



CITY OF LAGUNA NIGUEL CITY COUNCIL AGENDA ITEM

To: Honorable Mayor and Council Members

FROM: Jacki Scott, Public Works Director/City Engineer

DATE: August 15, 2023

SUBJECT: Approval of Amendment No. 5 to the On-Call Professional Services Agreement with Mark Thomas & Company, Inc. for the Design Plans and Specifications for this Project, and Approval of Fiscal Year 2023-2024 Budget Adjustment for the Construction of the Restoration of Two-Way Traffic along La Paz Road from Rancho Niguel Road to Kings Road

RECOMMENDATION

Staff recommends that the City Council:

1. Approve Amendment No. 5 to the On-Call Professional Services Agreement with Mark Thomas & Company, Inc. to provide engineering design services for the restoration of two-way traffic along La Paz Road for a not-to-exceed amount of \$171,382;
2. Approve a not-to-exceed 20% contingency for Amendment No. 5 to the On-Call Professional Services Agreement with Mark Thomas & Company, Inc. in the amount of \$34,276, for unforeseen conditions or extra work and authorize the Public Works Director/City Engineer to approve additional work for a total not-to-exceed amount of \$205,658, if needed;
3. Authorize the City Manager to execute Amendment No. 5 to the On-Call Professional Services Agreement with Mark Thomas & Company, Inc; and,
4. Approve a Fiscal Year 2023-2024 Budget Adjustment of \$1,500,000 from the Deferred Maintenance, Capital Assets, & Infrastructure Reserves to Capital Improvement Project Number 7022-06 – La Paz Road Earth Movement Evaluation, Mitigation, & Remediation for the construction of two-way traffic along La Paz Road from Rancho Niguel Road to Kings Road and increase the total appropriation for all funds in Fiscal Year 2023-24 to \$62,397,977.

BACKGROUND

La Paz Road was constructed in the late 1960's with one lane in each direction, then subsequently widened to two lanes in each direction in the 1990's. Throughout the years, earth movement was noticed with distortions of the pavement, sidewalk, and parkway areas along the Laguna Niguel Regional Park interface near Rancho Niguel Road. To

address the earth movement and minimize future cracking and roadway distortion, nearly seventy 24-inch diameter caissons were installed within the travel lanes of La Paz Road in the 1990's and early 2000's, along with a crib wall at Laguna Niguel Regional Park.

Over time, the earth movement has caused substantial damage to the roadbed and sidewalk on the southbound side of La Paz Road between Rancho Niguel Road and Kings Road. Several attempts were made by the City to repair the damaged road, however, roadway movement continued.

Timeline:

In the summer of 2021, the City initiated additional geotechnical evaluations of the impacted areas along La Paz Road.

In September 2021, out of an abundance of caution, the City closed the southbound number two (curb) lane to vehicular and pedestrian traffic. The City then continued to monitor the affected area.

In January 2022, the City retained Psomas and Ninyo & Moore to conduct an engineering study and geotechnical analysis to the area along La Paz Road between Rancho Niguel Road and Kings Road.

On May 4, 2023, the City received a report on the conditions of the slope from its geotechnical consultant, GMU, who has overseen the on-going monitoring. The report indicated that the site showed increasing signs of vertical displacement and that new tension cracks were visible in the soil adjacent to the southbound sidewalk. The report further indicated that the movement has been creeping at depth, which is indicative of deep-seated landslide movement likely attributed to the heavy rainfall that the City received this past winter. Out of an abundance of caution and at the recommendation of the City's geotechnical consultant GMU, the City determined that it was necessary to close both southbound lanes along La Paz Road between Rancho Niguel Road and Kings Road.

On May 17, 2023, following the City Council's adoption of Resolution No. 2023-1427 declaring a local emergency, the City implemented a new traffic control pattern, called the Short-Term Phase I Plan, on La Paz Road that closed the two southbound travel lanes at Rancho Niguel Road and detoured southbound La Paz Road traffic onto eastbound Rancho Niguel Road. The closure and detour were implemented as a temporary and precautionary measure to ensure public safety and allow roadway modifications to be expedited as the City prepares to implement the Long-Term Phase II Plan, a traffic switch allowing two-way traffic on the east side of the La Paz Road median. To keep the public informed, staff created a dedicated La Paz Road webpage on the City's website and is actively sharing information on social media platforms regarding project updates and changes in traffic patterns.

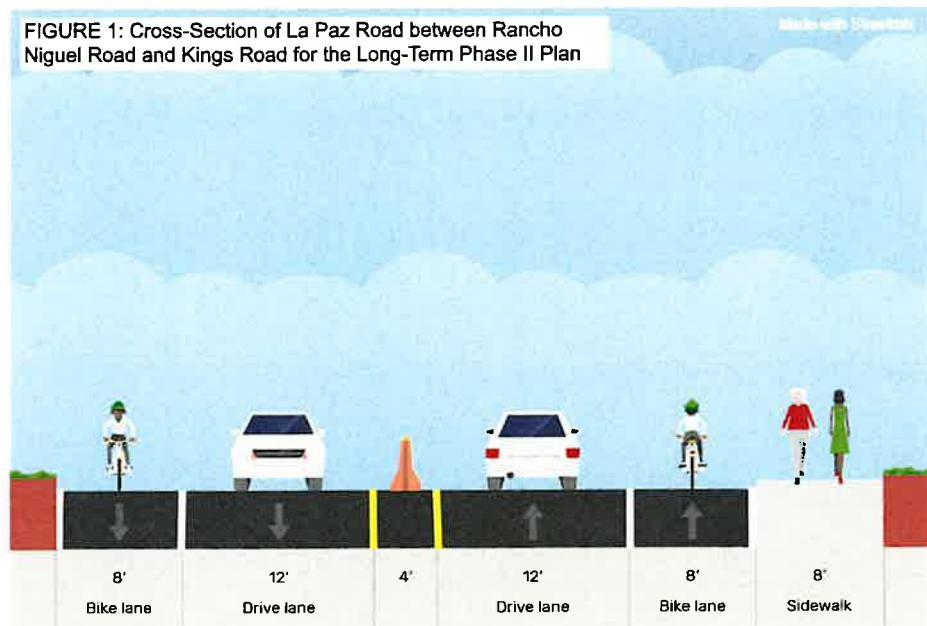
A map showing the vicinity and location of the project area along La Paz Road is provided as Attachment "A". Investigation and resolution of the roadway distress supports City Council Goal 1 (Public Safety) and Goal 4 (Infrastructure and Technology) of the City's adopted Strategic Plan.

ANALYSIS

Since May 2023, Public Works department staff has been working closely with Mark Thomas & Company, Inc., an engineering firm on the approved Public Works On-Call Professional Services List, to identify a Long-Term Phase II Plan that would safely allow a single travel lane in each direction for both northbound and southbound traffic on La Paz Road as a replacement to the existing Short-Term Phase I temporary detour. This preliminary evaluation was completed under the On-Call Professional Services Agreement approved by the City Council on March 16, 2021.

The Long-Term Phase II Plan that has been identified to reopen southbound traffic on La Paz Road includes the following features:

- Removes the center median island along La Paz Road from Rancho Niguel Road to Kings Road and replaces it with new pavement.
- Converts the two northbound lanes of La Paz Road to one northbound lane and one southbound lane to allow two-way traffic circulation.
- Adds separation between the northbound and southbound travel lanes (illustrated as K-rail in Figure 1 below, but actual separation treatment may differ based on analysis during design).
- Preserves the northbound bike lane and adds a southbound bike lane.
- Preserves the sidewalk on the easterly side of La Paz Road only.
- Preserves southbound La Paz Road left-turn access at the intersection of Rancho Niguel Road and La Paz Road and preserves northbound La Paz Road left-turn access at the SOCWA plant driveway and La Paz Road.
- Provides adequate roadway width to meet emergency access standards.
- Provides/restores street lighting to match the existing condition.
- Eliminates the current detour onto Rancho Niguel Road.



On July 20, 2023, the Public Works Department requested a proposal from Mark Thomas & Company, Inc. to provide final design engineering services for the Long-Term Phase II Plan to restore two-way traffic along La Paz Road. Mark Thomas & Company, Inc. submitted its proposal, and cost negotiations with the consultant yielded a proposal that delivers the emergency design services at a fair and reasonable cost to the City. The Public Works Department identified Mark Thomas & Company, Inc. as the most qualified consultant to provide the final design and engineering plan preparation services for the two-way traffic along La Paz Road given the City's knowledge of Mark Thomas & Company, Inc.'s capabilities, experience, past performance, and previous work on concept plans for the Long-Term Phase II Plan.

In accordance with Subsection 3 of Section 3-6-7 of the Laguna Niguel Municipal Code and under the City Manager's authority for the immediate procurement of services in emergency situations pursuant to Subsection 7(b) of Section C of the City's Purchasing Policy, competitive bidding requirements were waived to address the emergency without delay. Issuing a competitive Request for Proposals (RFP) and subsequently evaluating multiple proposals would delay bidding and implementing two-way traffic by a minimum of four to six months. Given this, staff recommends that the City Council approve Amendment No. 5 to the On-Call Professional Services Agreement with Mark Thomas & Company, Inc. to provide engineering design services for the restoration of two-way traffic along La Paz Road for a not-to-exceed amount of \$171,382 (Attachment "B").

Additionally, due to the nature of the earth movement issue, it is anticipated that unknown conditions may present themselves during final design. Typically, a 10% contingency is the standard recommendation; however, this project poses a higher risk of added costs, and it is recommended that a 20% contingency be established on this project to address concerns in a timely fashion. Any additional cost above the 20% contingency will require additional City Council approval. Therefore, staff also recommends that the City Council approve a not-to-exceed 20% contingency for Amendment No. 5 to the On-Call Professional Services Agreement with Mark Thomas & Company, Inc. in the amount of \$34,276 for unforeseen conditions or extra work, and also authorize the Public Works Director/City Engineer to approve additional work for a total not-to-exceed amount of \$205,658, if needed.

The deliverables to be provided by Mark Thomas & Company, Inc. for the implementation of the Long-Term Phase II Plan includes the design plans, specifications, and probable construction cost estimate in a "ready to bid" package. The plans will include the street improvement design, traffic control design, and street lighting design. The scope of work also includes utility coordination, consultation with public safety representatives (Fire and Police), and coordination with the City's geotechnical consultants.

The scope of work being provided by Mark Thomas & Company, Inc. will require approximately three months, including plan check reviews, to complete. The construction phase of the project, including bidding, award of contract, and construction, will require approximately six months to complete as the center median along La Paz Road will have to be removed to safely implement the Long-Term Phase II Plan. Staff is continuously exploring options to expedite the implementation of the Long-Term Phase II Plan.

The Long-Term Phase II Plan developed by Mark Thomas & Company, Inc. will serve two-way traffic for an estimated three to five years while Public Works staff continues to seek grant funding to design and construct permanent repairs to the roadway and earth movement. Construction of the improvements needed to restore two-way traffic on La Paz Road is estimated to cost \$1,500,000. A budget adjustment of \$1,500,000 from the Deferred Maintenance, Capital Assets, & Infrastructure Reserves to Capital Improvement Project Number 7022-06 – La Paz Road Earth Movement Evaluation, Mitigation, & Remediation is recommended for the construction of the Long-Term Phase II Plan.

ALTERNATIVES CONSIDERED

1. The City Council may decide not to approve Amendment No. 5 to the On-Call Professional Services Agreement with Mark Thomas & Company, Inc. and direct staff to issue a competitive RFP and evaluate multiple proposals. Staff believes that issuing a competitive RFP will not result in more desirable proposals and will cause delays in initiating the design to restore two-way traffic on La Paz Road, prolonging the lane closure for an additional four to six months.
2. The City Council may decide not to approve the Fiscal Year 2023-2024 budget adjustment of \$1,500,000 for the construction of the Long-Term Phase II Plan. This alternative is not recommended as it will result in the detour onto Rancho Niguel Road remaining in place until grant funds are available to make permanent repairs to La Paz Road and the slope, which could be many years. The Short-Term Phase I detour was intended to be temporary. Leaving the detour in its current condition, with temporary traffic control signage, for many years could be a significant liability for the City.

FISCAL REVIEW

As of July 31, 2023, Project Number 7022-06 – La Paz Road Earth Movement Evaluation, Mitigation, & Remediation had \$173,235 remaining from previous fiscal years. Staff intends to utilize those remaining funds for Amendment Number 5 to the On-Call Professional Services Agreement with Mark Thomas & Company, Inc. for the engineering design services for the restoration of two-way traffic along La Paz Road. The \$1,500,000 budget amendment is intended to be used to fund the construction of two-way traffic along La Paz Road from Rancho Niguel Road to Kings Road and, if needed, the contingency for Amendment No. 5 to the On-Call Professional Services Agreement with Mark Thomas & Company, Inc. This budget amendment would increase total appropriations for all funds in Fiscal Year 2023-24 to \$62,397,977. Total General Fund expenditures would remain at \$51,855,796.

Based on the current budgeted revenues and expenditures for Fiscal Year 2023-2024, the General Fund reserves estimated balance at June 30, 2024, is \$44.5 million. This balance includes the City's Deferred Maintenance, Capital Assets, & Infrastructure Reserves. The proposed \$1,500,000 budget amendment would be transferred from the City's Deferred Maintenance, Capital Assets, & Infrastructure Reserves and would reduce the projected June 30, 2024, General Fund Reserve balance to \$43.0 million. The City is

actively seeking reimbursement locally and at the State and Federal levels for this emergency solution and the permanent repair. Any unused funds from the proposed budget amendment or grants received would be used to replenish the reserves.

General Fund Reserves		
Reserves	Estimated Balance at June 30, 2024	Revised Estimated Balance at June 30, 2024
Total General Fund Reserves	\$44,520,371	\$43,020,371

Per the City's Financial Reserves Policy, the City is required to maintain a Reserve for Financial and Economic Uncertainty of no less than 50% of annual General Fund operating expenditures. The estimated General Fund expenditures for the Fiscal Year 2023-2024 Budget is \$51,855,796. With this amendment, the City's estimated General Fund reserves represent approximately 83% of the estimated expenditures. If this budget adjustment were approved, the City would continue to comply with the City's adopted Financial Reserves Policy.

LEGAL REVIEW

The City Attorney's Office has reviewed Amendment No. 5 to the On-Call Professional Services Agreement with Mark Thomas & Company, Inc. and has approved the document as to form.

CONCLUSION

Staff recommends that the City Council:

1. Approve Amendment No. 5 to the On-Call Professional Services Agreement with Mark Thomas & Company, Inc. to provide engineering design services for the restoration of two-way traffic along La Paz Road for a not-to-exceed amount of \$171,382;
2. Approve a not-to-exceed 20% contingency for Amendment No. 5 to the On-Call Professional Services Agreement with Mark Thomas & Company, Inc. in the amount of \$34,276 for unforeseen conditions or extra work and authorize the Public Works Director/City Engineer to approve additional work for a total not-to-exceed amount of \$205,658, if needed;
3. Authorize the City Manager to execute Amendment No. 5 to the On-Call Professional Services Agreement with Mark Thomas & Company, Inc; and,
4. Approve a Fiscal Year 2023-2024 Budget Adjustment of \$1,500,000 from the Deferred Maintenance, Capital Assets, & Infrastructure Reserves to Capital Improvement Project Number 7022-06 – La Paz Road Earth Movement Evaluation, Mitigation, & Remediation for the construction of two-way traffic along La Paz Road from Rancho Niguel Road to Kings Road and increase the total appropriation for all funds in Fiscal Year 2023-24 to \$62,397,977.



Tamara S. Letourneau
City Manager



Scott C. Smith
City Attorney



for

Jacki Scott
Public Works Director/City Engineer



Kathy Nguyen
Engineering Services Manager



Trevor Agrelius
Finance Director



Kelli Everett
Senior Management Analyst

Attachments:

- A. Vicinity and Location Map
- B. Amendment No. 5 to the On-Call Professional Services Agreement with Mark Thomas & Company, Inc.

ATTACHMENT A

Vicinity and Location Map

LEGEND



Project Boundary

Aliso Creek Rd



VICINITY MAP

Rancho Niguel Rd

La Paz Rd

Kings Rd

Maxar



Vicinity and Location Map

La Paz Road Earth Movement Evaluation



ATTACHMENT B

**Amendment No. 5 to the On-Call Professional Services
Agreement with Mark Thomas & Company, Inc.**

**AMENDMENT NO. 5 TO AGREEMENT FOR ON-CALL PROFESSIONAL SERVICES
BETWEEN CITY OF LAGUNA NIGUEL AND
MARK THOMAS & COMPANY, INC.
FOR MULTIYEAR PROFESSIONAL SERVICES**

THIS AMENDMENT NO. 5 TO AGREEMENT FOR ON-CALL PROFESSIONAL SERVICES (“**Amendment**”) is made and entered into _____ by and between CITY OF LAGUNA NIGUEL, a California municipal corporation (“**City**”) and Mark Thomas & Company, Inc., a California Corporation (“**Consultant**”). City and Consultant may be referred to individually as “**Party**” or collectively as “**Parties**.”

RECITALS

1. City and Consultant entered into an on-call professional services agreement on July 1, 2023 to provide on-call professional services (“**Agreement**”). The initial term of the Agreement terminates on June 30, 2026.
2. City has requested design and engineering plan preparation services for interim conditions on La Paz Road from the Consultant pursuant to the terms of the Agreement.
3. Consultant submitted a written project proposal for the above requested services (“**Project Proposal**”) pursuant to the terms of the Agreement.
4. Consultant has the qualifications and experience to render the requested services.
5. City and Consultant have entered into amendment(s) to the Agreement as detailed in “Prior Amendments to Agreement” attached hereto as Exhibit E-5.
6. City and Consultant now desire to enter into Amendment No. 5 to the Agreement for the performance by Consultant of the requested services for City.

AGREEMENT

In consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. **Project Term.** This Amendment shall become effective as of the date stated above and, unless earlier terminated in accordance with Article 7 of the Agreement, shall continue in full force and effect until completion of the services.
2. **Consultant Project Proposal.** The Project Proposal from Consultant, for this Amendment to the Agreement, shall be incorporated herein by this reference as though fully set forth herein. The Scope of Services shall include the scope of services or work included in the Project Proposal. In the event of any inconsistency or any conflict between the terms of the Project Proposal, and the Agreement or this Amendment, the terms of the Agreement or this Amendment, respectively, shall govern. No other terms and conditions from the Project Proposal, other than

description of scope of services or work, shall apply to this Amendment or the Agreement, unless specifically agreed to by City in writing.

3. Project Scope of Services. In compliance with all terms and conditions of the Agreement and this Amendment, Consultant shall provide the services specified in the “Scope of Services” attached hereto as **Exhibit A-5** and incorporated herein by this reference, which may be referred to herein as the “services” or “work” hereunder.

4. Project Special Requirements. Additional terms and conditions of this Amendment, if any, which are made a part hereof are set forth in the “Special Requirements” attached hereto as **Exhibit B-5** and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit B-5, and any other provisions of this Amendment or the Agreement, the provisions of Exhibit B-5 shall govern.

5. Project Compensation and Aggregate Contract Sums. Subject to any limitations set forth in the Agreement and this Amendment, City agrees to pay Consultant the amounts specified in the “Schedule of Compensation” attached hereto as **Exhibit C-5** and incorporated herein by this reference. The total compensation (excluding the Contingency Sum), including reimbursement for actual expenses, shall not exceed One Hundred Seventy-One Thousand Three Hundred Eighty-Two Dollars (\$171,382) (“**Compensation Sum**”). This Amendment includes a contingency amount equal to twenty percent of the Compensation Sum (“**Contingency Sum**”) to account solely for additional work, or unforeseen conditions, related to the services. The total compensation (including the Contingency Sum), including reimbursement for actual expenses, shall not exceed Two Hundred Five Thousand Six Hundred Fifty-Eight Dollars (\$205,658) (“**Contract Sum**”), unless additional compensation is approved pursuant to Section 1.5 of the Agreement. The Consultant shall obtain written approval from the City for any use of the Contingency Sum. Compensation may include reimbursement, for actual and necessary expenditures, if both specified in either the Schedule of Compensation (Exhibit C-5 to this Amendment) or the Schedule of On-Call Compensation (Exhibit C to the Agreement), as well as approved by City in advance. The Contract Sum shall include the attendance of Consultant at all project meetings reasonably deemed necessary by City. Consultant agrees that if Consultant becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services, Consultant shall promptly notify the City Representative of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto.

6. Project Schedule of Performance. Consultant shall commence the services pursuant to this Amendment upon receipt of a written notice to proceed pursuant to Exhibit A-5 and shall perform all services within the time period(s) established in the “Schedule of Performance” attached hereto as **Exhibit D-5** and incorporated herein by this reference (and as applicable the “Schedule of Performance” attached as Exhibit D to the Agreement).

7. Prior Amendments to Agreement. Prior amendments to the Agreement, if any, are itemized in “Prior Amendments to Agreement,” attached hereto as **Exhibit E-5** and incorporated herein by this reference.

8. Consultant Representative for Project. The Consultant Representative for the work or services under this Amendment is Paul Martin, Project Manager, 949-697-7840, pmartin@markthomas.com, who is authorized to act on Consultant's behalf with respect to the work or services specified herein and to make all decisions in connection therewith. It is expressly understood that the experience, knowledge, capability and reputation of the representative was a substantial inducement for City to enter into this Amendment to the Agreement. Therefore, the representative shall be responsible during the term of this Amendment for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. For purposes of this Amendment, the representative may not be replaced nor may their responsibilities be substantially reduced by Consultant without the express written approval of City.

9. Continuing Effect of the Agreement. Except as amended by this Amendment No. 5, and Amendment Nos. 1 through 4, all provisions of the Agreement shall remain unchanged and in full force and effect. From and after the date of this Amendment, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement, as amended by this Amendment No. 5.

10. Affirmation of the Agreement. City and Consultant each ratify and reaffirm each and every one of the respective rights and obligations arising under the Agreement. Each Party represents and warrants to the other that the Agreement is currently an effective, valid, and binding obligation.

11. Adequate Consideration. The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment.

12. Authority. The persons executing this Amendment on behalf of the Parties hereto warrant that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Amendment on behalf of said Party, (iii) by so executing this Amendment, such Party is formally bound to the provisions of this Amendment, and (iv) entering into this Amendment does not violate any provision of any other agreement to which said Party is bound.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment on the date and year first-above written.

CITY:

CITY OF LAGUNA NIGUEL, a California municipal corporation

Tamara S. Letourneau, City Manager

ATTEST:

Marissa J. Asistin, City Clerk

CONSULTANT:

Mark Thomas & Company, Inc., a California Corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____
Address: _____

Two corporate officer signatures required when Consultant is a corporation, with one signature required from each of the following groups: 1) Chairperson of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. (Cal. Corp. Code § 313.) APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONSULTANT'S BUSINESS ENTITY.

EXHIBIT A-5
SCOPE OF SERVICES

- I. All work product is subject to review and acceptance by City, and must be revised by Consultant without additional charge to City until found satisfactory and accepted by City.**
- II. Consultant will perform design and engineering plan preparation services for interim conditions on La Paz Road described in the Project Proposal dated July 28, 2023 (refer to Section 1.2 of the Agreement for conflicts).**

EXHIBIT B-5
SPECIAL REQUIREMENTS
(Superseding Amendment Template)

NOT APPLICABLE

EXHIBIT C-5
SCHEDULE OF COMPENSATION

- I. City will compensate Consultant for the services performed upon submission of a valid invoice, as described in Section 2.2 of the Agreement.**
- II. The total compensation for the services provided pursuant to this Amendment shall not exceed the Contract Sum, as provided in Section 5 of this Amendment.**
- III. Consultant will be compensated for services provided pursuant to this Amendment pursuant to the fees and rates in Exhibit C of the Agreement and in accordance with the Project Proposal.**

EXHIBIT D-5
SCHEDULE OF PERFORMANCE

I. Consultant shall perform all services and deliver all work products timely in accordance with the Project Proposal and shall not receive additional compensation for work completed after the term of this Amendment.

EXHIBIT E-5
PRIOR AMENDMENTS TO AGREEMENT

1. Amendment No. 1 to Agreement, executed on July 1, 2023, provides Traffic Engineering services from Consultant to City for a not-to-exceed Aggregate Contract Sum of \$660,000.

2. Amendment No. 2 to Agreement, executed on July 1, 2023, provides Project and Program Management services from Consultant to City for a not-to-exceed Aggregate Contract Sum of \$330,000.

3. Amendment No. 3 to Agreement, executed on July 1, 2023, provides Graphic Design, Marketing, Photography and Videography services from Consultant to City for a not-to-exceed Aggregate Contract Sum of \$165,000.

4. Amendment No. 4 to Agreement, executed on July 1, 2023, provides Local Transportation Climate Adaptation Program (LTCAP) Grant application services from Consultant to City for a not-to-exceed Contract Sum of \$33,000.