and the Seaside Groundwater Basin Watermaster TAC.

Recently, I was responsible for preparing the City's 5-Year CIP which involved coordinating with each of the City's departments to develop a list of over 30 projects for consideration by city council members.

During my time as contract City Engineer for the City, I had the opportunity to develop strong working relationships with the Sand City team including; the Interim City Administrator, City Planner, Chief of Police, Public Works Foreman, Deputy City Clerk, Administrative Staff, and yourself as Administrative Services Director.

On behalf of the City, I successfully applied for and obtained Proposition 1 Stormwater Technical Assistance (TA) Grant funding to support the West End Stormwater Improvement Project, which involves the reconstruction of major portions of Contra Costa and Catalina Streets. The City was awarded approximately \$240,000 and I coordinated with the TA team and City staff through the 30% design stage.

As you can see, I have **first-hand knowledge** of the City's infrastructure and a significant amount of "**institutional memory**" for many of the City's current and past projects, as well as **strong relationships with existing City staff**.

Why should you consider Harris for this important role? At Harris, we are deeply passionate about enhancing the quality of life where we live and work. Harris provides "Big City" resources to our clients with personal "Small Town" attitude, service and attention. We become a part of the communities we serve and enjoy a long-term relationship with our clients, many of whom become close friends. As our clients' trusted advisors, we're always here to help. Harris brings the following benefits:

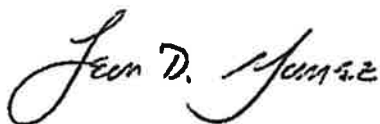
1. **Personal Service.** Harris' office at 450 Lincoln Avenue, Salinas, CA is less than 18 miles from City Hall. I and/or my support staff can be at City Hall in about 20 minutes. As acting City Engineer from January 2013 to July 2019, I already have an understanding of the unique Sand City community, which fuels my passion to provide quality service to the City.
2. **Local Understanding and Focus.** Harris has been a local business since 1998. We serve many of the agencies within Monterey County, and the County itself. We have a very strong local focus and possess a unique understanding of the inner-workings of local government, and regional entities such as TAMC and Monterey County.
3. **Depth of Resources.** Harris is a singular source for all things municipal and public works related, including the many highly-experienced professionals needed to successfully complete today's complex municipal projects: gifted engineers, planners, public finance experts, and asset management and grant specialists who understand the interpersonal aspects as well as the technical — and who stay ahead of trends and can see what's coming around the corner.

I look forward to continuing my professional relationship with the City of Sand City in the role of contract City Engineer and continuing to provide an exceptional level of service. If you have any questions regarding this contract, please do not hesitate to call me at 831-272-4909.

If this proposal meets with your approval, please execute and return the attached Professional Services Agreement.

Sincerely,

Harris & Associates, Inc.



Leon D. Gomez, PE, QSD  
Sr. Project Manager  
Tel. (831) 272-4909 ■  
Email: Leon.Gomez@WeAreHarris.com



Frank Lopez, PE, QSD, CFM  
Sr. Director of Engineering Services  
Tel. (831) 233-9242 ■  
Email: Frank.Lopez@WeAreHarris.com

# EXHIBIT A

## PROPOSAL TO PROVIDE CITY ENGINEERING SERVICES

### UNDERSTANDING AND APPROACH

#### Understanding

The City is in a current state of transition as it looks to appoint a new, permanent City Manager, approve a new 5-year Capital Improvement Program (CIP), and realize significant public and private development projects such as the Sand City Water Supply Project Phase 1 New Intake Wells that will support the City's reverse-osmosis desalination facility and the West End South of Tioga redevelopment project that will develop over 10 acres near Tioga Avenue. The City maintains its own Public Works Department that oversees street and facility maintenance, public utilities (i.e., the storm drain system), and coordinates with the public, City Manager and staff to perform day to day operations. The City has traditionally relied on a City Engineer/Public Works Director to help lead City initiatives, develop infrastructure, and coordinate with City staff.

#### Approach

As the City grapples with this transition period, Harris is willing and able to support the City for as long as needed. Our experience with a wide breadth of municipal clients as well as Mr. Leon Gomez's recent and relevant experience as contract City Engineer to the City will provide for a **smooth transition**.

**Mr. Leon Gomez, PE, Senior Project Manager, will be the primary point of contact for this contract.** In this capacity, Mr. Gomez will have access to a wide breadth of engineering, planning, environmental, financial, and technical support staff, both locally and company-wide, within the Harris team. Many of the Salinas area employee-owners are local Monterey County residents who are fully invested in the local community. This will allow Mr. Gomez to effectively and efficiently manage the role of City Engineer by leveraging the skills, knowledge, and resources of the Harris team in order to provide the full range of services needed.

**Public Works Operation** - As Contract City Engineer, Mr. Gomez will coordinate with the City's Public Works Department and Operations Supervisor (the Chief of Police) such as for CIP and Public Works project planning and/or implementation, storm water program activities and reporting, illicit discharge response and reporting, well production reporting, etc.

**Capital Improvements** are planned out via a rolling, multi-year, Capital Improvement Program (CIP). The CIP is very important for long-range planning of City infrastructure. Administration of the CIP includes long-range visioning of necessary improvements to the City's infrastructure to manage risk and reduce public liability as well as long-term financial planning to provide funding for the planned improvements. Effective coordination with the City Manager and other stakeholders within the City and public rights-of-way help to prevent conflicts and preserve the overall value of the improvements being considered in the near term as well as those planned for the future. The CIP includes:

- Evaluation and prioritization of short and long-term capital improvement projects;
- Planned procurement of funds;
- Planning and funding for necessary right-of-way and land acquisitions;
- Administration of grant funding, if utilized;
- Administration of Gas Tax funding (SB1) through California Transportation Commission and Measure X;
- Administration of the public procurement and bidding processes;
- Inspection of the project construction and acceptance of the completed improvements

**Development Projects** and all permitted improvements to an existing parcel are all entitled, reviewed and approved in coordination with the City's Planning, Public Works, and Police Departments as well as the City's contract Building and Fire Departments. Land-use entitlements and permitting are coordinated with the City's General Plan, Specific Plans,

Municipal Code, Municipal Storm Water Permit and CIP to ensure that the permitted improvements are consistent with the aforementioned plans and programs and comply with City standards and requirements.

Since 2013, Mr. Gomez has participated in the review of almost every proposed development project within the City, including: The West End South of Tioga Redevelopment Project, The Bungalows at East Dunes Project, The Catalina Lofts Mixed Use Project, The San Juan Pools Commercial Building Project, and various single-family residential developments such as the Bogue Residence, the Dayton Residences, and the 22 & 23 Scott Street Residence.

**Assessment Districts** - the depth of the Harris team includes Public Finance specialists who can support the City with the formation of Assessment and/or Community Facilities Districts, such as the one proposed for the West End South of Tioga development project.

## **Scope of Work**

Harris will provide the services generally described below to the City of Sand City. Since the role of City Engineer is extensive and ever evolving, it should be noted that the services listed below are the general types of services to be provided. Each item of work will be evaluated by the City Engineer to determine the project requirements, work plan, schedule, and whether support staff is needed. With the exception of minor items of work, the work and the approach will be reviewed with the City Manager prior to the start of work.

**Additional services, functions, and/or responsibilities not listed below may be performed by Harris at the request of the City under this contract.**

**A. Administrative**, day-to-day, operations are provided on an on-going basis just as they would be in any Engineering and Public Works Department. These administrative duties include:

1. Administration of the City's encroachment permit program;
2. Administration of the City's various Assessment Districts;
3. Attendance and presentations at regular staff meetings and city council meetings;
4. Attendance and representation at regular meetings of the Monterey Regional Storm Water Management Program, Seaside Groundwater Basin Watermaster, and Transportation Agency for Monterey County;
5. Coordination with neighboring cities and regional agencies such as TAMC, AMBAG, Monterey County, etc.;
6. Coordination with the Public Works Department regarding operations and maintenance, storm water program reporting, repair of public facilities, etc.;
7. Enforcement of the City's Standards for design and construction;
8. Enforcement of City's Storm Water Management Program;
9. Representation of the City's interests in regional transportation and funding issues;
10. Communication, either written or by telephone, with City staff to discuss and/or coordinate on City projects;
11. Assist with updates and/or revisions to Engineering and Public Works Department forms, permits, and applications;
12. Review Environmental Impact Reports (EIRs) for engineering, traffic, and utility impacts or concerns;
13. Regular well production reporting to the Seaside Groundwater Basin Watermaster;
14. Assist in filing State, Federal, or other agency grant applications.

**B. Civil Engineering** services including:

1. Design and construction of City infrastructure including street rehabilitation and/or reconstruction, ADA improvements, storm drainage, grading improvements, water and wastewater systems, and other improvements;
2. Preliminary and/or conceptual design and cost estimating thru preparation of detailed plans, specifications, and estimates (PS&E);
3. Preparation of contract documents for public bidding, construction administration, construction management and inspection, project close-out;
4. Assist with public works project reporting related to prevailing wage and the Department of Industrial Relations;
5. Municipal financing programs, including Assessment and/or Community Facility Districts may be evaluated for projected assessment costs and annual assessment payments, construction of improvements and ongoing

operation and maintenance costs. If an assessment and/or CFD is to be formed, the typically required Engineer's Report, Boundary Map, and Assessment Diagram would be prepared in coordination with the City Surveyor and City staff;

6. Prepare preliminary design studies, technical reports, exhibits, engineer's estimates of probable construction cost;
7. Project management for CIP and/or public works projects;
8. Grant administration and management;
9. Pavement Management Program – manage the City's PMP utilizing the StreetSaver software;
10. **Land Surveys and Mapping:** coordinate with the contract City Surveyor to obtain land surveys, aerial surveys, legal descriptions, plat maps, ALTA maps, Record of Survey Maps, boundary maps, etc., and for the review of Lot Mergers and Lot Line Adjustments.

**C. Construction Management and Inspection services including:**

1. Once a contract has been approved and issued by the City, Harris may provide management of the construction phase of the project;
2. Field inspection of the project construction in accordance with the approved contract documents (plans and specifications). Field inspections will include documentation in the form of inspection reports and photographs;
3. Review of the construction contractor's work progress and payment requests and make recommendations for payment to the City;
4. Report construction work progress to the City.

**D. Materials Testing and Inspection including:**

1. Coordinate with a geotechnical engineering and/or other sub-consultants to provide materials testing to ensure compliance with the project specifications;
2. Coordinate testing with field inspections and the construction schedule;
3. If necessary, require the construction contractor to replace improvements that do not meet the project specifications.

**E. Development Review Services (Plan Checking of Public and Private Projects) including;**

1. Review preliminary and/or conceptual project designs, reports, exhibits, maps, etc. during the land entitlement review process and provide input to City staff and/or the project applicant/proponent regarding City requirements, standards, etc.;
2. Assist City staff in the preparation of land-use entitlement permits including Engineering and Public Works Department Conditions of Approval;
3. During the Building Permit Phase, review civil improvement and/or construction plans for conformance to City Standards, the project Conditions of Approval, and any applicable local, state, federal requirements;
4. Coordinate with outside agencies regarding proposed utility services and connections, such as the Seaside County Sanitation District (SCSD) for sanitary sewer services, California American Water for water services, Pacific Gas & Electric, AT&T, Comcast, Monterey Salinas-Transit, etc.;
5. Coordinate with the contract City Surveyor to review and process Tentative Maps, Vesting Tentative Maps, and Tract/Final Maps to ensure compliance with land survey requirements, the Subdivision Map Act, the project Conditions of Approval, and any applicable City ordinances and codes;
6. Coordinate with the contract City Surveyor to review and process applications for Voluntary Lot Merger, Lot Line Adjustments and assist in the recordation of said documents with the County Recorder's office.

**F. Municipal Storm Water Program Management including:**

1. Provide overall management of the City's National Pollutant Discharge Elimination System (NPDES) Phase II Municipal Separate Storm Sewer System (MS4) General Permit;
2. Coordinate with the City's Planning, Public Works, Police, Building, and Fire Departments to ensure compliance with the Phase II MS4 General Permit requirements;
3. Review proposed development projects and coordinate land-use entitlement permits and conditions of approval with City staff to ensure compliance with the Phase II MS4 General Permit requirements;

4. Inspect construction projects to ensure compliance with the Phase II MS4 General Permit requirements and applicable Municipal Code requirements;
5. Prepare the City's Annual Storm Water Report and Supporting Documentation;
6. Attend regular meetings of the Monterey Regional Storm Water Management Program and coordinate with the Program Manager;
7. Coordinate with the State and Regional Water Resources Control Board.

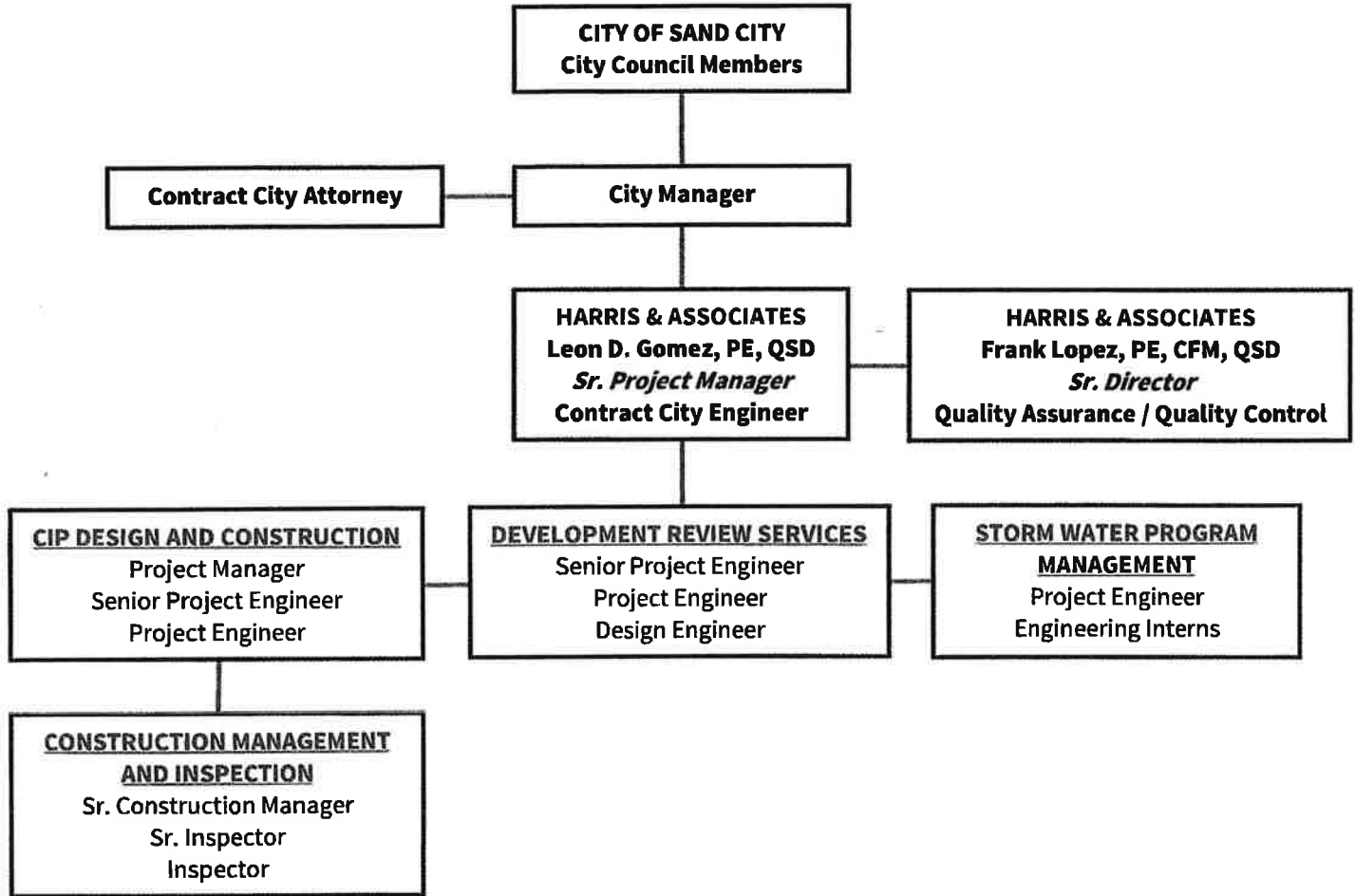
**G. File / Records Management** including:

1. Assist in obtaining, organizing, and filing the City's engineering and public works related files (electronic and hard copy);
2. Assist in the setup of an archive filing system for the City's engineering and public works related files (electronic and hard copy).

**H. Sub-consultant services** including:

1. When required, the services of other consultants such as architectural, landscape architectural, geotechnical engineering, electrical engineering, and/or other services may be provided by Harris. Harris will obtain proposals from the consultants and arrange for these services on a sub-consultant basis up to a maximum cost of \$20,000 and/or as allowed by the City Manager's authorized approval limit per the City's purchasing ordinance.
2. The fee for management of any sub-consultant will be 10% based on the sub-consultant's approved fee.

## Organization Chart



**This organization chart identifies the staff support by classification that is available within the Harris team to support the Contract City Engineer in providing the range of city engineering services to the City of Sand City.**

### ADDITIONAL SERVICES

Due to the depth of resources available at Harris, we can assist the City in other areas such as; Public Finance, Environmental Compliance, Risk & Resiliency Planning, Infrastructure Master Planning, and Asset Management. Should the City like to discuss the breadth of services available, please feel free to contact us for more information. Harris can provide brochures detailing our services via email.

**EXHIBIT B  
FEE SCHEDULE**



**Hourly Rates**

Applicable to Contract City Engineering Services for the City of Sand City, CA  
Effective July 1, 2020 — June 30, 2021

	Hourly Rates
<b>Engineering Services</b>	
Leon Gomez-Contract City Engineer	\$205
Sr. Project Directors	\$220- \$280
Project Directors	\$200- \$250
Sr. Project Managers	\$195- \$240
Project Managers	\$165- \$200
Sr. Project Engineers	\$160- \$190
Project Engineers	\$135- \$160
Technical Support	\$100- \$120
Administration	\$90- \$110
Engineering Inters	\$60-70

<b>Construction Management</b>	
Sr. Project Directors	\$220- \$280
Project Directors	\$200- \$250
Sr. Construction Managers	\$190- \$210
Construction Managers	\$160- \$185
Inspectors (prevailing wage)*	\$165- \$190
Inspectors (nonprevailing wage)	\$135- \$150

<b>Environmental Services</b>	
Project Director	\$200- \$250
Project Manager	\$150- \$200
Project Analyst	\$125- \$150

**Notes:** Rates are subject to adjustment due to promotions during the effective period of this schedule. Unless otherwise indicated in the cost proposal, hourly rates include most direct costs such as travel, equipment, computers, communications and reproduction (except large quantities such as construction documents for bidding purposes).

\*Inspectors working in the State of California are subject to the Prevailing Wage Rates established for that area.

All subconsultant charges are subject to a 10% markup.

**Harris & Associates, Inc.** ■ 450 Lincoln Avenue, Suite 103, Salinas, CA 93901 Tel. 831.233.9242 ■ WeAreHarris.com

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## EXHIBIT C

### INSURANCE REQUIREMENTS

Without limiting CONSULTANT's indemnification of CITY, and prior to commencement of Work, CONSULTANT shall obtain, provide and maintain at its own expense during the term of this AGREEMENT, policies of insurance of the type and amounts described below and in a form satisfactory to CITY.

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

**Automobile liability insurance.** CONSULTANT shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this AGREEMENT, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

**Professional liability (errors & omissions) insurance.** CONSULTANT shall maintain professional liability insurance that covers the Services to be performed in connection with this AGREEMENT, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this AGREEMENT and CONSULTANT agrees to maintain continuous coverage through a period no less than three (3) years after completion of the services required by this AGREEMENT.

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

CONSULTANT shall submit to CITY, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of CITY, its officers, agents, employees and volunteers.

**Umbrella or excess liability insurance.** [Optional depending on limits required]. CONSULTANT shall obtain and maintain an umbrella or excess liability insurance policy with limits that will provide bodily injury, personal injury and property damage liability coverage at least as broad as the primary coverages set forth above, including commercial general liability, automobile liability, and employer's liability. Such policy or policies shall include the following terms and conditions:

- A drop down feature requiring the policy to respond if any primary insurance that would otherwise have applied proves to be uncollectible in whole or in part for any reason;
- Pay on behalf of wording as opposed to reimbursement;
- Concurrency of effective dates with primary policies;
- Policies shall "follow form" to the underlying primary policies; and
- Insureds under primary policies shall also be insureds under the umbrella or excess policies.

### **Other provisions or requirements**

**Proof of insurance.** CONSULTANT shall provide certificates of insurance to CITY as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with CITY at all times during the term of this contract. CITY reserves the right to require complete, certified copies of all required insurance policies, at any time.

**Duration of coverage.** CONSULTANT shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by CONSULTANT, his agents, representatives, employees or subconsultants.

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

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

**Acceptable insurers.** All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City Administrator.

**Waiver of subrogation.** All insurance coverage maintained or procured pursuant to this AGREEMENT shall be endorsed to waive subrogation against CITY, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow CONSULTANT or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. CONSULTANT hereby waives its own right of recovery against CITY, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

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

**Requirements not limiting.** Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the CITY requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the CITY.

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

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

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

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

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

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

**Self-insured retentions.** Any self-insured retentions must be declared to and approved by CITY. CITY reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by CITY.

**Timely notice of claims.** CONSULTANT shall give CITY prompt and timely notice of claims made or suits instituted that arise out of or result from CONSULTANT's performance under this AGREEMENT, and that involve or may involve coverage under any of the required liability policies.

**Additional insurance.** CONSULTANT shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

RECEIVED  
AUG 23 2019  
CITY OF SAND CITY