



CITY COUNCIL AGENDA REPORT



DEPARTMENT: Public Services

MEETING DATE: January 16, 2018

PREPARED BY: Sean Sullivan, Public Works Division Manager

AGENDA LOCATION: AR-1

TITLE: Award of Contract to Sequel Contractors, Inc. for the Monrovia Renewal South Section Infrastructure Improvements Project (Project No. MR-011) and Consultant Services Agreement with Merrell-Johnson Engineer, Inc., for Construction Management Services

OBJECTIVE: To approve a construction contract with Sequel Contractors, Inc. (Sequel), for infrastructure construction in the South Section of the Monrovia Renewal Infrastructure Improvement Program, and to approve an agreement with Merrell-Johnson Engineering, Inc. (Merrell-Johnson) for construction surveying, inspection, materials testing, and project management

BACKGROUND: Monrovia Renewal is a comprehensive infrastructure improvement program aimed at making citywide repairs to street, water, and sewer infrastructure. The \$51.7 million initiative is funded through a number of sources and is estimated to be complete by 2021.

For the purposes of implementing the Monrovia Renewal initiative, the City has been divided into the six (6) project areas, including the North, Northwest, Northeast, South, Southwest, and Southeast. To date, the work has been completed in the Southwest and Southeast Project Areas, also known as Phase I, and work is well underway in the Northwest Project Area, which is a component of Phase II. The Northwest Project Area includes the area that is bordered by Hillcrest Boulevard to the North, Colorado Boulevard to the South, the City Limits to the West, and Myrtle Avenue to the East.

The second component of Phase II is the South Project Area, which encompasses all improvements located to the South of the 210 Freeway. On September 5, 2017, the City Council authorized staff to solicit bids for a project entitled Monrovia Renewal South Section Infrastructure Improvements Project. Furthermore, on November 7, 2017, the Council approved the recommendation of staff to reject all bids, reconsider key components of the project, and again solicit bids for the same project with a modified scope of work.

As directed in the November 7, 2017, City Council action, there were two key project design components driving the proposed project scope change. First, staff felt that it would be appropriate to rework the engineering and design related to the use of cape seal roadway treatments. Additionally, the team identified other improvements in this project area that were not included in the initial scope of work, including pipeline and valve improvements adjacent to the City's water production facility and landscape / sidewalk improvements on Duarte Road adjacent to the Metro Gold Line Operations and Maintenance Facility (between California Avenue and Mountain Avenue).

These identified work items were added to the project scope in the rebid South Project Area section, which consists of a complete battery of roadway maintenance, repairs, and striping, as well as concrete sidewalk, curb and gutter replacement. Additionally, the project includes drainage improvements, the construction of new sidewalk and landscaping, and improvements to water pipelines and valves. The roadway maintenance and repair treatments include the application of slurry seal and micro surfacing, 2"

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grind and overlays, and 4" street reconstruction efforts. A summary of the improvements included in the section are as follows:

- **Roadway Improvements – Approximately 22 Centerline Miles**
 - 4" Street Reconstruction – 5.07 centerline miles (501,232 square feet)
 - 2" Grind and Overlay – 11.529 centerline miles (1,092,667 square feet)
 - Slurry Seal application – 3.73 centerline miles (171,909 square feet)
 - Micro Surfacing Application – 1.60 centerline miles (80,615 square feet)
 - Removal and replacement of approximately 10,000 linear feet of curb and gutter
- **Concrete Sidewalk**
 - Removal and Replacement of approximately 12,500 square feet
 - Installation of approximately 8,500 square feet of new sidewalk
- **Sewer Improvements**
 - Lining of approximately 2,800 linear feet of sewer line
 - Point Repairs to approximately 30 damaged sections of sewer line
- **Water System Improvements**
 - Replacement of approximately 148 water service lines
 - Replacement of pipeline and valves adjacent to the water production location on Myrtle Avenue.
- **Drainage Improvements**
 - Construction of 7 new catch basins and related drainage pipeline
 - Construction of 4 drywells

City staff advertised the project and solicited bidders in accordance with the California Public Contracts Code and the City of Monrovia Purchasing Policy. A Notice Inviting Bids was published in the local newspaper and a trade publication of general circulation. A mandatory pre-bid conference was held on December 12, 2017 and was attended by eight (8) general engineering firms as perspective bidders.

On December 20, 2017, the City Clerk received and publicly read 5 (five) bids with the following results:

Rank	Company	Location	Base Bid Amount
1	Sequel Contractors, Inc.	Santa Fe Springs, CA	\$6,395,271.57
2	Palp, Inc. DBA Excel Paving Co.	Long Beach, CA	\$6,619,078.55
3	Sully-Miller Contracting Co.	Brea, CA	\$6,743,416.38
4	Los Angeles Engineering, Inc.	Covina, CA	\$6,777,070.95
5	All American Asphalt	Corona, CA	\$6,977,374.09

ANALYSIS: Staff has reviewed the bid documents for completeness and accuracy, and has investigated background information for contractors submitting bids. Staff has found that Sequel is the lowest responsive bidder and is qualified to complete the work, as specified, for this project. Sequel is an established general engineering contractor with an extensive record of experience in projects of this nature throughout Southern California. Staff has checked references with their counterparts at other agencies for whom Sequel has completed similar projects and found the feedback received to be favorable.

The Engineer's Estimate for this project was \$7,267,265.23. The base bid of \$6,395,271.57 received from Sequel was below the Engineer's Estimate and is within the budget for this project. Staff attributes the favorable pricing to the low price of oil and the competitive construction climate for projects of this magnitude.

In addition to the award of the Base Bid, staff is requesting a contingency amount of \$960,000 (15%) to cover the cost of any unforeseen conditions and to complete additional work utilizing the favorable unit prices received.

Therefore, the total contract award for Sequel is recommended as:

Base Bid:	\$ 6,395,271.57
Total Bid:	\$ 6,395,271.57
15% Contingency:	\$ 960,000.00
Total Award to Sequel Contractors:	\$ 7,355,271.57

In addition, staff is recommending that an additional contract for project surveying, testing and inspection, along with overall project management, be awarded to our project partner Merrell-Johnson. These services include construction survey staking, materials testing, both at the materials plant and in the field, and inspection or day to day oversight of the contractor's field activities. In addition, construction management services include the oversight and management of all contract compliance, financials, quantities, and any extras. These services will all contribute to the successful execution of this project and are in line with industry norms, and the expenditure amounts include:

Surveying, Testing, & Inspection	5%	\$ 367,500.00
Project Management	5%	\$ 367,500.00
Total Expenses	10%	\$ 735,000.00

Work is anticipated to begin on or around March 1, 2018 and the established timeline for completion is 180 working days or 36 weeks.

ENVIRONMENTAL IMPACTS: This project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to the CEQA implementation guidelines.

FISCAL IMPACTS: Funding for this project is available in the program fund for Monrovia Renewal, and the necessary appropriations from these funds to complete the South Section of the Monrovia Renewal initiative are as follows:

Item	Percentage	Cost
Construction Contract	100%	\$ 6,395,271.57
Construction Contingencies	15%	\$ 960,000.00
Surveying, Testing, Inspection	5%	\$ 367,500.00
Construction Management	5%	\$ 367,500.00
Total Appropriation		\$ 8,090,271.57

OPTIONS: The following options are provided for the City Council's consideration:

1. Award a contract to Sequel for the completion of the Monrovia Renewal South Section Infrastructure Improvements Project; approve a consultant services agreement to Merrell-Johnson for project surveying, materials testing, inspection, and management; and appropriate \$8,090,271.57 from Monrovia Renewal funds to complete this project.
2. Request additional information from Staff before taking action.

RECOMMENDATIONS: Staff recommends Option 1, thereby awarding a contract to Sequel for the completion of the Monrovia Renewal South Section Infrastructure Improvements Project; approving a consultant services agreement with Merrell-Johnson for construction management services; and appropriating \$8,090,271.57 from Monrovia Renewal funds to complete this project.

COUNCIL ACTION REQUIRED: If City Council concurs, the appropriate action would be a motion to award a contract to Sequel Contractors, Inc., for the completion of the Monrovia Renewal South Section Infrastructure Improvements Project (MR-011); approve a consultant services agreement with Merrell-Johnson Engineering, Inc., for project surveying, materials testing, inspection, and management; appropriate \$8,090,271.57 from Monrovia Renewal funds to complete this project; and authorize the City Manager to execute the necessary documents in a form approved by the City Attorney.

CONSULTANT SERVICES AGREEMENT

This Consultant Services Agreement (“Agreement”) is dated January 16, 2018 (“Effective Date”), and is between the City of Monrovia, a California municipal corporation (“City”) and Merrell Johnson Engineering, Inc., a California corporation (“Consultant”).

RECITALS

A. City desires to utilize the services of Consultant as an independent contractor to provide project engineering, inspection, surveying and management services related to the Construction Management and Inspection Services of the Monrovia Renewal South Section Infrastructure Improvement Project.

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

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

The parties therefore agree as follows:

1. **Consultant’s Services.**

A. Scope of Services. Consultant shall perform the services described in the Scope of Services, attached as **Exhibit A**. City may request, in writing, changes in the scope of services to be performed. Any changes mutually agreed upon by the parties, and any increase or decrease in compensation, shall be incorporated by written amendments to this Agreement.

B. Party Representatives. For the purposes of this Agreement, the City Representative shall be the City Manager, or such other person designated in writing by the City Manager (the “City Representative”). For the purposes of this Agreement, the Consultant Representative shall be Brad Merrell, P.E., President (the “Consultant Representative”). The Consultant Representative shall directly manage Consultant’s services under this Agreement. Consultant shall not change the Consultant Representative without City’s prior written consent.

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

D. Standard of Performance. Consultant shall perform all services under this Agreement in accordance with the standard of care generally exercised by like

professionals under similar circumstances and in a manner reasonably satisfactory to City.

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

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

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

2. Term of Agreement. The term of this Agreement shall be from the Effective Date through completion of project scope as identified in **Exhibit A**, unless sooner terminated as provided in Section 13 of this Agreement or extended.

3. Compensation.

A. Compensation. As full compensation for Consultant's services provided under this Agreement, City shall pay Consultant a sum not to exceed Seven Hundred Thirty Five Thousand Dollars (\$735,000.00) (the "maximum compensation"), as set forth in the Approved Fee Schedule, attached hereto as **Exhibit B**.

B. Expenses. The amount set forth in paragraph A shall include reimbursement for all actual and necessary expenditures reasonably incurred in the performance of this Agreement.

C. Additional Services. City shall not allow any claims for additional services performed by Consultant, unless the City Council and the Consultant Representative authorize the additional services in writing prior to Consultant's performance of the additional services or incurrence of additional expenses. Any additional services or expenses authorized by the City Council shall be compensated at the rates set forth in **Exhibit B**, or, if not specified, at a rate mutually agreed to by the parties. City shall make payment for additional services and expenses in accordance with Section 4 of this Agreement.

4. Method of Payment.

A. Invoices. Consultant shall submit to City an invoice, on a monthly basis or less frequently, for the services performed pursuant to this Agreement. Each invoice shall itemize the services rendered during the billing period, hourly rates charged, if

applicable, and the amount due. City shall review each invoice and notify Consultant in writing within ten (10) business days of receipt of any disputed invoice amounts.

B. Payment. City shall pay all undisputed invoice amounts within thirty (30) calendar days after receipt up to the maximum compensation set forth in Section 3 of this Agreement. City shall not withhold federal payroll, state payroll or other taxes, or other similar deductions, from payments made to Consultant.

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

5. Ownership of Documents. All reports, documents or other written material ("written products") developed by Consultant in the performance of this Agreement shall be and remain City's property without restriction or limitation upon its use or dissemination by City. Consultant may take and retain copies of the written products as desired, but the written products shall not be the subject of a copyright application by Consultant.

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

7. Confidentiality. All data, documents, discussion, or other information (collectively "data") developed or received by Consultant or provided for performance of this Agreement are deemed confidential. Consultant shall keep all data confidential and shall not disclose any data to any person or entity without City's prior written consent. City shall grant such consent if disclosure is legally required. Consultant shall return all data to City upon the expiration or termination of this Agreement. Consultant's covenant under this Section 7 shall survive the expiration or termination of this Agreement.

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

Consultant shall incorporate a clause substantially similar to this Section 8 into any subcontract that Consultant executes in connection with the performance of this Agreement.

9. Indemnification.

A. Indemnity for Design Professional Services. To the fullest extent permitted by law, Consultant shall, at its sole cost and expense, protect, indemnify, and hold harmless City and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees"), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith, and reimbursement of attorney's fees and costs of defense (collectively "Liabilities"), whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to, in whole or in part, the negligence, recklessness or willful misconduct of Consultant, its officers, agents, servants, employees, subcontractors, material men, contractors or their officers, agents, servants or employees (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of design professional services under this Agreement by a "design professional," as the term is defined under California Civil Code Section 2782.8(c)(2).

B. Other Indemnities.

1) Other than in the performance of design professional services, and to the fullest extent permitted by law, Consultant shall, at its sole cost and expense, defend, hold harmless and indemnify the Indemnitees from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith and the payment of all consequential damages (collectively "Claims"), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Consultant, its officers, agents, servants, employees, subcontractors, materialmen, contractors or their officers, agents, servants or employees (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Claims arising from the sole negligence or willful misconduct of the Indemnitees, as determined by final arbitration or court decision or by the agreement of the parties. Consultant shall defend the Indemnitees in any action or actions filed in connection with any Claim with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually

incurred in connection with such defense. Consultant shall reimburse the Indemnitees for any and all legal expenses and costs incurred by the Indemnitees in connection therewith.

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

3) Consultant shall obtain executed indemnity agreements with provisions identical to those in this Section 9 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnities, Consultant shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from and against any and all Claims in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Consultant's subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, contractors or their officers, agents, servants or employees (or any entity or individual that Consultant's subcontractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Claims arising from the sole negligence or willful misconduct of the Indemnitees, as determined by final arbitration or court decision or by the agreement of the parties.

C. Workers' Compensation Acts not Limiting. Consultant's obligations under this Section 9, or any other provision of this Agreement, shall not be limited by the provisions of any workers' compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.

D. Insurance Requirements not Limiting. City does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provisions in this Section 9 shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liability, Claim, tax, assessment, penalty or interest asserted against City.

E. Survival of Terms. The indemnification in this Section 9 shall survive the expiration or termination of this Agreement.

10. Insurance.

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

1) Commercial General Liability Insurance with a minimum limit of Two Million Dollars (\$2,000,000) per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of Four Million Dollars (\$4,000,000) per project or location. If Consultant is a limited liability company, the commercial general liability coverage shall be amended so that Consultant and its managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.

2) Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with a combined single limit of Two Million Dollars (\$2,000,000) per accident for bodily injury and property damage. If Consultant does not use any owned, non-owned or hired vehicles in the performance of services under this Agreement, Consultant shall obtain a non-owned auto endorsement to the Commercial General Liability policy required under Subparagraph A. 1) of this Section 10.

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

4) Errors and Omissions Insurance with minimum limits of Two Million Dollars (\$2,000,000) per claim and in aggregate.

B. Acceptability of Insurers. The insurance policies required under this Section 10 shall be issued by an insurer admitted to write insurance in the State of California with a rating of A:VII or better in the latest edition of the A.M. Best Insurance Rating Guide. Self-insurance shall not be considered to comply with the insurance requirements under this Section 10.

C. Additional Insured. The commercial general and automobile liability policies shall contain an endorsement naming the City, its officers, employees, agents and volunteers as additional insureds.

D. Primary and Non-Contributing. The insurance policies required under this Section 10 shall apply on a primary non-contributing basis in relation to any other

insurance or self-insurance available to City. Any insurance or self-insurance maintained by City, its officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.

E. Consultant's Waiver of Subrogation. The insurance policies required under this Section 10 shall not prohibit Consultant and Consultant's employees, agents or subcontractors from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against City.

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

G. Cancellations or Modifications to Coverage. Consultant shall not cancel, reduce or otherwise modify the insurance policies required by this Section 10 during the term of this Agreement. The commercial general and automobile liability policies required under this Agreement shall be endorsed to state that should the issuing insurer cancel the policy before the expiration date, the issuing insurer will endeavor to mail thirty (30) days' prior written notice to City. If any insurance policy required under this Section 10 is canceled or reduced in coverage or limits, Consultant shall, within two (2) business days of notice from the insurer, phone, fax or notify City via certified mail, return receipt requested, of the cancellation of or changes to the policy.

H. City Remedy for Noncompliance. If Consultant does not maintain the policies of insurance required under this Section 10 in full force and effect during the term of this Agreement, or in the event any of Consultant's policies do not comply with the requirements under this Section 10, City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may, but has no duty to, take out the necessary insurance and pay, at Consultant's expense, the premium thereon. Consultant shall promptly reimburse City for any premium paid by City or City may withhold amounts sufficient to pay the premiums from payments due to Consultant.

I. Evidence of Insurance. Prior to the performance of services under this Agreement, Consultant shall furnish City's Risk Manager with a certificate or certificates of insurance and all original endorsements evidencing and effecting the coverages required under this Section 10. The endorsements are subject to City's approval. Consultant may provide complete, certified copies of all required insurance policies to City. Consultant shall maintain current endorsements on file with City's Risk Manager. Consultant shall provide proof to City's Risk Manager that insurance policies expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Consultant shall furnish such proof at least two (2) weeks prior to the expiration of the coverages.

J. Indemnity Requirements not Limiting. Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duty to indemnify City under Section 9 of this Agreement.

K. Subcontractor Insurance Requirements. Consultant shall require each of its subcontractors that perform services under this Agreement to maintain insurance coverage that meets all of the requirements of this Section 10.

11. Mutual Cooperation.

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

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

12. Records and Inspections. Consultant shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of three (3) years. Consultant shall, without charge, provide City with access to the records during normal business hours. City may examine and audit the records and make transcripts therefrom, and inspect all program data, documents, proceedings and activities.

13. Termination of Agreement.

A. Right to Terminate. City may terminate this Agreement at any time, at will, for any reason or no reason, after giving written notice to Consultant at least five (5) calendar days before the termination is to be effective. Consultant may terminate this Agreement at any time, at will, for any reason or no reason, after giving written notice to City at least sixty (60) calendar days before the termination is to be effective.

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

14. Force Majeure. Consultant shall not be liable for any failure to perform its obligations under this Agreement if Consultant presents acceptable evidence, in City's sole judgment, that such failure was due to strikes, lockouts, labor disputes, embargoes,

acts of God, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond Consultant's reasonable control and not due to any act by Consultant.

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

If to City:
Attn: Alice D. Atkins, City Clerk
City of Monrovia
415 South Ivy Avenue
Monrovia, California 91016

If to Consultant:
Brad Merrell, P.E.
President
Merrell Johnson Engineering, Inc.
22221 US Highway 18
Apple Valley, CA 92307

With a courtesy copy to:

Craig A. Steele, City Attorney
Richards, Watson & Gershon
355 South Grand Avenue, 40th Floor
Los Angeles, CA 90071

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

17. Prohibition of Assignment and Delegation. Consultant shall not assign any of its rights or delegate any of its duties under this Agreement, either in whole or in part, without City's prior written consent. City's consent to an assignment of rights under this Agreement shall not release Consultant from any of its obligations or alter any of its primary obligations to be performed under this Agreement. Any attempted assignment or delegation in violation of this Section 17 shall be void and of no effect and shall entitle

City to terminate this Agreement. As used in this Section 17, “assignment” and “delegation” means any sale, gift, pledge, hypothecation, encumbrance or other transfer of all or any portion of the rights, obligations, or liabilities in or arising from this Agreement to any person or entity, whether by operation of law or otherwise, and regardless of the legal form of the transaction in which the attempted transfer occurs.

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

19. Exhibits. Exhibits A & B constitute a part of this Agreement and are incorporated into this Agreement by this reference. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, the provisions of this Agreement shall control.

20. Entire Agreement and Modification of Agreement. This Agreement and all exhibits referred to in this Agreement constitute the final, complete and exclusive statement of the terms of the agreement between the parties pertaining to the subject matter of this Agreement and supersede all other prior or contemporaneous oral or written understandings and agreements of the parties. No party has been induced to enter into this Agreement by, nor is any party relying on, any representation or warranty except those expressly set forth in this Agreement. This Agreement may be modified only by a writing signed by both parties.

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

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

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

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

25. Attorneys' Fees. In any litigation or other proceeding by which on party seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party shall be shall be awarded reasonable attorneys' fees together with any costs and expenses, to resolve the dispute and to enforce the final judgment.

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

[SIGNATURE PAGE FOLLOWS]

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

City:

City of Monrovia,
a California municipal corporation

By: _____
Name: Oliver Chi
Title: City Manager

ATTEST:

By: _____
Name: Alice D. Atkins, CMC
Title: City Clerk

APPROVED AS TO FORM:

By: _____
Name: Craig A. Steele
Title: City Attorney

Consultant:

Merrell Johnson Engineering, Inc.
a California corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

(Two signatures of corporate officers required for corporations under Corporations Code Section 313, unless corporate documents authorize only one person to sign this Agreement on behalf of the corporation.)

EXHIBIT A SCOPE OF SERVICES

Merrell-Johnson Companies will provide for the following services, utilizing their staff, on a time and materials basis. The Scope of Services includes:

Construction Support

Provide construction support for this project as it relates to the design detail and intent of the construction documents. Review submittals, respond to RFI's, attend site meetings with construction managers and inspector, and have the design staff participate in final punch list walk.

Construction Testing

Provide construction sampling and testing for all aspects of this work, including: concrete sampling and testing, soil sampling and testing for compaction, grain size analysis, sand equivalents, R-value, and other related laboratory and field analysis, structural section verification, asphalt sampling and laboratory testing for compliance with contract document as the quality assurance (QA) representative for the City of Monrovia.

Construction Inspection

Provide Construction inspection on a daily and periodic basis depending on the work being performed. Prepare daily and final reports for contractor's compliance to the project specifications.

Construction Survey Staking

Provide construction survey staking for the City of Monrovia as they relate to the plans giving the contractor grades and offsets as references for the construction of the streets and structures per the plan. Any re-staking to be the responsibility of the contractor, as requested, and will be back charged per the contract documents.

Construction Management

Provide the construction management of the project as it relates to the contract documents, plans and specifications. Conduct weekly meetings with the contractor and the City of Monrovia. Respond to requests for clarifications, track notices of noncompliance, negotiate change orders and extra work items. Provide daily coordination with the contractor, inspectors, surveying and testing personnel to ensure the successful completion of this project. Process pay requests and manage the overall budget of the contract. Assist in the notice of completion, the final punch list items, and the payment of retention funds.

**EXHIBIT B
APPROVED FEE SCHEDULE**

Schedule of Fees

Principal Engineer	\$145.00/Hour
Principal Surveyor	\$145.00/Hour
Associate Engineer	\$125.00/Hour
Project Manager	\$125.00/Hour
Project Engineer	\$125.00/Hour
Senior Designer	\$100.00/Hour
Designer	\$ 85.00/Hour
Project Coordinator	\$ 80.00/Hour
Administrative	\$ 65.00/Hour
Qualified SWPPP Developer (QSD)	\$140.00/Hour
Qualified SWPPP Practitioner (QSP)	\$110.00/Hour
Two-Man Survey Crew	\$200.00/Hour
Travel Expenses:	
Lodging – Meals	\$150.00/Per Day
Mileage	.60/Per Mile
Equipment and Materials:	
Printing and Document Reproduction, Miscellaneous Materials and Supplies Cost + 20%	

Conditions and Working Hours

Advance Notice: Twenty-four (24) working hours advanced notice is required for scheduling personnel to report to designated job site.

Cancellation: No charge, if made before 4:00 p.m. of the proceeding workday. If no cancellation notice is provided, the minimum show up time may be charged.

Regular Time: First eight (8) hours Monday through Friday (excluding Holidays)

***Overtime Rate:** After eight (8) hours Monday through Friday and all hours on Saturday, Sunday and the following holidays:

1. New Year's Day
2. Martin Luther King Day
3. Presidents Day
4. Memorial Day
5. Independence Day (July 4)
6. Labor Day
7. Veterans Day
8. Thanksgiving
9. Day after Thanksgiving
10. Christmas Day

*Monday through Friday and all hours Saturday the overtime rate will be charged and incurred at one and a half times the applicable unit cost.

*Sunday the first four (4) hours will be charged at one and a half times the applicable unit cost. The hours after this will be charged and incurred at two times the applicable cost.

*Holidays will be charged and incurred at two times unit cost.

*Minimum show up time for survey crews is three (3) hours at the applicable unit cost.