

**CITY OF CAPITOLA  
PROFESSIONAL SERVICES AGREEMENT  
THE PARK AT RISPIN MANSION  
BETZ WORKS**

THIS AGREEMENT is entered into on March 28, 2024 by and between the City of Capitola, a Municipal Corporation, hereinafter called "City" and Betz Works, hereinafter called "Contractor".

WHEREAS, City desires certain services described in Appendix One and Contractor is capable of providing and desires to provide these services;

NOW, THEREFORE, City and Contractor for the consideration and upon the terms and conditions hereinafter specified agree as follows:

**SECTION 1  
Scope of Services**

The services to be performed under this Agreement are for Park development at Wharf Rd and Clares Street (APN 035-371-01), City of Capitola, CA and further detailed in Appendix One.

**SECTION 2  
Duties of Contractor**

All work performed by Contractor, or under its direction, shall be sufficient to satisfy the City's objectives for entering into this Agreement and shall be rendered in accordance with the generally accepted practices, and to the standards of, Contractor's profession.

Contractor shall not undertake any work beyond the scope of work set forth in Appendix One unless such additional work is approved in advance and in writing by City. The cost of such additional work shall be reimbursed to Contractor by City on the same basis as provided for in Section 4.

If, in the prosecution of the work, it is necessary to conduct field operations, security and safety of the job site will be the Contractor's responsibility excluding, nevertheless, the security and safety of any facility of City within the job site which is not under the Contractor's control.

Contractor shall meet with the Public Works Director, called "Director," or other City personnel, or third parties as necessary, on all matters connected with carrying out of Contractor's services described in Appendix One. Such meetings shall be held at the request of either party hereto. Review and City approval of completed work shall be obtained monthly, or at such intervals as may be mutually agreed upon, during the course of this work.

### SECTION 3 Duties of the City

City shall make available to Contractor all data and information in the City's possession which City deems necessary to the preparation and execution of the work, and City shall actively aid and assist Contractor in obtaining such information from other agencies and individuals as necessary.

The Director may authorize a staff person to serve as his or her representative for conferring with Contractor relative to Contractor's services. City shall not control or direct the manner in which the services are to be performed. However, the work in progress hereunder shall be reviewed from time to time by City at the discretion of City or upon the request of Contractor. If the work is satisfactory, it will be approved. If the work is not satisfactory, City will inform Contractor of the changes or revisions necessary to secure approval.

### SECTION 4 Fees and Payment

Payment for the Contractor's services shall be made upon a schedule and within the limit, or limits shown, upon Appendix Two. Such payment shall be considered the full compensation for all personnel, materials, supplies, and equipment used by Contractor in carrying out the work. If Contractor is compensated on an hourly basis, Contractor shall track the number of hours Contractor, and each of Contractor's employees, has worked under this Agreement during each fiscal year (July 1 through June 30) and Contractor shall immediately notify City if the number of hours worked during any fiscal year by any of Contractor's employees reaches 900 hours. In addition, each invoice submitted by Contractor to City shall specify the number of hours to date Contractor, and each of Contractor's employees, has worked under this Agreement during the current fiscal year.

### SECTION 5 Changes in Work

City may order major changes in scope or character of the work, either decreasing or increasing the scope of Contractor's services. No changes in the Scope of Work as described in Appendix One shall be made without the City's written approval. Any change requiring compensation in excess of the sum specified in Appendix Two shall be approved in advance in writing by the City.

### SECTION 6 Time of Beginning and Schedule for Completion

This Agreement will become effective when signed by both parties and will terminate on the earlier of:

- The date Contractor completes the services required by this Agreement, as agreed by the City; or
- The date either party terminates the Agreement as provided below.

Work shall begin on or about April 15, 2024.

In the event that major changes are ordered or Contractor is delayed in performance of its services by circumstances beyond its control, the City will grant Contractor a reasonable adjustment in the schedule for completion provided that to do so would not frustrate the City's objective for

entering into this Agreement. Contractor must submit all claims for adjustments to City within thirty calendar days of the time of occurrence of circumstances necessitating the adjustment.

## SECTION 7 Termination

City shall have the right to terminate this Agreement at any time upon giving ten days written notice to Contractor. Contractor may terminate this Agreement upon written notice to City should the City fail to fulfill its duties as set forth in this Agreement. In the event of termination, City shall pay the Contractor for all services performed and accepted under this Agreement up to the date of termination.

## SECTION 8 Insurance

Contractor shall procure and maintain for the duration of the contract and for one year thereafter, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, or employees.

### ***Minimum Scope of Insurance***

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 0001).
2. Insurance Services office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California, and Employer's Liability Insurance.
4. Professional (Errors and Omissions) Liability insurance appropriate to the consultant's profession. Architects' and engineers' coverage shall include contractual liability.

### ***Minimum Limits of Insurance***

Consultant shall maintain limits no less than:

1. General Liability: **\$1,000,000** per occurrence and **\$2,000,000** in aggregate (including operations, products and completed operations, for bodily injury, personal and property damage.)
2. Automobile Liability: **\$1,000,000** per accident for bodily injury and property damage.

- |    |   |  |
|----|---|--|
| 3. | Employer's Liability Insurance            | <b>\$1,000,000 per accident for bodily injury and property damage.</b> |
| 4. | Errors and Omissions Liability:<br>Limits | <b>\$1,000,000 per claim and \$2,000,000 in the aggregate.</b>         |

### ***Other Insurance Provisions***

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

1. The City of Capitola, its officers, officials, employees and volunteers are to be covered as additional insured's as respects: liability arising out of work or operations performed by or on behalf of the Consultant or automobiles owned, leased, hired or borrowed by the Consultant.
2. For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled except after prior written notice has been given to the City.

### ***Acceptability of Insurers***

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

### ***Waiver of Subrogation***

Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. **The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City of Capitola** for all work performed by the Contractor, its employees, agents and subcontractors.

### ***Verification of Coverage***

Contractor shall furnish the City with original certificates and amendatory endorsements affecting coverage by this clause. The endorsements should be on forms provided by the City or on other than the City's forms provided those endorsements conform to City requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City

reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

## SECTION 9 Indemnification

For General Services: To the fullest extent permitted by law, Contractor agrees to indemnify, defend, and hold harmless the City, its directors, officers, employees from and against any and all claims, demands, actions, liabilities, damages, judgments, or expenses (including attorneys' fees and costs) arising from the acts or omissions of Contractor's employees or agents in any way related to the obligations or in the performance of services under this Agreement, except for design professional services as defined in Civil Code § 2782.8, and except where caused by the sole or active negligence, or willful misconduct of the City.

## SECTION 10 Civil Rights Compliance/Equal Opportunity Assurance

Every supplier of materials and services and all contractors doing business with the City of Capitola shall be in compliance with the applicable provisions of the Americans with Disabilities Act of 1990, and shall be an equal opportunity employer as defined by Title VII of the Civil Rights Act of 1964 and including the California Fair Employment and Housing Act of 1980. As such, contractor shall not discriminate against any person on the basis of race, religious creed, color, national origin, ancestry, disability, medical condition, marital status, age or sex with respect to hiring, application for employment, tenure or terms and conditions of employment. Contractor agrees to abide by all of the foregoing statutes and regulations.

## SECTION 11 Legal Action/Attorneys' Fees

If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief to which he or she may be entitled. The laws of the State of California shall govern all matters relating to the validity, interpretation, and effect of this Agreement and any authorized or alleged changes, the performance of any of its terms, as well as the rights and obligations of Contractor and the City.

## SECTION 12 Assignment

This Agreement shall not be assigned without first obtaining the express written consent of the Director after approval of the City Council.

## SECTION 13 Amendments

This Agreement may not be amended in any respect except by way of a written instrument which expressly references and identifies this particular Agreement, which expressly states that its purpose is to amend this particular Agreement, and which is duly executed by the City and Contractor. Contractor acknowledges that no such amendment shall be effective until approved and authorized by the City Council, or an officer of the City when the City Council may from time to time

empower an officer of the City to approve and authorize such amendments. No representative of the City is authorized to obligate the City to pay the cost or value of services beyond the scope of services set forth in Appendix Two. Such authority is retained solely by the City Council. Unless expressly authorized by the City Council, Contractor's compensation shall be limited to that set forth in Appendix Two.

#### SECTION 14 Miscellaneous Provisions

1. *Project Manager.* Director reserves the right to approve the project manager assigned by Contractor to said work. No change in assignment may occur without prior written approval of the City.

2. *Contractor Service.* Contractor is employed to render professional services only and any payments made to Contractor are compensation solely for such professional services.

3. *Licensure.* Contractor warrants thereby represents that he or she has an established trade, occupation, or business in the same nature of services Contractor is performing under this Agreement. Contractor warrants that he or she has complied with any and all applicable governmental licensing requirements.

4. *Other Agreements.* This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter, and no other agreement, statement or promise related to the subject matter of this Agreement which is not contained in this Agreement shall be valid or binding.

5. *City Property.* Upon payment for the work performed, or portion thereof, all drawings, specifications, records, or other documents generated by Contractor pursuant to this Agreement are, and shall remain, the property of the City whether the project for which they are made is executed or not. The Contractor shall be permitted to retain copies, including reproducible copies, of drawings and specifications for information and reference in connection with the City's use and/or occupancy of the project. The drawings, specifications, records, documents, and Contractor's other work product shall not be used by the Contractor on other projects, except by agreement in writing and with appropriate compensation to the City.

6. *Contractor's Records.* Contractor shall maintain accurate accounting records and other written documentation pertaining to the costs incurred for this project. Such records and documentation shall be kept available at Contractor's office during the period of this Agreement, and after the term of this Agreement for a period of three years from the date of the final City payment for Contractor's services.

7. *Independent Contractor.* In the performance of its work, it is expressly understood that Contractor, including Contractor's agents, servants, employees, and subcontractors, is an independent contractor solely responsible for its acts and omissions, and Contractor shall not be considered an employee of the City for any purpose. Contractor expressly warrants not to represent, at any time or in any manner, that Contractor is an employee of the City.

8. *Conflicts of Interest.* Contractor stipulates that corporately or individually, its firm, its employees and subcontractors have no financial interest in either the success or failure of any project

which is, or may be, dependent on the results of the Contractor's work product prepared pursuant to this Agreement.

9. *Notices.* All notices herein provided to be given, or which may be given by either party to the other, shall be deemed to have been fully given and fully received when made in writing and deposited in the United States mail, certified and postage prepaid, and addressed to the respective parties as follows:

CITY  
CITY OF CAPITOLA  
420 Capitola Avenue  
Capitola, CA 95010  
831-475-7300

CONTRACTOR  
Betz Works  
310A Kennedy Dr  
Capitola, CA 95010  
831-400-8466

By: \_\_\_\_\_  
Benjamin Goldstein, City Manager

By: \_\_\_\_\_  
Allan Betz

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Samantha W. Zutler, City Attorney



**APPENDIX ONE  
Scope of Services**

**[To be completed by Contractor]**

**I. REQUIRED CONTRACTOR INFORMATION**

NOTICE: In the case of a corporation, complete the following:

Corporation Name:

Business Address:

Mailing Address:

President:

Business Address:

Mailing Address:

Secretary:

Business Address:

Mailing Address:

Treasurer:

Business Address:

Mailing Address:

Manager:

Business Address:

Mailing Address:

## **II.LIST OF SUBCONTRACTORS**

The shall list the name, location of place of business, the California contractor's license number, the public works contractor registration number issued pursuant to California Labor Code Section 1725.5, and the dollar amount and proportion (in percent) of work of each subcontractor to whom the Bidder proposes to subcontract portions of the work.

<b>Subcontractor Name</b>	<b>Location of Place of Business</b>	<b>CSLB License Number</b>	<b>Public Works Contractor Registration Number</b>	<b>Amount and Proportion of Subcontractor Work</b>

**III.CONTRACTOR REFERENCE INFORMATION**

To complete this proposal, contractors shall list previous similar work performed, the agency for which work was performed, and the contact person.

<u>Project Title</u>	<u>Company</u>	<u>Contact Person/Phone</u>
—		
—		
—		
—		
—		
—		
—		
—		
—		
—		
—		
—		
—		
—		
—		
—		
—		
—		
—		

**IV. FAITHFUL PERFORMANCE & MAINTENANCE BOND**

WHEREAS, the City of Capitola, a municipal corporation, in the County of Santa Cruz, State of California, has awarded to \_\_\_\_\_, hereinafter designated as the "Principal," a contract for constructing the work or improvement described in the contract documents entitled:

**The Park at Rispin Mansion**

WHEREAS, said Principal is about to enter into the contract with the City of Capitola:

NOW, THEREFORE, we, the Principal, and \_\_\_\_\_, a corporation organized and existing under and by virtue of the laws of the State of California, as surety, are held and firmly bound unto the City of Capitola, a municipal corporation in the County of Santa Cruz, State of California, in the sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) being not less than one hundred percent (100%) of the estimated contract costs of the work, to be paid to the City of Capitola, for the payment of which sum, well and truly to be paid, we hereby jointly and severally bind ourselves, our heirs, administrators, executors, successors and assigns;

NOW, THEREFORE THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal, his/her heirs, executors, administrators, successors, or assigns shall in all things abide by and well and truly keep and perform the covenants, conditions and agreements in the said contract and any alteration thereof made as herein provided, on his/her or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to the true intent and meaning, and shall indemnify and save harmless the City of Capitola, its officers and agents as therein stipulated, that this obligation shall be discharged, otherwise it shall be and remain in full force and effect.

As a condition precedent to the satisfactory completion of the said contract, the above obligation in the amount of dollars \_\_\_\_\_ dollars (\$ \_\_\_\_\_), being not less than 10 percent of the estimated contract cost, shall remain in force for a period of one (1) year after the completion and acceptance of the said work, during which time if the Principal, his/her or its heirs, executors, administrators, successors or assigns shall fail to make full, complete and satisfactory repairs and replacements or totally protect the City of Capitola from loss or damage made evident during said period of one (1) year from the date of official acceptance of said work and resulting from or caused by defective materials or faulty workmanship in the prosecution of the work done, the above obligation in the sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_), shall remain in full force and effect, otherwise the obligation shall be discharged. However, notwithstanding any other provisions of this paragraph, the obligation of the surety hereunder shall continue so long as any obligation of the Principal remains.

The surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder or the specifications shall in any way effect its obligation on this bond, and it does hereby waive notice of any such changes, extensions of time, alterations, or additions to the terms of the contract or to the work or to the specifications, and the surety does hereby waive its rights under California Civil Code Section 2819.

IN WITNESS whereof, the parties have executed this instrument under their seals, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by its undersigned representative, pursuant to the authority of its governing body, the day and year first hereinabove written.

\_\_\_\_\_  
PRINCIPAL

\_\_\_\_\_  
SURETY

**V. LABOR AND MATERIAL BOND**

WHEREAS, the City of Capitola, a municipal corporation in the County of Santa Cruz, State of California, has awarded to \_\_\_\_\_, hereinafter designated as the "Principal," a contract for constructing the work or improvement described in the contract documents entitled:

**The Park at Rispin Mansion**

WHEREAS, said Principal is required under the terms of said contract to furnish a Labor and Material Bond, the surety of this bond will pay the same to the extent hereinafter set forth; and

WHEREAS, the said Principal is about to enter into the annexed contract with the City of Capitola to complete the work or improvement referred to above for the City of Capitola, County of Santa Cruz, State of California, all as more particularly and in detail as shown upon the Special Project Specifications and Contract Documents filed in the Public Works Department of the City of Capitola;

NOW, THEREFORE, we the Principal, and \_\_\_\_\_ a corporation organized and existing under and by virtue of the laws of the State of California, as surety, are held and firmly bound unto the City of Capitola in the sum of \_\_\_\_\_ dollars (\$\_\_\_\_\_) such sum being not less than one hundred percent (100%) of the estimated contract cost of the work, lawful money of the United States of America, to be paid to the City of Capitola, for the payment of which sum, well and truly to be made, we hereby bind ourselves, our heirs, administrators, executors, successors and assign jointly and severally.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if said Principal or its heirs, executors, administrators, successors or assigns, shall fail to pay for any materials, provisions, vendor supplies, or equipment as provided in the contract documents, upon, for, or about the performance of the work contracted to be done, or for any work or waiver thereon of any kind, or for amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, or fails to pay any of the persons authorized under Civil Code Section 9100 to assert a claim against a payment bond, or fails to pay for any amounts required to be deducted, withheld, and paid over to the Franchise Tax Board for the wages of employees of the Principal or his/her subcontractor pursuant to Section 18806 of the Revenue and Taxation Code, or fails to pay for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the principal and all subcontractors with respect to such work and labor that the surety or sureties will pay for the same, in an amount not exceeding the sum specified in this bond, and also, in case suit is brought upon the bond, will pay, in addition to the face amount hereof, a reasonable attorney's fee, to be fixed by the Court.

The condition of this obligation is such that its terms inure to the benefit of any of the persons and entities authorized in Civil Code Section 9100 to assert a claim against a payment bond so as to give a right of action to such persons or entities or their assigns in any suit brought upon or action to enforce liability on the bond.

The surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder shall

in any manner affect its obligation upon this bond, and it does hereby explicitly waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder, and further explicitly hereby waives its rights under Civil Code Section 2819.

IN WITNESS WHEREOF, the above parties have executed this instrument under their seals this\_\_\_\_ day of\_\_\_\_\_, 20\_\_, and duly signed by its undersigned representation, pursuant to authority of its governing body.

\_\_\_\_\_  
PRINCIPAL

\_\_\_\_\_  
SURETY

## VI.SCOPE OF WORK

**6.01 WORK TO BE DONE** – Furnish and deliver all materials and to do and perform all work in accordance with the plans and contract documents of the City of Capitola for

### **The Park at Rispin Mansion**

and referred to the "Notice to Contractors/Notice Inviting Sealed Proposals of Bids", dated February 22, 2023 and further limited to the below schedule of values, and to provide all necessary machinery, tools, apparatus, and other means of construction and do all work and furnish all materials required by said specifications, plans, and drawings in the manner prescribed therein.

#### Schedule of Values

Material	Units	Quantity
<b>FENCING</b>		
30" high metal fence	LF	105
5' high black metal fence	LF	64
6' high black chain fencing	LF	140
6' high black metal fence	LF	304
Double gate at steps	EA	1
Single gate at ramp	EA	1
Single stair handrail at grand staircase	LF	84

#### SITE FURNISHINGS

3' concrete benches	EA	4
6' picnic tables w/ 2 benches	EA	1
6' recycled plastic bench	EA	12
8' picnic table w/2 5' benches ADA	EA	1
Dog cleanup station	EA	2
Drinking Fountain	EA	1
Recycling receptacle	EA	3
Street lights	EA	8
Trash receptacle	EA	3

#### HISTORIC ELEMENTS

Concrete floor with color	EA	1
Fountain plumbing/repair/	EA	1
Grand staircase and entry stairs	EA	1
New concrete columns	EA	3
Restoration of historic elements	EA	1
Wall cut/repair/remove/new cap	EA	1

Material	Units	Quantity
<b>NEW ELEMENTS</b>		
Amphitheater	EA	1

#### IRRIGATION

Per Plan	LS	1
----------	----	---

#### Civil Improvements

AC & AB Class 2	SF	400
Christy V12	EA	6
Concrete flatwork incl AB Class 2	SF	350
Curb	LF	340
Decomposed Granite	SF	3360
Deepened Vertical Curb/Dwarf Wall	LF	150
Demolition, Grub & Grade	LS	1
Drain Pipe	LF	500
Energy Disapator	EA	2
Erosion Control	EA	1
Grub and Grading (incl Compaction)	SF	17500
Pedestrian Handrailing	LF	0
Pedestrian Guardrail with handrail	LF	104
SDCO	EA	3



**6.02 MAINTENANCE AND CLEAN-UP** – Throughout the construction period, the Contractor shall keep the site of the work in a neat and clean condition, shall dispose of any surplus materials in an approved manner off the site, keep debris out of drainage ditches, and maintain proper housekeeping practices to the satisfaction of the Director.

When any material is to be disposed of outside of the easement or street or highway right-of-way, the Contractor shall first obtain written permission from the owner on whose property the disposal is to be made. Disposal must conform to grading ordinances of the jurisdiction in which the work is performed.

Upon completion of the work, and prior to requesting final inspection, the Contractor shall thoroughly clean the site of the work of all rubbish, excess materials, falsework, temporary structures, and equipment, and all portions of the work shall be left in a neat and orderly condition. The final inspection, acceptance, and final payment will not be made until this has been accomplished.

**6.03 CHANGES & CHANGE ORDERS** – The City may increase or decrease quantities of work to be done under the Contract, make revisions to the Drawings or Specifications, or require the performance of extra work and furnishing of materials therefor by the Contractor as the City requires for the proper completion or construction of the whole work contemplated. The City, at its option, may furnish said materials.

When alterations in quantities of work for which unit prices are shown in the proposal are ordered and performed, the adjustment in the contract amount shall be determined on the basis of such unit prices for the actual quantities of work done. Adjustments, if any, in the amount to be paid the Contractor by reason of any other modifications of the work as set forth in a contract change order, shall be determined by one or more of the following methods:

- a. **Lump Sum Price.** By an acceptable lump-sum proposal from the Contractor. Said proposal shall be based on a cost estimate as to materials, equipment, and labor, to which total may be added a maximum of 15 percent for overhead, profit, and all other expenses; this 15 percent limitation shall apply for work done directly by the Contractor's organization or by his/her subcontractors, and shall be added only once.
- b. **Unit Prices.** By unit prices fixed by agreement between the City and the Contractor.
- c. **Force Account.** By ordering the Contractor to proceed with the work and to keep and present in such form as the Director may order, a correct account of the cost of the change, together with all vouchers therefor.

The changes will be set forth in written Contract Change Orders which specify the work to be done in connection with the changes, the basis of compensation for the work, and any adjustments of contract time. Such Change Orders shall be approved by the Director.

Upon receipt of an approved Contract Change Order, or of a written authorization from the Director setting forth a description of the change and agreed upon changes in contract price, the

Contractor shall proceed with the work so ordered. The Contractor may request the issuance of Change Orders. In the absence of an approved Contract Change Order or written authorization, the Contractor shall not be entitled to payment for any changed or extra work or any adjustment of Contract time.

When the changes increase or decrease the cost of the work, an adjustment of the Contract price will be made as set forth in the Change Order. At the option of the City, the work which is changed may be paid for on the basis of force account.

New and unforeseen items of work will be classed as extra work when the item cannot be covered by any of the various items or combination of items for which there is a bid price. The Contractor shall do such work and furnish such materials and equipment as may be required in writing by Director, but shall do no extra work except upon written order from the Director, and in the absence of such written order, (s)he shall not be entitled to payment for such extra work. All bills for extra work done in any month shall be filed in writing with the Director before the fifteenth of the following month. For such extra work, the Contractor shall receive compensation at the prices previously agreed upon in writing, or upon a failure to agree upon prices, (s)he shall be paid on force account.

If the work is done on force account, compensation shall be in accordance with Article 9.04 of these Specifications. The City reserves the right to furnish any material deemed expedient and the Contractor shall have no claim for profit on the cost of such materials. All Contractors shall have no claim for profit on the cost of such materials. All extra work shall be adjusted daily upon report sheets furnished to the Director by the Contractor and signed by both parties, which daily reports shall thereafter be considered the true record of extra work done.

**APPENDIX TWO  
Fees and Payments**

For the services performed, City will pay contractor on a not-to-exceed, lump sum basis upon satisfactory completion of the services and delivery of work products. Payments will be issued monthly as charges accrue.

Contractor hereby represents and warrants, based upon Contractor's independent determination of the time and labor, which will be required to perform said services, that Contractor will provide all said services at a cost which will not exceed the maximum price set forth in this agreement for Contractor's services. Contractor hereby assumes the risk that Contractor will perform said services within this maximum price constraint and Contractor acknowledges that its inability to do so shall not excuse completion of the services and shall not provide a basis for additional compensation.

In no event shall the total fee charged for the scope of work set forth in Appendix One exceed the total budget of \$949,000 (Nine Hundred Forty-Nine Thousand Four Hundred Dollars and Zero Cents), without specific, written advance authorization from the City.

Payments shall be made monthly by the City, based on itemized invoices from the Contractor which list a brief description of the services performed, the date the services were performed, the hours spent and by whom, and a brief description of the actual costs and expenses incurred. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person. Such payments shall be for the invoice amount. The monthly statements shall contain the following affidavit signed by a principal of the Contractor's firm:

"I hereby certify as principal of the firm of \_\_\_\_\_, that the charge of \$\_\_\_\_\_ as summarized above and shown in detail on the attachments is fair and reasonable, is in accordance with the terms of the Agreement dated \_\_\_\_\_, \_\_, and has not been previously paid."