

**City of Garden Grove**

**INTER-DEPARTMENT MEMORANDUM**

To:	Matthew J. Fertal	From:	William E. Murray
Dept:	City Manager	Dept:	Public Works
Subject:	AWARD OF CONTRACTS FOR PROFESSIONAL ENGINEERING SERVICES TO LEE & RO, INC. AND PSOMAS FOR PROJECT NOS: 7372 AND 7373 - PRIORITY FIRE FLOW WATER IMPROVEMENTS	Date:	May 8, 2012

**OBJECTIVE**

To recommend that City Council award a contract for professional engineering services for Project No. 7372 Buaro Street/Haster Street Fire Flow Water Improvements to Lee & Ro, Inc., and to recommend that City Council award a contract for professional engineering services for Project No. 7373 - Della Lane/Loara Street Fire Flow Water Improvements to Psomas.

**BACKGROUND**

The Water Master Plan has identified Project No. 7372 and Project No. 7373 as high priority fire flow deficiency projects. These projects will be designed and constructed by next FY 2012/13.

The Buaro Street/Haster Street Fire Flow Water Improvements Project will relieve fire flow capacity deficiencies in the areas along Buaro Street from Twintree Avenue to Jentges Avenue, Haster Street from Ascot Drive to Simmons Avenue, and other residential streets in Garden Grove as shown in the attached Location Map A.

The Della Lane/Loara Street Fire Flow Water Improvements Project will relieve fire flow capacity deficiencies in the areas along Jerry Lane from approximately 175 feet east of Ora Street to Elmwood Street, Loara Street from Chapman Avenue to the city limit, Della Lane from Chapman Avenue to the city limit, and other residential streets in Garden Grove as shown in the attached Location Map B.

**DISCUSSION**

Staff requested proposals from four (4) firms to provide professional engineering services. Out of those four (4), three (3) consultants responded. Staff rated the submitted proposals on the basis of qualifications. Based on evaluation results, Lee & Ro, Inc. and Psomas are rated as the top two consultants in qualifications and their ability to provide professional engineering services for these projects. The following is a summary of the ratings:

AWARD OF CONTRACTS FOR PROFESSIONAL ENGINEERING SERVICES FOR TO LEE & RO, INC. AND PSOMAS FOR PROJECTS: 7372 AND 7373 - PRIORITY FIRE FLOW WATER IMPROVEMENTS May 8, 2012

Page 2

	<b>Psomas</b> Santa Ana, CA	<b>Lee &amp; Ro</b> City of Industry, CA	<b>Tetra Tech</b> Irvine, CA
<i>Rater A</i>	157.5	153	152.5
<i>Rater B</i>	173.5	170	170
<i>Rater C</i>	158	156	154.5
<b>Totals</b>	<b>489</b>	<b>479</b>	<b>477</b>

FINANCIAL IMPACT

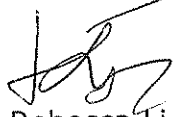
These professional engineering services will be financed with Water Funds and will have no impact to the General Fund.

RECOMMENDATION

It is recommended that the City Council:

- Award the contract for professional engineering services for Project No. 7372 - Buaro Street/Haster Street Water Improvements, in the amount of \$61,300, to Lee & Ro, Inc.; and
- Award the contract for professional engineering services for Project No. 7373 - Della Lane/Loara Street Water Improvements, in the amount of \$81,350, to Psomas; and
- Authorize the City Manager to execute the agreements on behalf of the City, and make minor modifications as appropriate.

  
WILLIAM E. MURRAY, P.E.  
Public Works Director/City Engineer

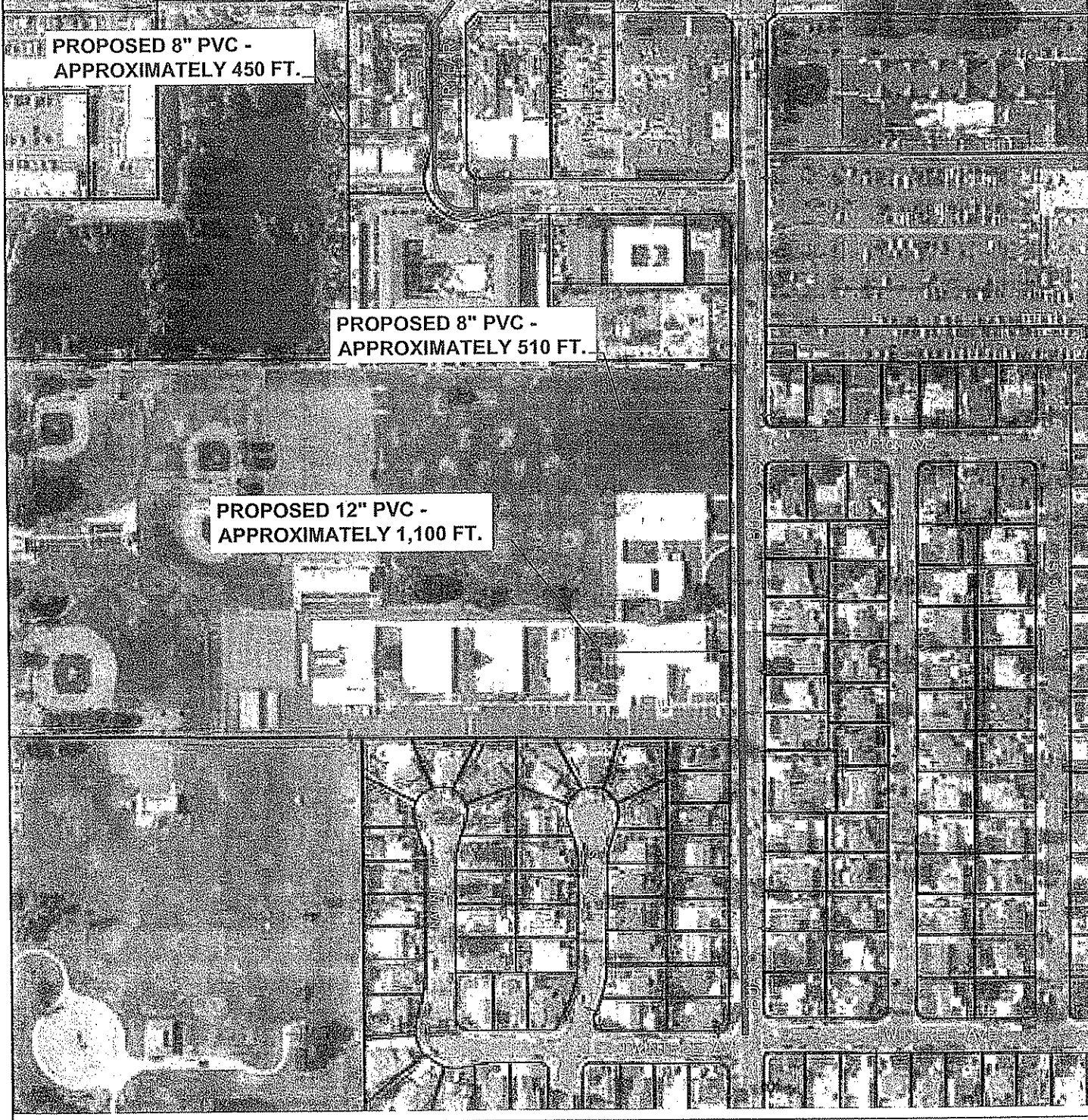
By:   
Rebecca Li, P.E.  
Associate Engineer

**Recommended for Approval**

  
**Matthew Ferial**  
City Manager

- Attachment: 1) Location Map A  
2) Location Map B  
3) Professional Services Agreement for Lee & Ro, Inc.  
4) Professional Services Agreement for Psomas

# FF025



H:\Projects\Water\GIP\_FF25\_FF76\_FF14\_FF17\_FF51\RF\ProjectA\_ProjectB\_Aerial

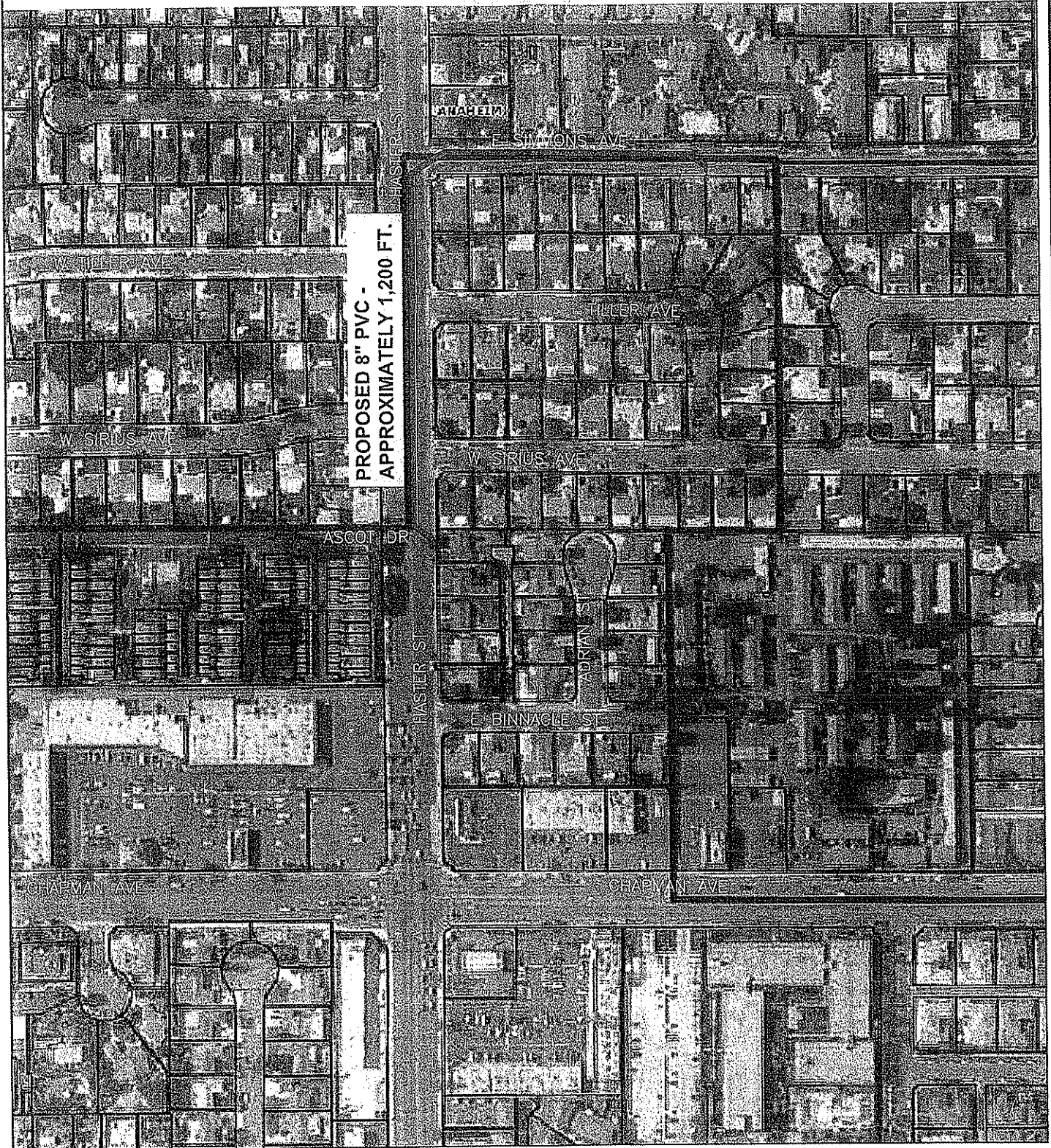
CHECKED BY: S.K.	PREPARED BY: R.L.	DRAWN BY: R.L.	SCALE: 1 inch = 250 feet	PROJECT NO.	DATE: April, 2012	LEC F
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City of Garden Grove  
Department of Public Works



**FF076**



LOCATION MAP A  
**BUARO ST / HASTER ST WATER IMPROVEMENTS  
(FF025 AND FF076)**

# FF014



H:\Projects\Water\CIP\_FF25\_FF76\_FF14\_FF17\_RFP\ProjectA\_ProjectB\_Aerial

CHECKED BY: S.K.	PREPARED BY: R.L.	DRAWN BY: R.L.	SCALE: 1 inch = 300 feet	PROJECT NO.	DATE: April, 2012
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LEC  
Sheet F



City of Garden Grove  
Department of Public Works



# FF017 & FF051



Water Mains

## LOCATION MAP B

DELLA LN / LOARA ST WATER IMPROVEMENTS  
(FF014, FF017, AND FF051)

## PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT is made and entered into, to be effective the 8<sup>th</sup> day of May, 2012, by and between the CITY OF GARDEN GROVE, a municipal corporation, hereinafter referred to as "City," and Lee & Ro, Inc., a California Corporation, hereinafter referred to as "Consultant." City and Consultant are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties."

### RECITALS

WHEREAS, City has determined that there is a need for Utility Research, Design Survey, Potholing, Permitting and Engineering Services for the construction of Buaro Street/Haster Street Fire Flow Water Improvements Project No.7372 (the "Project");

WHEREAS, City desires to retain Consultant to provide such services; and

WHEREAS, Consultant is qualified by virtue of experience, training, education, and expertise to perform the professional services required by this Agreement and has agreed to provide such services.

NOW, THEREFORE, in consideration of the promises and mutual benefits which will result to the Parties in carrying out the terms of this Agreement, it is mutually agreed as follows:

### AGREEMENT

#### I. SCOPE OF WORK

City agrees to retain Consultant, and Consultant agrees to perform the services set forth in the Scope of Services described in Exhibit "A", attached hereto and by reference made a part of this Agreement (hereinafter the "Services"). Consultant agrees that its provision of Services under this Agreement shall be within accepted standards within the profession, and its specialized services shall be in accordance with customary and usual practices in Consultant's profession. By executing this Agreement, Consultant warrants that it has carefully considered how the work should be performed and fully understands the facilities, difficulties, and restrictions attending performance of the work under this Agreement.

## II. TERM

This Agreement shall be effective as of the date first set forth above. This Agreement shall commence upon the effective date of this Agreement, and shall remain and continue in effect until tasks described herein are completed unless otherwise terminated prior to this date pursuant to the provisions of this Agreement.

## III. FEES

### A. Accounting Records

Consultant shall keep complete, accurate, and detailed accounts of all time, costs, expenses, and expenditures pertaining in any way to this Agreement. Upon request of City, Consultant shall provide City with all records pertaining to this Agreement.

### B. Total Payment

The Parties agree that Consultant shall bill for the Services provided by Consultant to City on an hourly basis and in accordance with the charges and fee schedule attached as Exhibit "B," except as otherwise set forth herein, provided compensation under this Agreement shall not exceed \$61,300.

### C. Monthly Payment

1. City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment, as set forth in Exhibit "B," attached hereto based upon actual time spent providing the services outlined in this Agreement. Consultant shall submit to City monthly or periodic statements requesting payment. Such requests shall be based upon the amount and value of the Services performed by Consultant under this Agreement and shall be prepared by Consultant and accompanied by such reporting data including a detailed breakdown of all costs incurred and tasks performed during the period covered by the statement, as may be required by City. Invoices shall be submitted on or about the first business day of each month, for Services provided the prior month. City shall use reasonable efforts to make payment to Consultant within forty-five (45) days after the date of the invoice or as soon thereafter as reasonably practicable. If City determines that the approved written Scope of Work under this Agreement or any specified task hereunder is incomplete, the City Manager, or his or her designee, shall notify Consultant and may withhold the payment amount for the unfinished work accordingly.

2. 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.



#### **IV. TERMINATION**

City may terminate this Agreement for its convenience at any time, with or without cause, in whole or in part, upon giving Consultant thirty (30) days written notice. Upon said notice, City shall pay Consultant its allowable costs incurred to date of termination and those allowable costs determined by City to be reasonably necessary to effect such termination. Upon receipt of said notice, Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If City terminates a portion of this Agreement, such termination shall not make void or invalidate the remainder of this Agreement. Thereafter, Consultant shall have no further claims against City under this Agreement. Upon termination of the Agreement pursuant to this Section, Consultant will submit an invoice to City pursuant to Section 3. Consultant may terminate this Agreement, with or without cause, upon thirty (30) days written notice to City.

#### **V. DEFAULT OF CONSULTANT**

A. Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event Consultant is in default, except as provided for in Section XXI, City shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default and can terminate the Agreement immediately upon written notice to Consultant.

B. If the City Manager, or his/her designee, determines that Consultant is in default in the performance of any of the terms or conditions of this Agreement, it shall notify Consultant in writing of such default. Consultant shall have ten (10) days to cure the default by rendering a satisfactory performance. In the event Consultant fails to cure its default within such period of time, City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice of any remedy to which City may be entitled at law, in equity or under this Agreement. Consultant shall be liable for any and all reasonable costs incurred by City as a result of such default including, but not limited to, procurement costs of the same or similar services defaulted by Consultant under this Agreement.

#### **VI. LEGAL RELATIONSHIP BETWEEN THE PARTIES**

A. The legal relationship between the Parties hereto is that of an independent contractor, and nothing herein shall be deemed to make Consultant a City employee. During the performance of this Agreement, Consultant and its officers, employees, and agents shall act in an independent capacity and shall not act as City officers, employees, or agents. 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 its officers, employees, or agents, except as set

forth in this Agreement. Consultant, its officers, employees, or agents shall not maintain an office or any other type of fixed business location at City's offices.

B. Consultant shall not incur or have the power to incur any debt, obligation, or liability against City, or bind City in any manner.

C. No City benefits shall be available to Consultant, its officers, employees, or agents in connection with any performance under this Agreement. Except for fees paid to Consultant as provided for in this Agreement, City shall not pay salaries, wages, or other compensation to Consultant for the performance of Services under this Agreement. City shall not be liable for compensation or indemnification to Consultant, its officers, employees, or agents for injury or sickness arising out of performing Services hereunder. If for any reason, any court or governmental agency determines that City has financial obligations, other than pursuant to Section III herein, of any nature related to salary, taxes, or benefits of Consultant's officers, employees, servants, representatives, subcontractors, or agents, Consultant shall indemnify City for all such financial obligations.

## **VII. MODIFICATIONS AND AMENDMENTS TO AGREEMENT**

No modification or amendment of this Agreement or any of the provisions hereof shall be effective for any purpose unless set forth in writing signed by duly authorized representatives of both Parties.

## **VIII. ASSIGNMENTS AND SUBCONTRACTING**

The experience, knowledge, capability, and reputation of Consultant, its principals and employees were a substantial inducement for City to enter into this Agreement. Consultant may not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, voluntarily or by operation of law, without the prior written approval of City. Except as otherwise expressly provided in the Scope of Services (Exhibit "A"), Consultant shall not contract with any other person or entity to perform the Services required without written approval of City. If Consultant is permitted to subcontract any part of this Agreement by City, Consultant shall be responsible to City for the acts and omissions of its subcontractor as it is for persons directly employed. Nothing contained in this Agreement shall create any contractual relationships between any subcontractor and City. All persons engaged in the work will be considered employees of Consultant. City will deal directly with and will make all payments to Consultant as provided for in Section III.

## **IX. SUCCESSORS IN INTEREST**

This Agreement shall be binding upon and inure to the benefit of the Parties' successors and assignees.

## X. THIRD PARTY BENEFICIARY

Except as may be specifically provided for herein, nothing contained in this Agreement is intended to confer, nor shall this Agreement be construed as conferring, any rights, including, without limitation, any rights as third-party beneficiary or otherwise, upon any entity or person not a party hereto.

## XI. INSURANCE

### A. Insurance Required

Consultant shall procure and maintain the insurance described herein for the duration of this Agreement, or as otherwise specified herein, against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Consultant, its agents, representatives, or employees. Insurance required herein shall be provided by a reputable insurance company in good standing with the State of California and having a minimum A.M. Best's Guide Rating of A-, Class VII or better. City will require Consultant to substitute any insurer whose rating drops below the levels specified herein. Such substitution shall occur within twenty (20) days of written notice to Consultant by City.

Consultant shall provide to City certificates of insurance in a form acceptable to City indicating the deductible or self-retention amounts and the expiration date of the policy, and shall provide renewal certificates not less than ten (10) days prior to the expiration of each policy term. The certificates of insurance shall specifically identify this Agreement and shall contain express conditions that City is to be given at least thirty (30) days advance written notice of any material modification in or termination of insurance. Such insurance shall be primary to and not contributing with any other insurance maintained by City and shall name the City of Garden Grove and its officers, councilmembers, officials, employees, agents and volunteers as additional insureds by endorsement to the insurance policies. Except as expressly authorized herein, all insurance shall be on an occurrence basis.

#### 1. Errors and Omissions Insurance

Consultant shall maintain in full force and effect throughout the term of this Agreement, standard industry form professional negligence errors and omissions insurance coverage in an amount of not less than One Million Dollars (\$1,000,000.00) per claim or occurrence, in accordance with the provisions of this Section. If the policy of insurance is written on a "claims made" basis, the policy shall be continued in full force and effect at all times during the term of this Agreement, and for a period of three (3) years from the date of the completion of the Services provided hereunder. In the event of termination of the policy during this period, Consultant shall obtain continuing insurance coverage for the prior acts or omissions of Consultant during the course of performing Services under the terms of this Agreement. The coverage shall be

evidenced by either a new policy evidencing no gap in coverage, or by obtaining separate extended "tail" coverage with the present or new carrier.

In the event the policy of insurance is written on an "occurrence" basis, the policy shall be continued in full force and effect during the term of this Agreement, or until completion of the Services provided for in this Agreement, whichever is later. In the event of termination of the policy during this period, new coverage shall be obtained for the required period to ensure coverage for the prior acts of Consultant during the course of performing the Services under the terms of this Agreement.

2. Workers' Compensation

Consultant shall obtain and maintain, during the term of this Agreement, Workers' Compensation Employer's Liability Insurance in the statutory amount as required by state law. Such worker's compensation insurance shall be endorsed to provide for a waiver of subrogation against City.

**B. Minimum Limits of Insurance**

Consultant shall maintain limits no less than:

1. General Liability:

\$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2. Automobile Liability:

\$1,000,000 per accident for bodily injury and property damage.

3. Employer Liability:

\$1,000,000 per accident for bodily injury or disease.

**C. Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to and approved by the City Manager. At the option of the City Manager, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City and its councilmembers, officials, officers, employees, agents or volunteers, or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses, or Consultant shall otherwise provide an alternative satisfactory to the City Manager.

**D. Other Insurance Provisions**

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City of Garden Grove and its councilmembers, officers, officials, employees, agents and volunteers are to be covered as insureds with respect to: liability arising out of activities performed by or on behalf of Consultant; products and completed operations of Consultant; premises owned occupied or used by Consultant; or automobiles owned, leased, hired, or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the Garden Grove Sanitary District, the City of Garden Grove, the Garden Grove Agency for Community Development and their respective councilmembers, board members, officers, officials, employees, agents, or volunteers.

2. For any claims related to this Agreement, Consultant's coverage shall be primary insurance as respects the City and its councilmembers, officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by Garden Grove Sanitary District, the City of Garden Grove, the Garden Grove Agency for Community Development and their respective councilmembers, board members, officers, officials, employees, agents, and volunteers shall be in excess of Consultant's insurance and shall not contribute with it.

3. Any failure to comply with reporting or other provisions of the policies, including breaches of warranties shall not affect coverage provided to the City and its respective councilmembers, board members, officers, officials, employees, agents, and volunteers.

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

5. Each insurance policy required by this Section shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been provided to City.

6. Consultant agrees to ensure that subcontractors, and any other parties involved with the project who are brought onto or involved in the project by Consultant, provide the same minimum insurance coverage 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 subcontractors and others engaged in the project will be submitted to City for review.

**E. Verification of Coverage**

Consultant shall furnish City with original endorsements effecting coverage required by this Agreement. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by City before work commences.

**XII. INDEMNITY**

**A. Indemnification**

To the fullest extent permitted by law, Consultant shall indemnify, defend (at Consultant's sole cost and expense), protect and hold harmless the City of Garden Grove and its councilmembers, officers, officials, employees, agents, and volunteers, (individually "Indemnified Party"; collectively "Indemnified Parties") against any and all liability, claims, judgments, costs, and demands (collectively, "Claims"), including Claims arising from injuries or death of persons (Consultant's employees included) and damage to property, which Claims arise out of, pertain to, or are related to the negligence, recklessness or willful misconduct of Consultant, its agents, employees, or subcontractors, or arise from Consultant's negligent, reckless or willful performance of or failure to perform any term, provision, covenant or condition of this Agreement ("Indemnified Claims"), but Consultant's liability for Indemnified Claims shall be reduced to the extent such Claims arise from the negligence, recklessness or willful misconduct of the City of Garden Grove and its councilmembers, officers, directors, officials, employees, or agents.

Consultant shall reimburse the Indemnified Parties for any reasonable expenditures, including reasonable attorneys' fees, expert fees, litigation costs and expenses that each Indemnified Party may incur by reason of Indemnified Claims. Upon request by an Indemnified Party, Consultant will defend with legal counsel reasonably acceptable to the Indemnified Party all Claims against the Indemnified Party that may arise out of, pertain to, or relate to Indemnified Claims, whether or not Consultant is named as a party to the Claim proceeding. The determination whether a Claim may "arise out of, pertain to, or relate to" Indemnified Claims shall be based on the allegations made in the Claim and the facts known or subsequently discovered by the parties. In the event a final judgment, arbitration award, order, settlement, or other final resolution expressly determines that Claims did not arise out of, pertain to, nor relate to the negligence, recklessness or willful misconduct of Consultant to any extent, then City will reimburse Consultant for the reasonable costs of defending the Indemnified Parties against such Claims, except City shall not reimburse Consultant for attorneys' fees, expert fees, litigation costs and expenses as were incurred defending Consultant or any parties other than Indemnified Parties against such Claims.

Consultant's liability for indemnification hereunder is in addition to any liability Consultant may have to City for a breach by Consultant of any of the provisions of this Agreement. Under no circumstances shall the insurance requirements and limits

set forth in this Agreement be construed to limit Consultant's indemnification obligation or other liability hereunder. The terms of this Agreement are contractual and the result of negotiation between the parties hereto. Accordingly, any rule of construction of contracts (including, without limitation, California Civil Code Section 1654) that ambiguities are to be construed against the drafting party, shall not be employed in the interpretation of this Agreement.

Consultant's indemnification obligation hereunder shall survive the expiration or earlier termination of this Agreement until all actions against the Indemnified Parties for such matters indemnified hereunder are fully and finally barred by the applicable statute of limitations or, if an action is timely filed, until such action is final. This provision is intended for the benefit of third party Indemnified Parties not otherwise a party to this Agreement.

### **XIII. COMPLIANCE WITH LAW**

A. Consultant certifies by the execution of this Agreement the following: that it pays employees not less than the minimum wage as defined by law and that it does not discriminate in its employment with regard to race, color, religion, sex, age, marital status, ancestry, or national origin; that Consultant is in compliance with all federal and state laws, local directives, and executive orders regarding non-discrimination in employment; and that Consultant agrees to demonstrate positively and aggressively the principle of equal opportunity in employment.

B. Consultant shall keep itself informed of State and Federal laws and regulations, which in any manner affect those employed by it or in any way affect the performance of its Services pursuant to this Agreement. Consultant shall at all times observe and comply with all such laws and regulations. The City of Garden Grove and its councilmembers, officers, employees, and agents shall not be liable at law or in equity for Consultant's failure to comply with such laws and regulations.

### **XIV. LICENSES AND QUALIFICATIONS**

Consultant represents and warrants to City that it has obtained all licenses, permits, qualifications, and approvals of whatever nature that is legally required to practice its profession. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any license, permit, or approval, which is legally required for Consultant to perform Services under this Agreement.

### **XV. CONFIDENTIALITY AND OWNERSHIP OF DOCUMENTS**

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

shall not without written authorization from the City Manager or unless requested by City's Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the Services performed under this Agreement or relating to any project or property location within City. Response to a subpoena or court order shall not be considered "voluntary" for the purposes of this Section, provided Consultant gives City proper notice of such subpoena or court order. Consultant shall properly notify City of any summons, complaints, subpoenas, notice of deposition, request for documents, interrogatories, requests for admissions or other discovery requests received by Consultant, its officers, employees, agents or subcontractors, related to Services performed pursuant to this Agreement. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding, the cost of which shall be borne by City. Consultant agrees to cooperate fully with City and to provide City with an opportunity to review and respond to discovery requests provided by Consultant, arising out of Services performed pursuant to this Agreement. However, City's right to review any such request or response does not imply or mean City has the right to control, direct, write or rewrite said response.

B. The documents and study materials for this project shall become the property of City upon the termination or completion of the work. Consultant agrees to furnish to City copies of all memoranda, correspondence, computation, and study materials in its files pertaining to the work described in this Agreement, which is requested in writing by City.

#### **XVI. INTERPRETED UNDER LAWS OF THE STATE OF CALIFORNIA**

This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof. Venue for any litigation concerning this Agreement shall be in the Superior Court for the County of Orange, California.

#### **XVII. ATTORNEYS' FEES**

If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees, costs, and necessary disbursements in addition to any other relief to which they may be entitled.





**XXI. FORCE MAJEURE**

If either party shall be delayed or prevented from the performance of any service under this Agreement by reason of acts of God, strikes, lockouts, labor troubles, restrictive governmental laws or regulations or other cause, without fault and beyond the reasonable control of the party obligated (financial inability excepted), performance of such act shall be excused for the period of delay, and the period for performance of any such act shall be extended for a period equivalent to the period of such delay.

**XXII. TIME IS OF THE ESSENCE**

The Parties agree that time is of the essence of this Agreement with respect to the deadlines set forth herein.

**XXIII. SEVERABILITY**

Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be invalid under the applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of that provision, or the remaining provisions of this Agreement.

**XXIV. PROHIBITED INTERESTS**

Consultant covenants that, for the term of this Agreement, no Board Member, official, officer or employee of City during his/her tenure in office/employment, or for one (1) year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. Consultant warrants that it has not given or paid and will not give or pay any third party money or other consideration for obtaining this Agreement.

**XXV. SCOPE CHANGES**

In the event of a change in the scope of the proposed project, as requested by City, the Parties hereto shall execute an addendum to this Agreement, setting forth, with particularity, all terms of the new Agreement, including but not limited to any additional Consultant's fees.

**XXVI. NON-LIABILITY OF CITY OFFICERS AND EMPLOYEES**

No officer or employee of the City shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Consultant or its successor, or for breach of any obligation of the terms of this Agreement.

**XXVII. AGREEMENT EXECUTION AUTHORIZATION**

Each of the undersigned represents and warrants that he or she is duly authorized to execute and deliver this Agreement and that such execution is binding upon the entity for which he or she is executing this Agreement.

**XXVIII. RECITALS**

The Recitals above are hereby incorporated into this section as though fully set forth herein and each party acknowledges and agrees that such Party is bound, for purposes of this Agreement, by the same.

IN WITNESS WHEREOF, this Agreement has been executed in the name of City, by its officers thereunto duly authorized, and Consultant as of the day and year first above written.

CITY OF GARDEN GROVE

By: \_\_\_\_\_  
Matthew J. Fertal  
City Manager

ATTEST:

By: \_\_\_\_\_  
Kathy Bailor  
City Clerk

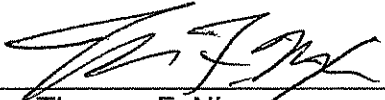
Lee & Ro, Inc.  
By: \_\_\_\_\_  
Dhiru Patel, P.E.  
Vice President – Southern California  
Region



If CONTRACTOR is a corporation, a Corporate Resolution and/or Corporate Seal is required. If a Partnership, Statement of Partnership must be submitted to CITY.

APPROVED AS TO FORM:

Woodruff, Spradlin & Smart

By:   
Thomas F. Nixon  
City Attorney



**EXHIBIT A**

**SCOPE OF SERVICES**



# Exhibit A

## Project Description and Scope of Work

### Project Description

#### Package A – Buaro St./Haster St. Water Improvements (FF025 & FF076)

Project FF025 will consist of new 8-inch and 12-inch replacement water mains in Buaro Street, Puryear Lane, and Jentges Avenue. The project will begin at the intersection of Buaro Street and Twintree Avenue, and will connect into an existing water main. From this connection point the main will continue north on Buaro Street to approximately 65 feet north of Jentges Avenue and connect to an existing water main. The proposed Puryear Lane water main will begin at the intersection of Chapman Avenue and Puryear Lane where it will connect to the existing water main, and then continue south on Puryear Lane and then east on Jentges Avenue to approximately 75 feet east of Puryear Lane where it will connect to an existing main. The length of Project F0025 is approximately 2,100 feet.

Project FF076 will consist of a new 8-inch replacement water main in Haster Street and East Simmons Avenue. The project will begin at the intersection of Haster Street and Ascot Drive, where it will connect to an existing water main, and then continue north on Haster Street and then east on East Simmons Avenue to approximately 500 feet east of Haster Street where the new water main will connect to an existing main. The length of Project F0076 is approximately 1,200 feet.

Total length of Package A is 3,300 feet.

### Scope of Work

#### TASK I – Project Management, Meetings, and Coordination:

##### 1.1 Project Management

LEE & RO will provide overall project management throughout the duration of the project. This includes contract administration with City of Garden Grove, general administration of the project, attendance at meetings, monitoring schedules and budgets, and timely and regular reporting of project status. LEE & RO's Project Manager will coordinate the project activities, monitor schedules and budgets, and administer the contract with City of Garden Grove.

**Work Plan:** At the beginning of the project, LEE & RO will develop a Work Plan, which is a written document that defines project deliverables and how the project will be planned, communicated, executed, controlled, monitored, and closed.

**Communication:** Timely, frequent and detailed communication is an essential tool for project success. LEE & RO will be responsible for project communication, both within the project team and among all of the project stakeholders. As a subset of the Work Plan, the Communications Plan will be prepared to describe the communication needs - how and in what format information will be communicated, and who is responsible for providing each type of communication.

The Work Plan will include a project schedule identifying significant milestones and deliverables that are complimentary to the established project goals and execution

strategy. The Work Plan will also include a QA/QC Plan. LEE & RO's QA/QC approach is two-pronged. The first prong focuses on the quality of our services and the second prong focuses on the quality of our deliverables.

#### QA/QC Components

LEE & RO's Design Quality Control components include:

- ✓ Incorporate City of Garden Grove Standards and Procedures.
- ✓ Plan for Quality, Not Just Review.
- ✓ Review Early When the Project Concept is Being Developed.
- ✓ "Clear and Concise" Presentation in Plans and Specifications and Reports.
- ✓ Plan and Perform Code, Permit and Constructability Reviews on Time.

#### 1.2 Project Kick-Off Meeting

Once the Work Plan is developed, the Project Manager will schedule a project kick-off meeting with City of Garden Grove staff to discuss the scope and parameters of the project. LEE & RO will prepare the meeting agenda and also the meeting minutes. Specific project goals to be accomplished will be identified and an effective project execution strategy to accomplish these goals will be further developed and subsequently incorporated into the Work Plan.

#### 1.3 Public Access and Protection Coordination

LEE & RO will meet with City of Garden Grove staff and contact all utility representatives, governmental agencies, City departments, neighborhood associations, and private homeowners to identify and develop the public protection and access requirements to be incorporated into the construction documents and implemented by the Contractor during construction activities.

#### 1.4 Monthly Project Status Reporting and Miscellaneous Meetings

LEE & RO will prepare and submit monthly progress reports summarizing the actual work performed, project issues, and status of the project schedule and budget. The report will be submitted with each invoice. LEE & RO will meet with City of Garden Grove staff, as necessary, to discuss and address any project issues. LEE & RO will prepare the agenda, as well as record and distribute the meeting minutes.

#### 1.5 Quality Assurance / Quality Control

LEE & RO QA/QC activities are led by a senior manager that is not directly involved in the day-to-day management and execution of the project. LEE & RO will perform technical and design reviews before each milestone deliverable is submitted to City of Garden Grove. Unless the QC review is completed, the Principal-in-Charge will not authorize the Project Manager to submit milestone deliverables. Our QC reviews will include checks of relevant calculations, memoranda, drawings, specifications, and the engineer's estimate of probable construction costs.

### TASK II- Preliminary Investigation and Design Survey

#### 2.1 Field Data Collection and Utility Investigation

LEE & RO will collect and review applicable plans, specifications, reports and related documents and information provided by City of Garden Grove. LEE & RO will also research and obtain available record data from utility agencies pertinent to the project and conduct a thorough utility

investigation including review of available as-builts to accurately show the location of utilities on the drawings. Available information from the City of Garden Grove GIS database and utility records will be reviewed to identify the location and elevation of critical underground utilities

## 2.2 Surveying and Right-of-Way

LEE & RO will provide field surveys for the preparation of the construction drawings and specifications. Surveys will determine site topography, contours and utility locations along the pipeline alignment. LEE & RO subconsultant team member Advanced Survey Concepts, Inc. (ASC) will set horizontal and vertical controls per CCS NAD 83 and established local benchmarks and locate existing street rights-of-way and critical property corners along the pipeline alignment.

## TASK III– Preliminary Engineering

### 3.1 Preliminary Design (25% Submittal)

LEE & RO will prepare preliminary drawings as required to establish agreement on scope, horizontal alignment, design parameters, structural requirements, maintenance concerns, constructability and construction phasing, traffic impacts, and general disruption to the area. The preliminary design report (PDR) will be submitted to City of Garden Grove for review and approval in accordance with the Work Plan prepared above. As a minimum the following will be included and addressed in the preliminary design submittal:

- a) Recommended pipeline alignment including impacts to immediate area
- b) Utility conflicts
- c) Recommended methods and materials of construction
- d) Identification of areas where construction is limited or controlled
- e) Construction cost estimate for the recommended improvements
- f) Permit and easement requirements
- g) Construction sequencing
- h) Recommended pothole locations

LEE & RO will submit ten (10) sets of the PDR that will include preliminary drawings showing locations of facilities for City of Garden Grove review and concurrence. The drawings will include pipeline plan horizontal alignments, construction phasing, proposed structures and details, layouts, figures and exhibits as required for the proposed construction, replacement or repair. The drawings will emphasize the impact on existing and adjacent utility facilities. LEE & RO will coordinate with other utility companies and agencies to obtain permits on behalf of City of Garden Grove as required.

LEE & RO will attend a PDR review meeting to discuss integrating the data and incorporating City of Garden Grove staff comments into the final design.





## TASK IV– Final Engineering

### Final Design

LEE & RO will be responsible for final design of the proposed water improvements. The designs shall provide for maintaining continual operation of the existing water system during the construction of the project. LEE & RO will prepare two (2) sets of detailed drawings and specifications for competitive bidding for the proposed construction work. Potholing will be performed for those utilities identified as potential conflicts in the 25% design PDR. A total of twenty (20) potholes have been included in the fee estimate for this work.

Drawings will be prepared on 24" x 36" sheets using computer generated drafting AutoCAD Version 2004 utilizing City of Garden Grove symbols set and text standards. LEE & RO and/or City of Garden Grove standard construction details that are applicable to the project will be used. Final project drawings will be signed and sealed by a professional engineer registered in the appropriate discipline in the State of California. Plans will be drawn to a horizontal scale of 1" = 40' and vertical scale of 1" = 4'. Detailed plans will be drawn to a scale of 1" = 8' or larger. A construction phasing plan will be provided.

Specifications and contract documents will be based on City of Garden Grove standard documents edited for application to this project. Additional specification sections necessary to completely define the work will be prepared and coordinated with project drawings to produce a complete set of construction documents.

#### 4.1 60% Design

Following the completion of the PDR review meeting, LEE & RO will prepare the 60% design. LEE & RO will provide ten (10) sets of the drawings and specifications to City of Garden Grove for review at the 60% design stage. We have included a two (2) week review period in our preliminary schedule.

LEE & RO will attend a 60% design review meeting to receive City of Garden Grove's comments related to the 60% design submittal.

#### 4.2 90% Design

Following the completion of the 60% design review meeting, LEE & RO will incorporate City of Garden Grove's comments and prepare the 90% design. LEE & RO will provide ten (10) sets of the drawings and specifications to City of Garden Grove for review at the 90% design stage.

LEE & RO will attend a 90% design review meeting to receive City of Garden Grove's comments related to the 90% design submittal.

#### 4.3 99% Design

Following the completion of the 90% design review meeting, LEE & RO will incorporate City of Garden Grove's comments and prepare the 99% design. LEE & RO will provide ten (10) sets of the drawings and specifications to City of Garden Grove for review at the 99% design

stage.

LEE & RO will attend a 99% design review meeting to receive City of Garden Grove's comments related to the 99% design submittal.

#### 4.4 100% Design

Following completion of the 99% design review meeting, LEE & RO will incorporate City of Garden Grove's comments and prepare final plans, specifications, and cost estimate for bid. LEE & RO will provide two (2) hard copy sets of signed and stamped drawings (prints and mylars) and two (2) original sets of final specifications (bound and unbound). A notebook containing the engineer's estimate of probable construction cost, in addition to all pertinent correspondence and calculations will be provided at the completion of final design.

#### 4.5 Construction Bidding Through Contract Award

LEE & RO will provide answers to contractor questions and will prepare and issue addenda (maximum of 2 addenda) for design related issues.

### V. CITY OF GARDEN GROVE RESPONSIBILITIES

1. Provide project management. Assign a Project Manager to act as the project focal point.
2. Provide or make available upon request, reports, CAD drawings (title sheet, border), specifications, GIS land base maps (hard copy and digital), City of Garden Grove standard specifications, records and other data deemed useful for project development.
3. Provide partial boilerplate of contract documents or general articles with sample agreement, sample bonds, and insurance forms.
4. Assist with plan research of available City plans.
5. Advertise for bids, review bids and award contracts.
6. Administer agreement and make payments to LEE & RO.
7. Award contract to Contractor, administer contract and make payments to Contractor.
8. All printing and reproduction for bidding and construction.
9. Pay all permit fees required for the project.
10. Provide coordination to avoid interfering with other City construction projects and major events.
11. Geotechnical services have not been included as part of this proposal. We assume the City of Garden Grove will contract directly with an on-call geotechnical firm to conduct the geotechnical investigation.
12. Provide construction management, inspection, and materials testing during construction phase.



## Assumptions

The schedule and associated fee estimate are based on the following assumptions and critical path tasks.

1. Our fees include traffic control plans for potholing work in Haster St. from Ascot Dr. to E. Simmons Ave.
2. The preliminary schedule allows a ten (10) day period for City of Garden Grove review of design submittals.
3. Survey services include a field topographic survey. An aerial survey is not included.
4. We have budgeted for a maximum of 20 potholes for project A. Additional potholes can be provided for a unit cost of \$850 per pothole. We have assumed that no contaminated soils will be encountered during potholing and have not budgeted for contaminated soils handling and/or disposal.

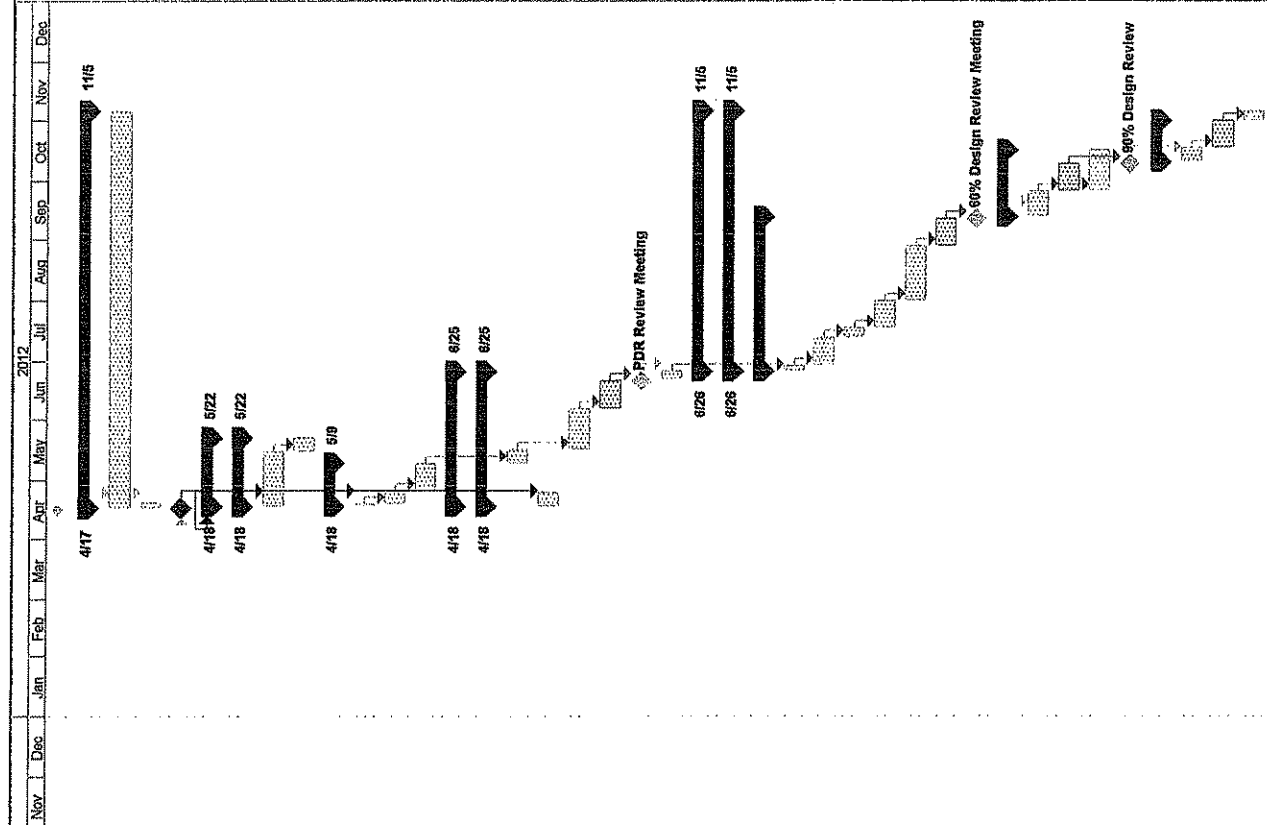


City of Garden Grove - Public Works  
Water Improvements Project A  
Nos. FF025 & FF076

Exhibit A

Preliminary Design Schedule

ID	Task Name	Duration	Start	Finish
1	Notice To Proceed	1 day	Mon 4/16/12	Mon 4/16/12
2	<b>Task No. 1: Project Management</b>	<b>146 days</b>	<b>Tue 4/17/12</b>	<b>Mon 11/16/12</b>
3	1.0 Overall Project Management	145 days	Tue 4/17/12	Mon 11/16/12
4	1.1 Develop Project Work Plan	3 days	Tue 4/17/12	Thu 4/19/12
5	1.2 Kick-Off Meeting	1 day	Tue 4/17/12	Tue 4/17/12
6	<b>Task No. 2: Preliminary Investigation and Design Survey</b>	<b>25 days</b>	<b>Wed 4/18/12</b>	<b>Tue 5/22/12</b>
7	2.1 Field Data Collection and Utility Investigation	25 days	Wed 4/18/12	Tue 5/22/12
8	Obtain and review existing utility drawings	20 days	Wed 4/18/12	Tue 5/15/12
9	Incorporate Utility Data	5 days	Wed 5/16/12	Tue 5/22/12
10	<b>2.2 Surveying</b>	<b>16 days</b>	<b>Wed 4/18/12</b>	<b>Wed 6/09/12</b>
11	Schedule Field Survey	1 day	Wed 4/18/12	Wed 4/18/12
12	Conduct Field Survey	5 days	Thu 4/19/12	Wed 4/25/12
13	Finalize Survey Topo and Submit	10 days	Thu 4/26/12	Wed 5/09/12
14	<b>Task No. 3: Preliminary Engineering</b>	<b>49 days</b>	<b>Wed 4/18/12</b>	<b>Mon 6/25/12</b>
15	3.1 Preliminary Design (25%)	49 days	Wed 4/18/12	Mon 6/25/12
16	Prepare preliminary pipeline alignment plans	5 days	Thu 5/10/12	Wed 5/16/12
17	Develop list of permit, regulatory requirements	5 days	Wed 4/18/12	Tue 4/24/12
18	Develop Preliminary Design Report (PDR)	15 days	Thu 5/17/12	Wed 6/06/12
19	City of Garden Grove Review of PDR	10 days	Thu 6/7/12	Wed 6/20/12
20	PDR Review Meeting	1 day	Thu 6/21/12	Thu 6/21/12
21	Summarize and incorporate City of Garden Grove Comments	2 days	Fri 6/22/12	Mon 6/25/12
22	<b>Task No. 4: Final Engineering</b>	<b>95 days</b>	<b>Tue 6/26/12</b>	<b>Mon 11/16/12</b>
23	Final Design	95 days	Tue 6/26/12	Mon 11/16/12
24	4.1 60% Design	57 days	Tue 6/26/12	Wed 9/12/12
25	Develop Potoling Location Map	3 days	Tue 6/26/12	Thu 6/28/12
26	Obtain Excavation Permit from City of Garden Grove Public Works	10 days	Fri 6/29/12	Thu 7/12/12
27	Field Potoling	3 days	Fri 7/13/12	Tue 7/17/12
28	Develop Potoling Report and Submit	10 days	Wed 7/18/12	Tue 7/31/12
29	Develop 60% Design (Plans, Specifications, Cost Estimate), QA/QC, and Submit	20 days	Wed 8/1/12	Tue 8/28/12
30	City of Garden Grove Review of 60% Design	10 days	Wed 8/28/12	Tue 9/11/12
31	60% Design Review Meeting	1 day	Wed 9/12/12	Wed 9/12/12
32	4.2 90% Design	24 days	Thu 9/13/12	Tue 10/16/12
33	Develop 90% Design (Plans, Specifications, Cost Estimate), QA/QC, and Submit	9 days	Thu 9/13/12	Tue 9/25/12
34	City of Garden Grove Review of 90% Design	10 days	Wed 9/26/12	Tue 10/09/12
35	Utility Companies Review of 90% Design	15 days	Wed 9/26/12	Tue 10/16/12
36	90% Design Review Meeting	1 day	Wed 10/10/12	Wed 10/10/12
37	4.3 99% Design	15 days	Thu 10/11/12	Wed 10/31/12
38	Develop 99% Design (Plans, Specifications, Cost Estimate), QA/QC, and Submit	5 days	Thu 10/11/12	Wed 10/17/12
39	City of Garden Grove Review of 99% Design	10 days	Thu 10/18/12	Wed 10/31/12
40	<b>4.4. Prepare 100% Plans, Specifications, &amp; Estimate and SUBMIT</b>	<b>3 days</b>	<b>Thu 11/1/12</b>	<b>Mon 11/16/12</b>



Project Schedule  
Date: October 11, 2011

Notice to Proceed Summary

Task: City of Garden Grove Review

Task Milestone: Utility Company Review

Meeting Milestone: Milestone

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LEE & RO, Inc.

**EXHIBIT B**

**SCHEDULE OF PAYMENT**

**EXHIBIT B - FEE PROPOSAL  
CITY OF GARDEN GROVE  
DESIGN SERVICES FOR WATER IMPROVEMENTS -  
PROJECT A  
(FF025 AND FF076)**

TASK No.	Labor Category Used for Fee Estimate: E8 Managing Engineer, E5 Principal Engineer, E2 Assistant Engineer, T7 Supervising Designer, T3 Associate Designer, and A2 Word Processor	Task Description	Labor Hours						Total Hours	Labor	Other Direct Costs (ODCs)	Subs	TOTAL
			E8	E5	E2	T3	A2						
			Hourly Billing Rates (\$/HR)										
			\$200	\$148	\$107	\$94	\$70						
<b>A</b>	<b>Work</b>												
TASK 1	Project Management, Meetings, and Coordination		8	4				12	\$2,192	\$100		\$2,292	
TASK 2	Preliminary Investigation and Design Survey				16	2		18	\$1,852	\$100		\$1,952	
2.1	Field Data Collection and Utility Investigation				2			2	\$214	\$50	\$8,195	\$8,459	
2.2	Surveying				6			6	\$642		\$15,600	\$16,242	
2.3	Potholing to locate existing underground utilities (Maximum of 20 Potholes)												
	<b>SUBTOTAL Task 2, Preliminary Investigation and Design Survey</b>		<b>0</b>	<b>0</b>	<b>24</b>	<b>0</b>	<b>2</b>	<b>26</b>	<b>\$2,708</b>	<b>\$150</b>	<b>\$23,795</b>	<b>\$26,653</b>	
TASK 3	Preliminary Engineering												
3.1	Preliminary Design (25% Submittal)		4	16	16	40	6	82	\$9,060	\$250		\$9,310	
	<b>SUBTOTAL Task 3, Preliminary Engineering</b>		<b>4</b>	<b>16</b>	<b>16</b>	<b>40</b>	<b>6</b>	<b>82</b>	<b>\$9,060</b>	<b>\$250</b>	<b>\$0</b>	<b>\$9,310</b>	
TASK 4	Final Engineering												
4.1	Prepare 60% Plans and Specifications, Cost Estimate (including traffic control)		4	4	16	80	8	112	\$11,184	\$100	\$1,500	\$12,784	
4.2	Prepare 90% Plans and Specifications, Cost Estimate		2	4	8	20	2	36	\$3,868	\$100		\$3,968	
4.3	Prepare 99% Plans and Specifications, Cost Estimate			2	6	8	1	17	\$1,760	\$100		\$1,860	
4.4	Prepare 100% Plans and Specifications, Cost Estimate		1	2	2	4	1	10	\$1,156	\$200		\$1,356	
4.5	Construction Bidding Through Contract Award		1	8	8	8		25	\$2,992	\$0		\$2,992	
	<b>SUBTOTAL Task 4, Final Engineering</b>		<b>8</b>	<b>20</b>	<b>40</b>	<b>120</b>	<b>12</b>	<b>200</b>	<b>\$20,960</b>	<b>\$500</b>	<b>\$1,500</b>	<b>\$22,960</b>	
<b>TOTAL WORK</b>			<b>20</b>	<b>40</b>	<b>80</b>	<b>160</b>	<b>20</b>	<b>320</b>	<b>\$ 34,920</b>	<b>\$ 1,000</b>	<b>\$ 25,295</b>	<b>\$ 61,215</b>	

**Total Not-to-Exceed Fee: \$ 61,300**

## PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT is made and entered into, to be effective the 8<sup>th</sup> day of May, 2012, by and between the CITY OF GARDEN GROVE, a municipal corporation, hereinafter referred to as "City," and Psomas, a California Corporation, hereinafter referred to as "Consultant." City and Consultant are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties."

### RECITALS

WHEREAS, City has determined that there is a need for Utility Research, Design Survey, Potholing, Permitting and Engineering Services for the construction of Della Lane/Loara Street Fire Flow Water Improvements Project No.7373 (the "Project");

WHEREAS, City desires to retain Consultant to provide such services; and

WHEREAS, Consultant is qualified by virtue of experience, training, education, and expertise to perform the professional services required by this Agreement and has agreed to provide such services.

NOW, THEREFORE, in consideration of the promises and mutual benefits which will result to the Parties in carrying out the terms of this Agreement, it is mutually agreed as follows:

### AGREEMENT

#### I. SCOPE OF WORK

City agrees to retain Consultant, and Consultant agrees to perform the services set forth in the Scope of Services described in Exhibit "A", attached hereto and by reference made a part of this Agreement (hereinafter the "Services"). Consultant agrees that its provision of Services under this Agreement shall be within accepted standards within the profession, and its specialized services shall be in accordance with customary and usual practices in Consultant's profession. By executing this Agreement, Consultant warrants that it has carefully considered how the work should be performed and fully understands the facilities, difficulties, and restrictions attending performance of the work under this Agreement.

## II. TERM

This Agreement shall be effective as of the date first set forth above. This Agreement shall commence upon the effective date of this Agreement, and shall remain and continue in effect until tasks described herein are completed unless otherwise terminated prior to this date pursuant to the provisions of this Agreement.

## III. FEES

### A. Accounting Records

Consultant shall keep complete, accurate, and detailed accounts of all time, costs, expenses, and expenditures pertaining in any way to this Agreement. Upon request of City, Consultant shall provide City with all records pertaining to this Agreement.

### B. Total Payment

The Parties agree that Consultant shall bill for the Services provided by Consultant to City on an hourly basis and in accordance with the charges and fee schedule attached as Exhibit "B," except as otherwise set forth herein, provided compensation under this Agreement shall not exceed \$81,350.

### C. Monthly Payment

1. City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment, as set forth in Exhibit "B," attached hereto based upon actual time spent providing the services outlined in this Agreement. Consultant shall submit to City monthly or periodic statements requesting payment. Such requests shall be based upon the amount and value of the Services performed by Consultant under this Agreement and shall be prepared by Consultant and accompanied by such reporting data including a detailed breakdown of all costs incurred and tasks performed during the period covered by the statement, as may be required by City. Invoices shall be submitted on or about the first business day of each month, for Services provided the prior month. City shall use reasonable efforts to make payment to Consultant within forty-five (45) days after the date of the invoice or as soon thereafter as reasonably practicable. If City determines that the approved written Scope of Work under this Agreement or any specified task hereunder is incomplete, the City Manager, or his or her designee, shall notify Consultant and may withhold the payment amount for the unfinished work accordingly.

2. 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.



#### **IV. TERMINATION**

City may terminate this Agreement for its convenience at any time, with or without cause, in whole or in part, upon giving Consultant thirty (30) days written notice. Upon said notice, City shall pay Consultant its allowable costs incurred to date of termination and those allowable costs determined by City to be reasonably necessary to effect such termination. Upon receipt of said notice, Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If City terminates a portion of this Agreement, such termination shall not make void or invalidate the remainder of this Agreement. Thereafter, Consultant shall have no further claims against City under this Agreement. Upon termination of the Agreement pursuant to this Section, Consultant will submit an invoice to City pursuant to Section 3. Consultant may terminate this Agreement, with or without cause, upon thirty (30) days written notice to City.

#### **V. DEFAULT OF CONSULTANT**

A. Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event Consultant is in default, except as provided for in Section XXI, City shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default and can terminate the Agreement immediately upon written notice to Consultant.

B. If the City Manager, or his/her designee, determines that Consultant is in default in the performance of any of the terms or conditions of this Agreement, it shall notify Consultant in writing of such default. Consultant shall have ten (10) days to cure the default by rendering a satisfactory performance. In the event Consultant fails to cure its default within such period of time, City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice of any remedy to which City may be entitled at law, in equity or under this Agreement. Consultant shall be liable for any and all reasonable costs incurred by City as a result of such default including, but not limited to, procurement costs of the same or similar services defaulted by Consultant under this Agreement.

#### **VI. LEGAL RELATIONSHIP BETWEEN THE PARTIES**

A. The legal relationship between the Parties hereto is that of an independent contractor, and nothing herein shall be deemed to make Consultant a City employee. During the performance of this Agreement, Consultant and its officers, employees, and agents shall act in an independent capacity and shall not act as City officers, employees, or agents. 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 its officers, employees, or agents, except as set

forth in this Agreement. Consultant, its officers, employees, or agents shall not maintain an office or any other type of fixed business location at City's offices.

B. Consultant shall not incur or have the power to incur any debt, obligation, or liability against City, or bind City in any manner.

C. No City benefits shall be available to Consultant, its officers, employees, or agents in connection with any performance under this Agreement. Except for fees paid to Consultant as provided for in this Agreement, City shall not pay salaries, wages, or other compensation to Consultant for the performance of Services under this Agreement. City shall not be liable for compensation or indemnification to Consultant, its officers, employees, or agents for injury or sickness arising out of performing Services hereunder. If for any reason, any court or governmental agency determines that City has financial obligations, other than pursuant to Section III herein, of any nature related to salary, taxes, or benefits of Consultant's officers, employees, servants, representatives, subcontractors, or agents, Consultant shall indemnify City for all such financial obligations.

## **VII. MODIFICATIONS AND AMENDMENTS TO AGREEMENT**

No modification or amendment of this Agreement or any of the provisions hereof shall be effective for any purpose unless set forth in writing signed by duly authorized representatives of both Parties.

## **VIII. ASSIGNMENTS AND SUBCONTRACTING**

The experience, knowledge, capability, and reputation of Consultant, its principals and employees were a substantial inducement for City to enter into this Agreement. Consultant may not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, voluntarily or by operation of law, without the prior written approval of City. Except as otherwise expressly provided in the Scope of Services (Exhibit "A"), Consultant shall not contract with any other person or entity to perform the Services required without written approval of City. If Consultant is permitted to subcontract any part of this Agreement by City, Consultant shall be responsible to City for the acts and omissions of its subcontractor as it is for persons directly employed. Nothing contained in this Agreement shall create any contractual relationships between any subcontractor and City. All persons engaged in the work will be considered employees of Consultant. City will deal directly with and will make all payments to Consultant as provided for in Section III.

## **IX. SUCCESSORS IN INTEREST**

This Agreement shall be binding upon and inure to the benefit of the Parties' successors and assignees.

**X. THIRD PARTY BENEFICIARY**

Except as may be specifically provided for herein, nothing contained in this Agreement is intended to confer, nor shall this Agreement be construed as conferring, any rights, including, without limitation, any rights as third-party beneficiary or otherwise, upon any entity or person not a party hereto.

**XI. INSURANCE**

**A. Insurance Required**

Consultant shall procure and maintain the insurance described herein for the duration of this Agreement, or as otherwise specified herein, against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Consultant, its agents, representatives, or employees. Insurance required herein shall be provided by a reputable insurance company in good standing with the State of California and having a minimum A.M. Best's Guide Rating of A-, Class VII or better. City will require Consultant to substitute any insurer whose rating drops below the levels specified herein. Such substitution shall occur within twenty (20) days of written notice to Consultant by City.

Consultant shall provide to City certificates of insurance in a form acceptable to City indicating the deductible or self-retention amounts and the expiration date of the policy, and shall provide renewal certificates not less than ten (10) days prior to the expiration of each policy term. The certificates of insurance shall specifically identify this Agreement and shall contain express conditions that City is to be given at least thirty (30) days advance written notice of any material modification in or termination of insurance. Such insurance shall be primary to and not contributing with any other insurance maintained by City and shall name the City of Garden Grove and its officers, councilmembers, officials, employees, agents and volunteers as additional insureds by endorsement to the insurance policies. Except as expressly authorized herein, all insurance shall be on an occurrence basis.

**1. Errors and Omissions Insurance**

Consultant shall maintain in full force and effect throughout the term of this Agreement, standard industry form professional negligence errors and omissions insurance coverage in an amount of not less than One Million Dollars (\$1,000,000.00) per claim or occurrence, in accordance with the provisions of this Section. If the policy of insurance is written on a "claims made" basis, the policy shall be continued in full force and effect at all times during the term of this Agreement, and for a period of three (3) years from the date of the completion of the Services provided hereunder. In the event of termination of the policy during this period, Consultant shall obtain continuing insurance coverage for the prior acts or omissions of Consultant during the course of performing Services under the terms of this Agreement. The coverage shall be

evidenced by either a new policy evidencing no gap in coverage, or by obtaining separate extended "tail" coverage with the present or new carrier.

In the event the policy of insurance is written on an "occurrence" basis, the policy shall be continued in full force and effect during the term of this Agreement, or until completion of the Services provided for in this Agreement, whichever is later. In the event of termination of the policy during this period, new coverage shall be obtained for the required period to ensure coverage for the prior acts of Consultant during the course of performing the Services under the terms of this Agreement.

2. Workers' Compensation

Consultant shall obtain and maintain, during the term of this Agreement, Workers' Compensation Employer's Liability Insurance in the statutory amount as required by state law. Such worker's compensation insurance shall be endorsed to provide for a waiver of subrogation against City.

**B. Minimum Limits of Insurance**

Consultant shall maintain limits no less than:

1. General Liability:

\$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2. Automobile Liability:

\$1,000,000 per accident for bodily injury and property damage.

3. Employer Liability:

\$1,000,000 per accident for bodily injury or disease.

**C. Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to and approved by the City Manager. At the option of the City Manager, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City and its councilmembers, officials, officers, employees, agents or volunteers, or Consultant shall procure a bond guaranteeing payment of losses and related

investigations, claim administration and defense expenses, or Consultant shall otherwise provide an alternative satisfactory to the City Manager.

**D. Other Insurance Provisions**

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City of Garden Grove and its councilmembers, officers, officials, employees, agents and volunteers are to be covered as insureds with respect to: liability arising out of activities performed by or on behalf of Consultant; products and completed operations of Consultant; premises owned occupied or used by Consultant; or automobiles owned, leased, hired, or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the Garden Grove Sanitary District, the City of Garden Grove, the Garden Grove Agency for Community Development and their respective councilmembers, board members, officers, officials, employees, agents, or volunteers.

2. For any claims related to this Agreement, Consultant's coverage shall be primary insurance as respects the City and its councilmembers, officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by Garden Grove Sanitary District, the City of Garden Grove, the Garden Grove Agency for Community Development and their respective councilmembers, board members, officers, officials, employees, agents, and volunteers shall be in excess of Consultant's insurance and shall not contribute with it.

3. Any failure to comply with reporting or other provisions of the policies, including breaches of warranties shall not affect coverage provided to the City and its respective councilmembers, board members, officers, officials, employees, agents, and volunteers.

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

5. Each insurance policy required by this Section shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been provided to City.

6. Consultant agrees to ensure that subcontractors, and any other parties involved with the project who are brought onto or involved in the project by Consultant, provide the same minimum insurance coverage 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 subcontractors and others engaged in the project will be submitted to City for review.

**E. Verification of Coverage**

Consultant shall furnish City with original endorsements effecting coverage required by this Agreement. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by City before work commences.

**XII. INDEMNITY**

**A. Indemnification**

To the fullest extent permitted by law, Consultant shall indemnify, defend (at Consultant's sole cost and expense), protect and hold harmless the City of Garden Grove and its councilmembers, officers, officials, employees, agents, and volunteers, (individually "Indemnified Party"; collectively "Indemnified Parties") against any and all liability, claims, judgments, costs, and demands (collectively, "Claims"), including Claims arising from injuries or death of persons (Consultant's employees included) and damage to property, to the extent such Claims arise out of, pertain to, or are related to the negligence, recklessness or willful misconduct of Consultant, its agents, employees, or subcontractors, or arise from Consultant's negligent, reckless or willful performance of or failure to perform any term, provision, covenant or condition of this Agreement ("Indemnified Claims"), but Consultant's liability for Indemnified Claims shall be reduced to the extent such Claims arise from the negligence, recklessness or willful misconduct of the City of Garden Grove and its councilmembers, officers, directors, officials, employees, or agents.

Consultant shall reimburse the Indemnified Parties for any reasonable expenditures, including reasonable attorneys' fees, expert fees, litigation costs and expenses that each Indemnified Party may incur by reason of Indemnified Claims. Upon request by an Indemnified Party, Consultant will defend with legal counsel reasonably acceptable to the Indemnified Party all Claims against the Indemnified Party that may arise out of, pertain to, or relate to Indemnified Claims, whether or not Consultant is named as a party to the Claim proceeding. The determination whether a Claim may "arise out of, pertain to, or relate to" Indemnified Claims shall be based on the allegations made in the Claim and the facts known or subsequently discovered by the parties. In the event a final judgment, arbitration award, order, settlement, or other final resolution expressly determines that Claims did not arise out of, pertain to, nor relate to the negligence, recklessness or willful misconduct of Consultant to any extent, then City will reimburse Consultant for the reasonable costs of defending the Indemnified Parties against such Claims, except City shall not reimburse Consultant for attorneys' fees, expert fees, litigation costs and expenses as were incurred defending Consultant or any parties other than Indemnified Parties against such Claims.

Consultant's liability for indemnification hereunder is in addition to any liability Consultant may have to City for a breach by Consultant of any of the provisions of this Agreement. Under no circumstances shall the insurance requirements and limits

set forth in this Agreement be construed to limit Consultant's indemnification obligation or other liability hereunder. The terms of this Agreement are contractual and the result of negotiation between the parties hereto. Accordingly, any rule of construction of contracts (including, without limitation, California Civil Code Section 1654) that ambiguities are to be construed against the drafting party, shall not be employed in the interpretation of this Agreement.

Consultant's indemnification obligation hereunder shall survive the expiration or earlier termination of this Agreement until all actions against the Indemnified Parties for such matters indemnified hereunder are fully and finally barred by the applicable statute of limitations or, if an action is timely filed, until such action is final. This provision is intended for the benefit of third party Indemnified Parties not otherwise a party to this Agreement.

### **XIII. COMPLIANCE WITH LAW**

A. Consultant certifies by the execution of this Agreement the following: that it pays employees not less than the minimum wage as defined by law and that it does not discriminate in its employment with regard to race, color, religion, sex, age, marital status, ancestry, or national origin; that Consultant is in compliance with all federal and state laws, local directives, and executive orders regarding non-discrimination in employment; and that Consultant agrees to demonstrate positively and aggressively the principle of equal opportunity in employment.

B. Consultant shall keep itself informed of State and Federal laws and regulations, which in any manner affect those employed by it or in any way affect the performance of its Services pursuant to this Agreement. Consultant shall at all times observe and comply with all such laws and regulations. The City of Garden Grove and its councilmembers, officers, employees, and agents shall not be liable at law or in equity for Consultant's failure to comply with such laws and regulations.

### **XIV. LICENSES AND QUALIFICATIONS**

Consultant represents and warrants to City that it has obtained all licenses, permits, qualifications, and approvals of whatever nature that is legally required to practice its profession. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any license, permit, or approval, which is legally required for Consultant to perform Services under this Agreement.

### **XV. CONFIDENTIALITY AND OWNERSHIP OF DOCUMENTS**

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

shall not without written authorization from the City Manager or unless requested by City's Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the Services performed under this Agreement or relating to any project or property location within City. Response to a subpoena or court order shall not be considered "voluntary" for the purposes of this Section, provided Consultant gives City proper notice of such subpoena or court order. Consultant shall properly notify City of any summons, complaints, subpoenas, notice of deposition, request for documents, interrogatories, requests for admissions or other discovery requests received by Consultant, its officers, employees, agents or subcontractors, related to Services performed pursuant to this Agreement. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding, the cost of which shall be borne by City. Consultant agrees to cooperate fully with City and to provide City with an opportunity to review and respond to discovery requests provided by Consultant, arising out of Services performed pursuant to this Agreement. However, City's right to review any such request or response does not imply or mean City has the right to control, direct, write or rewrite said response.

B. The documents and study materials for this project shall become the property of City upon the termination or completion of the work. Consultant agrees to furnish to City copies of all memoranda, correspondence, computation, and study materials in its files pertaining to the work described in this Agreement, which is requested in writing by City.

#### **XVI. INTERPRETED UNDER LAWS OF THE STATE OF CALIFORNIA**

This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof. Venue for any litigation concerning this Agreement shall be in the Superior Court for the County of Orange, California.

#### **XVII. ATTORNEYS' FEES**

If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees, costs, and necessary disbursements in addition to any other relief to which they may be entitled.



**XVIII. WAIVER**

No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought. Any waiver by the Parties of any default or breach of any covenant, condition, or term contained in this Agreement, shall not be construed to be a waiver of any subsequent or other default or breach, nor shall failure by the Parties to require exact, full, and complete compliance with any of the covenants, conditions, or terms contained in this Agreement be construed as changing the terms of this Agreement in any manner or preventing the Parties from enforcing the full provisions hereof.

**XIX. NOTICES**

All notices or other communications required or permitted hereunder shall be in writing and shall be personally delivered, sent by registered or certified mail, postage prepaid, return receipt requested, or delivered or sent by electronic transmission, and shall be deemed received upon the earlier of: (i) the date of delivery to the address of the person to receive such notice if delivered personally or by messenger or overnight courier; (ii) three (3) business days after the date of posting by the United States Post Office if by mail; or (iii) when sent if given by electronic transmission. Any notice, request, demand, direction, or other communication sent by electronic transmission must be confirmed within forty-eight (48) hours by letter mailed or delivered. Notices or other communications shall be addressed as follows:

To City: City of Garden Grove  
13802 Newhope Street  
Garden Grove, CA 92843  
Attention: Project Engineer

To Consultant: Psomas  
3 Hutton Centre Drive, Suite 200  
Santa Ana, CA 92707  
Attention: Joe Gutierrez, P.E.

Either Party may, by written notice to the other, designate a different address, which shall be substituted for that specified above.

**XX. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, arrangements, representations, and understandings, if any, made by or among the parties with respect to the subject matter hereof. No amendments or other modifications of this Agreement shall be binding unless executed in writing by both parties hereto, or their respective successors, assigns, or grantees.

**XXI. FORCE MAJEURE**

If either party shall be delayed or prevented from the performance of any service under this Agreement by reason of acts of God, strikes, lockouts, labor troubles, restrictive governmental laws or regulations or other cause, without fault and beyond the reasonable control of the party obligated (financial inability excepted), performance of such act shall be excused for the period of delay, and the period for performance of any such act shall be extended for a period equivalent to the period of such delay.

**XXII. TIME IS OF THE ESSENCE**

The Parties agree that time is of the essence of this Agreement with respect to the deadlines set forth herein.

**XXIII. SEVERABILITY**

Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be invalid under the applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of that provision, or the remaining provisions of this Agreement.

**XXIV. PROHIBITED INTERESTS**

Consultant covenants that, for the term of this Agreement, no Board Member, official, officer or employee of City during his/her tenure in office/employment, or for one (1) year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. Consultant warrants that it has not given or paid and will not give or pay any third party money or other consideration for obtaining this Agreement.

**XXV. SCOPE CHANGES**

In the event of a change in the scope of the proposed project, as requested by City, the Parties hereto shall execute an addendum to this Agreement, setting forth, with particularity, all terms of the new Agreement, including but not limited to any additional Consultant's fees.

**XXVI. NON-LIABILITY OF CITY OFFICERS AND EMPLOYEES**

No officer or employee of the City shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Consultant or its successor, or for breach of any obligation of the terms of this Agreement.

**XXVII. AGREEMENT EXECUTION AUTHORIZATION**

Each of the undersigned represents and warrants that he or she is duly authorized to execute and deliver this Agreement and that such execution is binding upon the entity for which he or she is executing this Agreement.

**XXVIII. RECITALS**

The Recitals above are hereby incorporated into this section as though fully set forth herein and each party acknowledges and agrees that such Party is bound, for purposes of this Agreement, by the same.

IN WITNESS WHEREOF, this Agreement has been executed in the name of City, by its officers thereunto duly authorized, and Consultant as of the day and year first above written.

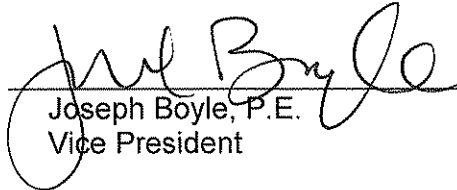
CITY OF GARDEN GROVE

By: \_\_\_\_\_  
Matthew J. Fertal  
City Manager

ATTEST:

By: \_\_\_\_\_  
Kathy Bailor  
City Clerk


Psomas

By:  \_\_\_\_\_  
Joseph Boyle, P.E.  
Vice President

If CONTRACTOR is a corporation, a Corporate Resolution and/or Corporate Seal is required. If a Partnership, Statement of Partnership must be submitted to CITY.

APPROVED AS TO FORM:

Woodruff, Spradlin & Smart

By:   
\_\_\_\_\_  
Thomas F. Nixon  
City Attorney



**EXHIBIT A**

**SCOPE OF SERVICES**

# SCOPE OF WORK

## Task I — Project Management, Meetings and Coordination

### 1.1 Project Management

Provide project management to ensure adherence to the project schedule and budget and to document all communication between Psomas and the City.

### 1.2 Meetings

At the commencement of the project, Psomas will hold a kick-off meeting with City staff to discuss the scope and parameters of the project. Psomas will also arrange for, and participate in, review meetings with City staff to review progress of the project work and exchange ideas and information at the 25% and 90% design stages. We assume the 60%, 99%, and 100% comments will not require a review meeting, but may be addressed via telephone and/or e-mail.

Prepare and submit minutes for each project meeting summarizing the participating personnel, key discussion comments and decisions, documents delivered or received, and actions required.

### 1.3 Coordination

Coordinate efforts of the Project Team and subconsultants with representatives of utilities and other government agencies to determine requirements to be included in the construction documents.

## Task II — Preliminary Investigations and Design Survey

This task is for preliminary investigations, design survey and collecting information available from the City. This task will also include a detailed field reconnaissance to get familiar with the project area and to note all visible relevant features along the pipeline alignment, including major utility structures within the street right-of-way, and existing driveways to frontage properties.

### 2.1 Initial / Kickoff Meeting

Set up and attend an initial/kick-off meeting with the City to introduce project team members; formalize project communication; discuss project schedule; review scope of work; and request available data, reports, documents, and plans from the City that are relevant to the Project.

*Deliverables: Meeting agenda and meeting minutes.*

### 2.2 Records and Requirements Search

Perform record and data search consisting of survey information (centerline control, bench marks, assessor maps, parcel maps, Record of Survey, easements, etc.) and utility information for existing water, sewer, and other utilities along the subject alignment. In addition, document contact and coordinate with other public and private agencies/entities involved to inform them about the project and obtain their record drawings.

*Deliverables: Utility coordination tables and coordination correspondence.*

### 2.3 Ground Control and Survey

Establish survey control and locate aerial targets using a combination of both GPS and conventional survey methods. Horizontal survey control and aerial targets will be based on the North American Datum of 1983 (NAD 83). Horizontal control will be based on the Orange County Surveyor California Coordinate System (CCS83), Zone VI, 2007.00 Epoch. Elevations will be based on the North American Datum of 1988 (NAVD 88) and on the Orange County Surveyor vertical benchmark system 1995 adjustment.

Target and fly project area based on the alignments shown on the RFP. Map project areas from right-of-way to right-of-way at a scale of 1"=40', with 1-foot contours and spot elevations on a 50-foot grid. Mapping will be prepared using traditional stereo compilation methods and will be flown at the appropriate flight height to ensure that mapping will meet and/or exceed national Mapping Accuracy Standards.

Locate key centerline monuments along streets in question and calculate the centerline and record right-of-way alignments. Plot property data into the digital base map.

Dip various manholes for measurement of invert elevations. We have assumed a total of 10–15 storm drain and sanitary sewer manholes for this project.

*Deliverables: Topographic map for base file.*

## Task III — Preliminary Engineering

### 3.1 Draft Preliminary Design Report

Prepare a Draft Preliminary Design Report (PDR) representing a 25% milestone summarizing preliminary design with calculations and recommendations for use during the final design. The Draft PDR will include the following:

- A. Preliminary plan view of proposed waterline alignments
- B. Permit requirements for waterline construction
- C. Preliminary schedule and estimated construction costs
- D. Recommendations of construction requirements and sequencing
- E. Environmental documents required for project processing

Submit 10 copies of the Draft PDR to the City for review.

*Deliverables: Draft Preliminary Design Report (10 copies).*

### 3.2 PDR Submittal Review Meeting

Meet with City staff to review comments on the Draft PDR and respond to comments.

*Deliverables: Meeting agenda and meeting minutes.*

### 3.3 Final Preliminary Design Report

Revise the PDR as necessary based on comments received from the meeting and submit 10 copies of Final PDR to City.

*Deliverables: Final Preliminary Design Report (10 copies).*



## Task IV — Final Engineering

The Final PDR will serve as the outline for executing the final design services, which includes the following items:

### 4.1 Utility Company Coordination

Coordinate and submit the 90% Construction Drawings to utility companies with copies of all correspondence and submittals to the City. Comments received from the utility companies will be incorporated into the final design.

*Deliverables: Copies of correspondence with utility companies.*

### 4.2 Utility Verification and Potholing

Perform utility verification by potholing using an air vacuum excavation technique. Resulting pothole data will be accurately shown on the construction drawings. A maximum of 20 potholes have been included in this proposal. All underground phone and electric utilities will be exposed from top to bottom of structure, if possible. The exact quantity and location of the potholes will be determined after the City's review of the 60% milestone submittal.

If required, traffic control plans will be prepared for potholing operations and submitted to the City for acquisition of encroachment permit. After potholing, the pavement will be repaired using Perma-Patch or quick-set concrete.

*Deliverables: Potholing summary.*

### 4.3 Construction Plans, Specifications and Engineer's Estimate at 60%, 90%, 99%, and 100% Stages of Design

Prepare construction drawings, specifications, and engineer's construction cost estimate incorporating any comments received from the City and utility companies. The construction specifications will include the City's contract boilerplate documents, construction sequencing, and technical specifications.

The construction plans will consist of the following sheets at a minimum, separated by project:

Ten (10) sets of the full Progress Submittal Package will be sent to the City for review. This includes the construction plans, specifications, cost estimates, and calculations.

The following list outlines a suggested level of completion for various milestone submittals. These will be discussed with the City at the kick-off meeting:

A. 60% Submittal: This submittal will include preliminary horizontal alignments, utility crossings, and abandonment methods. The submittal package will account for and be comprised of the following:

1. Completed Base Map
2. Preliminary Calculations
3. Completed Base Drawing with Street Data and Existing Utilities
4. Completed Title Sheet (including vicinity map, location map, and index)
5. Index Map (substantially complete)
6. General Notes, Abbreviations, Legend (substantially complete)
7. Horizontal Alignment with Stationing and Control (substantially complete)

8. Standard Details (substantially complete)
  9. Preliminary Project Specific Details
  10. Preliminary Annotations
  11. Technical Specifications (Table of Contents only)
  12. Preliminary Engineer's Estimate
- B. 90% Submittal: This submittal will have a completed horizontal alignment, and partially completed vertical alignment, construction notes, plan annotations, connection details, and project details. The submittal package will account for and be comprised of the following:
1. All Items "Completed" in the 60% Milestone Submittal
  2. Completed Potholing Information
  3. Completed Final Calculations
  4. Completed Index Map
  5. Completed General Notes, Abbreviations, and Legend
  6. Completed Horizontal Alignment with Stationing and Control
  7. Vertical Profile (substantially complete)
  8. Completed Standard Details
  9. Connection Enlargement Details (substantially complete)
  10. Project Specific Details (substantially complete)
  11. Plan Annotations (substantially complete)
  12. Technical Specifications (substantially complete)
  13. Front End Documents (substantially complete)
  14. Engineer's Estimate (substantially complete)
  15. Completed Utility Coordination
- C. 99% Submittal: This submittal is deemed the pre-final submittal and is the City's final opportunity for review prior to Mylar production. The construction plans will include a completed horizontal and vertical alignment, completed details, and completed plan annotations. The project specifications will include completed technical specifications and completed front end documents (City's boiler plate).
- D. 100% Submittal: This submittal is considered the final submittal and will serve as a back check to make sure all comments from the 99% submittal were addressed.

*Deliverables: Ten (10) copies of 60% design submittal, 90% design submittal, and 99% design submittal, and three (3) copies of 100% design submittal.*

#### 4.4 Progress Submittal Review Meetings

Arrange a review meeting with the City staff at the 90% submittal milestone to discuss the design, collect and respond to review comments.

*Deliverables: Meeting agenda and meeting minutes.*

#### 4.5 Final Deliverables

Submit one (1) bound copy of the construction plans along with a reverse read Mylar set. Drawings will be 24"x36" in size, drawn at 40-scale plan view and 4-scale vertical. Details will be 20 scale or less. All drawings will conform to City standards and will be signed and stamped by a registered civil engineer in the State of California. Project specifications will also be signed and stamped by the Engineer of Record. Two (2) copies of the specifications will be submitted, one (1) bound and the other unbound. Provide the City with two (2) copies of the project design notebook. The design notebook will include all pertinent correspondence, calculations, quantity and cost estimates. The final project design notebook will be signed and stamped by the project engineer of record.

*Deliverables: Final Design Submittal which includes one (1) bond copy of construction plans; one (1) Mylar copy of construction plans; one (1) bound copy of project specifications; one (1) unbound copy of project specifications; and two (2) copies of design notebook.*

#### 4.6 Environmental Documentation

It is anticipated a categorical exemption will be required for this project. We have budgeted up to \$1,000 for any additional environmental documentation.

*Deliverables: Correspondence required for environmental documentation.*

#### 4.7 Bid Phase Assistance

Provide necessary support services to the City during the project bid phase. Support services will include the following:

- A. Attendance at Pre-Bid Meetings
- B. Answering Contractor's questions and providing clarifications
- C. Issuing one (1) project addendum

*Deliverables: Project addendum and design clarifications.*

## **Exclusions**

The following items are not included in the Scope of Work above:

- A. Traffic control plans for pipeline construction
- B. Geotechnical investigations
- C. Construction administration
- D. Construction observation
- E. Construction Staking

**EXHIBIT B**

**SCHEDULE OF PAYMENT**

**CITY OF GARDEN GROVE  
DEPARTMENT OF PUBLIC WORKS**  
City of Garden Grove Water Improvements - Project B (FF014, FF017 and FF051)  
Estimated Labor Hours and Fees

Scope of Work Tasks	Labor Hours											Total Hours	FEE	Sub (Pothole)	Direct Costs	Total Fee			
	PM	QC	PE	Staff	TC	CADD	Admin	Survey	Incorporated in Tasks II - IV										
									PM	QC	PE						Staff	TC	CADD
	\$ 185	\$ 196	\$ 162	\$ 117	\$ 110	\$ 110	\$ 75	\$ 165											
<b>TASK I - Project Management, Meetings &amp; Coordination</b>																			
<b>TASK II - Preliminary Investigation &amp; Design Survey</b>																			
2.1 Initial Kick-Off Meeting	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	\$370	\$25	\$395
2.2 Records and Requirements Search	0	0	0	2	0	2	1	0	0	0	0	0	0	0	0	0	\$529	\$0	\$529
2.3 Ground Control and Survey	0	0	0	0	0	0	0	0	0	0	0	0	109	0	0	0	\$17,985	\$0	\$17,985
<b>Subtotal Task II -</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>2</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>1</b>	<b>0</b>	<b>109</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>\$18,884</b>	<b>\$25</b>	<b>\$18,909</b>
<b>TASK III - Preliminary Engineering</b>																			
3.1 Draft Preliminary Design Report	1	1	6	4	0	6	1	0	0	0	0	0	0	0	0	0	\$2,556	\$150	\$2,706
3.2 Preliminary Design Submittal Meeting	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	\$370	\$50	\$420
3.3 Final Preliminary Design Report	0	0	2	2	0	2	1	0	0	0	0	0	0	0	0	0	\$853	\$50	\$903
<b>Subtotal Task III -</b>	<b>3</b>	<b>1</b>	<b>8</b>	<b>6</b>	<b>0</b>	<b>8</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>\$3,779</b>	<b>\$250</b>	<b>\$4,029</b>
<b>TASK IV - Final Engineering</b>																			
4.1 Utility Coordination	0	0	0	4	0	0	2	0	0	0	0	0	0	0	0	0	\$618	\$0	\$618
4.2 Utility Verification and Potholing	0	0	0	2	23	0	2	0	0	0	0	0	0	0	0	0	\$2,914	\$17,160	\$20,074
4.3 Prepare Plans, Specs, and Estimate (60%, 90%, 99%, and 100%)	9	3	30	82	0	140	13	0	0	0	0	0	0	0	0	0	\$33,082	\$1,002	\$34,084
4.4 Submittal Review Meeting (90% only)	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	\$324	\$25	\$349
4.5 Final Deliverable	0	0	0	0	0	2	4	0	0	0	0	0	0	0	0	0	\$520	\$200	\$720
4.6 Environmental Documentation	0	0	1	4	0	0	4	0	0	0	0	0	0	0	0	0	\$930	\$70	\$1,000
4.7 Bid Phase Assistance	1	0	2	4	0	4	2	0	0	0	0	0	0	0	0	0	\$1,567	\$0	\$1,567
<b>Subtotal Task IV -</b>	<b>10</b>	<b>3</b>	<b>35</b>	<b>96</b>	<b>23</b>	<b>146</b>	<b>27</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>27</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>\$39,955</b>	<b>\$1,297</b>	<b>\$58,412</b>
<b>Total Estimated Hours and Fee -</b>	<b>15</b>	<b>4</b>	<b>43</b>	<b>104</b>	<b>23</b>	<b>156</b>	<b>30</b>	<b>109</b>	<b>0</b>	<b>0</b>	<b>30</b>	<b>0</b>	<b>109</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>\$62,618</b>	<b>\$1,572</b>	<b>\$81,350</b>

Legend	
<b>Psomas Staff</b>	<b>Subconsultant</b>
PM - Project Manager (Joey Gutierrez, \$185/hr)	Pothole - Saf-R-Dig
QC - Quality Assurance (Joe Boyle, \$196/hr)	
PE - Project Engineer (Neha Gajjar, \$158/hr)	
SE - Staff Engineer (Nancy Heim, \$117/hr)	
TC - Traffic Control (Jay Levitus, \$110/hr)	
CADD - CAD Designer (John Kaneshiro, \$110/hr)	
Admin - Project Assistant Administration (Vanessa Scott, \$75/hr)	
Survey - Psomas Survey (Field Crew and Office, \$165/hr)	

## HOURLY RATE SCHEDULE

For services by Psomas

*Effective through December 31, 2012*

### **Water and Wastewater Engineering Services**

\$ 65 - \$ 85	Administrative Assistant
\$ 65 - \$ 95	Engineering Assistant
\$ 70 - \$100	CAD Designer
\$ 80 - \$125	Lead CAD Designer
\$ 80 - \$125	Civil Engineer Designer
\$ 90 - \$130	Professional Engineer/Surveyor
\$120 - \$165	Project Engineer/Project Surveyor/Senior Environmental Scientist
\$120 - \$195	Senior Project Engineer
\$150 - \$190	Project Manager
\$165 - \$230	Senior Project Manager, QA/QC Manager, Principal-In-Charge
\$210 - \$242	Two-Man Survey Crew

- ▶ Standard computer and technology costs are incorporated into these hourly rates, as well as direct labor, overhead, fringe benefits and fee.
- ▶ Survey and other specialty equipment will be charged at a per unit per day rate.
- ▶ Expert witness testimony is two times the normal rate.
- ▶ Per Diem is calculated at current State Department of Transportation rates (or other appropriate Agency rate).

### **Reimbursables**

Mileage at \$0.550 per mile (or current IRS allowable rate) and parking expenses incurred by office employees are charged at cost. Prints, plots, messenger service, subsistence, air travel, and other direct expenses will be charged at cost plus ten percent. The services of outside consultants will be charged at cost plus fifteen percent.

**UNANIMOUS WRITTEN CONSENT  
OF THE  
BOARD OF DIRECTORS  
OF  
PSOMAS  
a California corporation**

March 1, 2011

**THE UNDERSIGNED**, being all of the members of the Board of Directors of Psomas, a California corporation (the "Corporation"), hereby adopt the following resolutions without a meeting as of the date set forth above, pursuant to Section 307(b) of the General Corporation Law of California:

**RESOLVED** that the following, being the Officers of the Corporation, be and hereby are authorized to execute any and all documents required to conduct the business of the Corporation, including, but not limited to contracts, leases and certifications;

**IT IS FURTHER RESOLVED** that any one signature of the Officers listed herein shall be sufficient to bind the Corporation;

TIMOTHY G. PSOMAS	Chairman Emeritus
BLAKE N. MURILLO	Chairman, Chief Executive Officer
JACOB LIPA	President
LOREN L. SOKOLOW	Chief Financial Officer, Treasurer, Assistant Secretary
DEBRA TILSON LAMBECK	Vice President, Secretary
CRAIG AHRENS	Vice President
ALEJANDRO ANGEL	Vice President
ROSS W. BARKER	Vice President
TEDDY C. BOLDEN, II	Vice President
ROBERT BLASBERG	Vice President
JOSEPH L. BOYLE	Vice President
BRIAN E. BULLOCK	Vice President
RON CANTRELL	Vice President
AGUSTIN CHANG	Vice President
HAN CHU	Vice President
MATTHEW D. CLARK	Vice President
MICHAEL J. CREHAN	Vice President
MIKE DALY	Vice President
CURT EDWARDS	Vice President
GERALD EDWARDS	Vice President
PAUL J. ENNEKING	Vice President
JEREMY L. EVANS	Vice President
HARVEY GOBAS	Vice President
CRAIG GOOCH	Vice President
DANNIE B. GREEN	Vice President
ANDREW N. GUST	Vice President
TIMOTHY G. HAYES	Vice President
STEPHEN D. HERRERA	Vice President
THOMAS R. HUNT	Vice President

Unanimous Written Consent of the Board of Directors of Psomas

March 1, 2011

Page 2

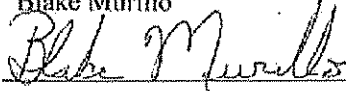
BRUCE KIRBY	Vice President
MICHAEL G. KREMER	Vice President
KARI J. LAUNEN	Vice President
THOMAS C. LODGE	Vice President
STEPHEN MacLENNAN	Vice President
STEVE MARGARONI	Vice President
DAVID McCARTHY	Vice President
DANIEL McCROSKEY	Vice President
PAT McGARRITY	Vice President
THOMAS P. McGOVERN	Vice President
RYAN E. McLEAN	Vice President
STEVE MENDENHALL	Vice President
JOEL B. MILLER	Vice President
DAVID A. MORITZ	Vice President
LESLIE MORTON	Vice President
MARK MOUREY	Vice President
FREDERICK W. MUELLER	Vice President
ROBERT C. OLSON	Vice President
GREGORY OW	Vice President
WEBSTER J. OWEN, JR.	Vice President
RICH RADOYCIS	Vice President
SCOTT ROCKE	Vice President
MATTHEW ROWE	Vice President
CLIFF SIMENTAL	Vice President
WAYNE SMITH	Vice President
KENNETH D. STRAM	Vice President
MICHAEL D. SWAN	Vice President
ROBERT J. TALAFUS	Vice President
MICHAEL G. THALHAMER	Vice President
JOHN R. THORNTON	Vice President
REUBEN TOLENTINO	Vice President
SEAN P. VARGAS	Vice President
ANISSA VOYIATZES	Vice President
DONALD LEE WHITELEY	Vice President
LENI ZARATE	Vice President




Unanimous Written Consent of the Board of Directors of Psomas  
March 1, 2011  
Page 3

**This Unanimous Written Consent** shall be filed with the Minutes of the proceedings of the Board of Directors, and the actions taken hereby shall have the same force and effect as if taken at a meeting duly called and held.

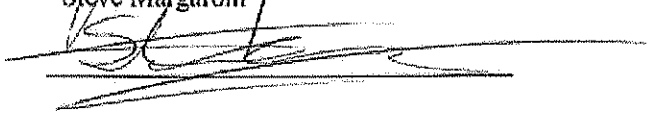
Blake Murillo

  
\_\_\_\_\_

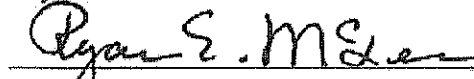
Jacob Lipa

  
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Steve Margaroni

  
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Ryan McLean

  
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Tom McGovern

  
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