

# CITY OF LOS ALAMITOS

3191 Katella Avenue  
Los Alamitos, CA 90720

## AGENDA CITY COUNCIL ADJOURNED REGULAR MEETING Monday, January 27, 2014 – 6:00 p.m.

### NOTICE TO THE PUBLIC

This Agenda contains a brief general description of each item to be considered. Except as provided by law, action or discussion shall not be taken on any item not appearing on the agenda. Supporting documents, including staff reports, are available for review at City Hall in the City Clerk's Office or on the City's website at [www.cityoflosalamitos.org](http://www.cityoflosalamitos.org) once the agenda has been publicly posted.

Any written materials relating to an item on this agenda submitted to the City Council after distribution of the agenda packet are available for public inspection in the City Clerk's Office, 3191 Katella Ave., Los Alamitos CA 90720, during normal business hours. In addition, such writings or documents will be made available for public review at the respective public meeting.

It is the intention of the City of Los Alamitos to comply with the Americans with Disabilities Act (ADA) in all respects. If, as an attendee, or a participant at this meeting, you will need special assistance beyond what is normally provided, please contact the City Clerk's Office at (562) 431-3538, extension 220, 48 hours prior to the meeting so that reasonable arrangements may be made. Assisted listening devices may be obtained from the City Clerk at the meeting for individuals with hearing impairments.

Persons wishing to address the City Council on any item on the City Council Agenda should complete a blue "Request to Speak" card and will be called upon at the time the agenda item is called or during the City Council's consideration of the item and may address the City Council for up to three minutes.

#### 1. CALL TO ORDER

#### 2. ROLL CALL

Council Member Edgar  
Council Member Grose  
Council Member Murphy  
Mayor Pro Tem Graham-Mejia  
Mayor Kusumoto

#### 3. ORAL COMMUNICATIONS

At this time, any individual in the audience may come forward to speak on any item within the subject matter jurisdiction of the City Council. Remarks are to be limited to not more than five minutes per speaker.

**4. DISCUSSION ITEMS**

**A. Developer Deposit with Highland Pointe Partners  
(Community Development)**

This agenda item recommends approval of an agreement with Highland Pointe Partners to provide a deposit to cover the cost related to the preparation of CEQA documents, Contract Planning Staff, legal and engineering related costs.

Recommendation:

1. Approve the Agreement between the City of Los Alamitos and Highland Pointe Partners for funding of necessary consultants; and,
2. Authorize the City Manager to enter into a Professional Services Agreement with Keeton Kreitzer Consulting to prepare necessary work to comply with the California Environmental Quality Act (CEQA); and,
3. Authorize the City Manager to enter into a Professional Services Agreement with MIG, a consulting firm, for the contract staffing devoted to processing of the development application.

**5. CLOSED SESSION**

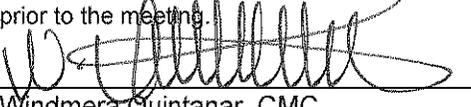
**A. PUBLIC EMPLOYEE PERFORMANCE EVALUATION**

Title: City Manager  
Authority: Government Code Section 54957

**6. ADJOURNMENT**

The City Council will adjourn to Monday, February 3, 2014.

I hereby certify under penalty of perjury under the laws of the State of California, that the foregoing Agenda was posted at the following locations: Los Alamitos City Hall, 3191 Katella Ave.; Los Alamitos Community Center, 10911 Oak Street; and, Los Alamitos Museum, 11062 Los Alamitos Blvd.; not less than 72 hours prior to the meeting.

  
\_\_\_\_\_  
Windmera Quintanar, CMC  
City Clerk

1/23/14  
\_\_\_\_\_  
Date

# City of Los Alamitos

## Agenda Report Discussion Items

January 27, 2014  
Item No: 4A

**To:** Mayor Gerri L. Graham-Mejia & Members of the City Council  
**Via:** Bret M. Plumlee, City Manager  
**From:** Steven Mendoza, Community Development/Public Works Director  
**Subject:** Developer Deposit with Highland Pointe Partners

**Summary:** This item was continued from the January 21, 2014 Council meeting in order to have all Council members present to provide input. This agenda item recommends approval of an agreement with Highland Pointe Partners to provide a deposit to cover the cost related to the preparation of CEQA documents, Contract Planning Staff, legal and engineering related costs.

### Recommendation:

1. Approve the Agreement between the City of Los Alamitos and Highland Pointe Partners for funding of necessary consultants; and,
2. Authorize the City Manager to enter into a Professional Services Agreement with Keeton Kreitzer Consulting to prepare necessary work to comply with the California Environmental Quality Act (CEQA); and,
3. Authorize the City Manager to enter into a Professional Services Agreement with MIG, a consulting firm, for the contract staffing devoted to processing of the development application.

### Background

Highland Pointe Partners, led by Mr. Steve Levenson, has filed an application for a General Plan Amendment, Zoning Ordinance Amendment, Site Plan Review, Specific Plan, and necessary California Environmental Quality Act (CEQA) work to process the proposed development on the vacant 2.1 acre site at 10650 Los Alamitos Boulevard. The site, previously home to Lou Webb Auto Dealership, has been vacant for decades. In order to facilitate the application, the City is required to receive a deposit from the developer in order to pay for the CEQA work, Contract Planning Staff, Legal work and Engineering.

## CEQA Work

It is necessary for the City to contract out CEQA related studies for larger projects such as this. This same process was employed for Sausalito Walk and the Los Alamitos Medical Center EIR. Staff has selected a CEQA consultant from a list of four preferred CEQA vendors created last year. Of those vendors, Staff selected Keeton Kreitzer Consulting to complete this task fully funded by the applicant but operating under the direction of the City.

## Contract Planning Staff

Due to the City's limited planning staff, the developer would like to fund supplemental staff dedicated to processing Mr. Levenson's project in a timely manner. Staff has done this once before for the Olson Company's Sausalito Walk project. Staff is proposing to use the same outside planning firm as was done with the Olson Project. MIG, a consulting firm previously known as Hogle Ireland, has offered to perform the services on behalf of the City fully funded by the applicant but will operate under the direction of the City.

## Agreement

The City Attorney has approved this form agreement. Approval of this Agreement will allow the Consultants to begin their work which is expected to be completed in early 2014, and also immediately proceed with processing the applications and drafting entitlement reports to the Planning Commission for the project. The Agreement allows the City to direct the deposit as follows:

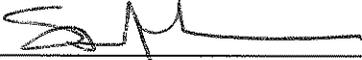
	<b>Firm</b>	<b>Specialty</b>	<b>Amount</b>
1	Keeton Kreitzer Consulting	CEQA Related Studies	\$49,840.00
2	MIG	Contract Staffing	\$34,787.00
3	City Attorney	Legal	\$5,000.00
4	Willdan	City Engineer	\$5,000.00
		<b>Total</b>	<b>\$94,627.00</b>

## Fiscal Impact

No costs will be incurred by the City by entering into a PSA with MIG or Keeton Kreitzer Consulting. The applicant has placed all funds on deposit.

Submitted By:

Approved By:



Steven A. Mendoza  
Community Development/Public Works Director



Bret M. Plumlee  
City Manager

- Attachments:*
- 1. Agreement*
  - 2. Deposit*
  - 3. Professional Services Agreement - Keeton Kreitzer Consulting*
  - 4. Professional Services Agreement - MIG*

**AGREEMENT  
BETWEEN THE CITY OF LOS ALAMITOS AND HIGHLAND POINTE PARTNERS  
FOR THE PAYMENT OF FEES AND COSTS RELATED TO  
THE PREPARATION OF AN ENVIRONMENTAL IMPACT REPORT, CONTRACT  
PLANNER AND ENGINEERING SERVICES AND LEGAL FEES  
FOR THE DEVELOPMENT OF THE VILLAGE AT LOS ALAMITOS**

This Agreement ("Agreement") is entered into as of January 21, 2014 by and between the City of Los Alamitos, a charter city and municipal corporation ("City"), and Highland Pointe Partners Inc. ("Developer"), a California Corporation who agree as follows:

1. Recitals. This Agreement is made with reference to the following facts and circumstances:

A. Developer holds interests in certain real property ("Property") located at 10650 Los Alamitos Blvd., in the City of Los Alamitos.

B. Developer has filed applications to develop the Property with 133 residential rental units and 4,600 square foot of commercial retail space including a 287 space parking structure (the "Project"). The applications consist of General Plan Amendment, Zoning Amendment, Specific Plan and Site Plan Review including necessary CEQA related studies.

C. City does not have personnel with sufficient expertise to prepare the environmental documentation and does not have sufficient resources to process the Project. In order for City to process the Project, City will need to hire a contract staff person and environmental consultant. In addition to the contract staff person and environmental consultant, processing the project will also require work to be performed by the City's contract engineer and the City's contract City Attorney's office. The work to be performed by such persons and firms is collectively referred to herein as "Services."

D. City believes it is in the public interest for Developer to pay for such Services.

2. Agreement to Pay for Services.

Developer agrees to pay for all costs and expenses related to the Services as provided for in this Agreement, even though the actual amounts may be different than the proposals for the EIR Consultant and Contract Planner as listed in Section 3, and the amount of costs for the City Attorney and Contract Engineer have not been estimated.

3. EIR Consultant and Contract Planner Costs.

A. City has received a proposal for an environmental consultant from Keeton Kreitzer Consulting in the amount of Forty-nine thousand, eight hundred, forty dollars (\$49,840.00), a copy of which is attached hereto as Exhibit A.

B. City has received a proposal for contract planner services from MIG in the amount of Thirty-four thousand, seven-hundred, eighty-seven Dollars (\$34,787.00), a copy of which is attached hereto as Exhibit B.

C. Upon execution of this Agreement, Developer agrees to deposit with City, the sum of Eighty-four thousand, six hundred twenty seven dollars (\$84,627).

D. City shall provide Developer with a [quarterly] statement of draws against the deposit.

4. City Attorney and Contract Engineer Services.

A. The City Attorney and the Contract Engineer will provide Services for this Project on an hourly basis. The City Attorney's contract bill rate is \$250 an hour and the Contract Engineer's billing rate is \$95 an hour.

B. Upon execution of this Agreement, Developer agrees to deposit with the City an additional sum of ten thousand dollars \$10,000 for City Attorney and Contract Engineer Services; invoices received for such services shall be applied against this amount.

C. City shall provide Developer with a monthly statement of draws against this deposit for months when there are draws.

5. Deposits.

A. At any time that City determines the deposit amounts to be inadequate, Developer shall replenish the deposits with the amount requested by City, within five (5) working days of such request.

B. Should the deposit not be replenished in the time and amount specified, City may direct that all Services be halted until such time as the deposit is replenished.

C. All deposits will be placed in a non-interest bearing trust account. Developer understands and agrees that City will not pay interest to Developer on the deposits, and Developer will not seek interest payments from City.

D. Upon completion of the Services, City will provide Developer with a final accounting of costs and expenses, which accounting the Developer agrees will be conclusive, in the absence of manifest error. Should the total reimbursement amount required for the EIR Consultant, Contract Planner, City Attorney and City Engineer Services be less than the total amount deposited, City will refund any remaining deposit amount to Developer within thirty (30) days after determining the final reimbursement amount.

6. Other Costs. Developer acknowledges that the cost of Services does not include application, permitting, inspection, or other fees, which amounts shall be separately paid.

7. No Guarantee of Approval. Developer acknowledges that its payments and deposits described herein do not mean that the City will approve the Project or that City staff will make a recommendation in favor of the Project. Even if the Project is not approved, Developer shall remain liable for all costs for Services.

8. Termination. Absent a formal withdrawal of the Project application(s), Developer shall not be entitled to terminate this agreement. If Developer does formally withdraw the Project application(s), Developer shall remain liable for all costs for Services incurred through the date of termination.

9. Developer Default.

A. Should Developer fail to perform any of its obligations under this Agreement, then City may, at its option, pursue any or all of the remedies available to it under this Agreement, at law or in equity.

B. Without limiting any other remedy which may be available to it, if Developer fails to perform any of its obligations under this Agreement, City may cease performing its obligations under this Agreement and halt all Services relating to the processing of the Project.

C. If any amounts remain owing to City, City may bring an action to recover all costs and expenses incurred by the City in completing the Services, together with interest thereon from the date incurred at the rate of 10% per annum, or at the maximum legal rate, whichever is greater.

D. If the Project is approved and any amounts remain owing to City for Services, City may withhold permits and/or certificates of occupancy until all such amounts are paid.

10. Compliance with Law. Developer will, at its sole cost and expense, comply with all of the requirements of all federal, state, and local laws now in force, or which may hereafter be in force, pertaining to this Agreement.

11. Waiver of Breach. Any express or implied waiver of a breach of any term of this Agreement will not constitute a waiver of any further breach of the same or any other term of this Agreement.

12. Notices. Except as otherwise expressly provided by law, all notices or other communications required or permitted by this Agreement or by law to be served on or given to either party to this Agreement by the other party shall be in writing and will be deemed received on: (i) the day of delivery if delivered by hand, e-mail (with confirmation of receiving party) and fax (both required), or overnight courier service, during regular business hours; or (ii) on the third business day following deposit, with

postage prepaid, in the United States Postal Service and addressed to the contracting parties. Name, address, telephone numbers, and e-mail addresses of the Parties are as follows:

City : City of Los Alamitos  
Attention: Community Development Director  
3191 Katella Avenue  
Los Alamitos, California 90720  
Telephone: (562) 431-3538  
Fax: (562) 493-1255  
E-mail: [SMendoza@cityoflosalamitos.org](mailto:SMendoza@cityoflosalamitos.org)

A Copy to: Cary S. Reisman  
City Attorney, City of Los Alamitos  
2800 28<sup>th</sup> Street, Suite 315  
Santa Monica, CA 90405  
Telephone: (310) 450-9582  
Fax: (310) 450-0506  
E-mail: [Cary@wkrklaw.com](mailto:Cary@wkrklaw.com)

Developer: Dori R Levenson, Secretary  
Steven H. Levenson, President  
HIGHLAND POINTE PARTNERS  
2082 Michelson Drive  
Suite 100  
Irvine, California 92612  
(949) 852-0322  
(949) 852-0325 (fax)  
[steve@hppartners-us.com](mailto:steve@hppartners-us.com)

Either party may change its address for the purpose of this Section by giving written notice of the change to the other party.

13. Successors. This Agreement shall be binding on and inure to the benefit of the successors and assigns of the respective parties hereto.

14. Governing Law. This Agreement has been made in and will be construed in accordance with the laws of the State of California, and exclusive venue for any action involving this Agreement will be in Orange County.

15. Partial Invalidity. Should any provision of this Agreement be held by a court of competent jurisdiction to be either invalid or unenforceable, the remaining provisions of this Agreement will remain in effect, unimpaired by the holding.

16. Integration. This instrument and its attachments constitute the sole agreement between City and Developer respecting the above matters, and correctly sets forth the

obligations of City and Developer. Any Agreements or representations by City to Developer not expressly set forth in this instrument are void.

17. Construction. The language of each part of this Agreement will be construed simply and according to its fair meaning, and this Agreement will never be construed either for or against either party, whether or not that party drafted all or a portion hereof.

18. Authority/Modification. The Parties represent and warrant that all necessary action has been taken by the Parties to authorize the undersigned to execute this Agreement and to engage in the actions described herein. This Agreement may be modified by written amendment. City's City Manager, or designee, may execute any such amendment on behalf of City.

19. Counterparts. This Agreement may be executed in any number of counterparts, each of which will be an original, but all of which together will constitute one instrument executed on the same date.

IN WITNESS WHEREOF the parties hereto have executed this contract the day and year first hereinabove written.

**CITY OF LOS ALAMITOS**

\_\_\_\_\_  
Gerri L. Graham-Mejia, Mayor

**ATTEST:**

\_\_\_\_\_  
Windmera Quintanar, CMC, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Cary Reisman, City Attorney

**DEVELOPER**

\_\_\_\_\_  
Steven H. Levenson, President  
Highland Pointe Partners

\_\_\_\_\_  
Dori R. Levenson, Secretary  
Highland Point Partners

**HIGHLAND POINTE PARTNERS, INC.**

2082 MICHELSON DR STE 100  
IRVINE, CA 92612

DATE 1/6/14

16-66/1220  
2519

PAY TO THE ORDER OF CITY OF LOS ALAMITOS

\$ 10,000.00

Ten Thousand Dollars and 00/100

DOLLARS



**Bank of America**

Irvine Spectrum  
67 Technology Drive West  
Irvine CA  
949.837.8482



*[Handwritten Signature]*

FOR Legal/Eng Deposit (Village at Los Alamitos)



**HIGHLAND POINTE PARTNERS, INC.**

2082 MICHELSON DR STE 100  
IRVINE, CA 92612

DATE 1/6/14

16-66/1220  
2519

PAY TO THE ORDER OF CITY OF LOS ALAMITOS

\$ 84,627.00

Eighty Four Thousand Six Hundred Twenty Seven Dollars and 00/100

DOLLARS



**Bank of America**

Irvine Spectrum  
67 Technology Drive West  
Irvine CA  
949.837.8482



*[Handwritten Signature]*

FOR Village at Los Alamitos Deposit



**PROFESSIONAL SERVICES AGREEMENT**  
(City of Los Alamitos/ *Keeton Kreitzer Consulting*)

**1. IDENTIFICATION**

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered into by and between the City of Los Alamitos, a California municipal corporation (“City”), and Keeton Kreitzer Consulting, Sole Proprietor (“Consultant”).

**2. RECITALS**

- 2.1 City has determined that it requires the following professional services from a consultant: Required CEQA Work (Initial Study/Negative Declaration or Mitigated Negative Declaration).
- 2.2 Consultant represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.

**NOW, THEREFORE,** for and in consideration of the mutual covenants and conditions herein contained, City and Consultant agree as follows:

**3. DEFINITIONS**

- 3.1 “Scope of Services”: Such professional services as are set forth in Consultant’s proposal/fee schedule to City attached hereto as Exhibit A and incorporated herein by this reference.
- 3.2 “Commencement Date”: January 21, 2014.
- 3.3 “Expiration Date”: January 21, 2015.

**4. TERM**

The term of this Agreement shall commence at 12:00 a.m. on the Commencement Date and shall expire at 11:59 p.m. on the Expiration Date unless extended by written agreement of the parties or terminated earlier in accordance with Section 17 (“Termination”) below.

**5. CONSULTANT’S SERVICES**

- 5.1 Consultant shall perform the services identified in the Scope of Services. City shall have the right to request, in writing, changes in the Scope of Services. Any such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written

amendment to this Agreement. In no event shall the total compensation and costs payable to Consultant under this Agreement exceed the sum of Forty-nine thousand, eight hundred, forty dollars (\$49,840.00) unless specifically approved in advance and in writing by City.

- 5.2 Consultant shall perform all work to the highest professional standards of Consultant's profession and in a manner reasonably satisfactory to City. Consultant shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*).
- 5.3 During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working at the Commencement Date if both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute and (ii) City has not consented in writing to Consultant's performance of such work.
- 5.4 Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. **Keeton Kreitzer** shall be Consultant's project administrator and shall have direct responsibility for management of Consultant's performance under this Agreement. No change shall be made in Consultant's project administrator without City's prior written consent.

## 6. COMPENSATION

- 6.1 City agrees to compensate Consultant for the services provided under this Agreement, and Consultant agrees to accept in full satisfaction for such services, payment in accordance with the Approved Fee Schedule and Section 5.1 of this Agreement above.
- 6.2 Consultant shall submit to City an invoice, on a monthly basis or less frequently, for the services performed pursuant to this Agreement. Each invoice shall itemize the services rendered during the billing period and the amount due. Within ten business days of receipt of each invoice, City shall notify Consultant in writing of any disputed amounts included on the invoice. Within thirty calendar days of receipt of each invoice, City shall pay all undisputed amounts included on the invoice. City shall not withhold applicable taxes or other payroll deductions from payments made to Consultant unless otherwise required by law.
- 6.3 Payments for any services requested by City and not included in the Scope of

Services shall be made to Consultant by City on a time-and-materials basis using Consultant's standard fee schedule. Consultant shall be entitled to increase the fees in this fee schedule at such time as it increases its fees for its clients generally; provided, however, in no event shall Consultant be entitled to increase fees for services rendered before the thirtieth day after Consultant notifies City in writing of an increase in that fee schedule nor to claim payment other than in compliance with this Agreement, including Section 5.1 above.. Fees for such additional services shall be paid within sixty days of the date Consultant issues an invoice to City for such services

#### **7. OWNERSHIP OF WRITTEN PRODUCTS**

All reports, documents or other written material ("written products" herein) developed by Consultant in the performance of this Agreement shall be and remain the property of City without restriction or limitation upon use or dissemination by City. Consultant may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Consultant.

#### **8. RELATIONSHIP OF PARTIES**

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

Under no circumstances shall Consultant look to the City as his employer. Consultant shall not be entitled to any benefits. City makes no representation as to the effect of this independent contractor relationship on Consultant's previously earned PERS retirement benefits, and Consultant specifically assumes the responsibility for making such a determination. Consultant shall be responsible for all reports and obligations including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation.

#### **9. CONFIDENTIALITY**

All data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without prior written consent by City. City shall grant such consent if disclosure is legally required. Upon request, all City data shall be returned to City upon the termination or expiration of this Agreement.

**10. INDEMNIFICATION**

- 10.1 The parties agree that City, its officers, agents, employees and volunteers should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, taxes, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the parties to be interpreted and construed to provide the City with the fullest protection possible under the law. Consultant acknowledges that City would not enter into this Agreement in the absence of Consultant's commitment to indemnify and protect City as set forth herein.
- 10.2 To the fullest extent permitted by law, Consultant shall indemnify, hold harmless, and when the City requests with respect to a claim provide a deposit for the defense of, and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person, whether physical, emotional, consequential or otherwise, and injury to any property arising out of or in connection with Consultant's alleged negligence, recklessness or willful misconduct or other wrongful acts, errors or omissions of Consultant or any of its officers, employees, servants, agents, or subcontractors, or anyone directly or indirectly employed by either Consultant or its subcontractors, in the performance of this Agreement or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the sole active negligence or willful misconduct of the City. Such costs and expenses shall include reasonable attorneys' fees due to counsel of City's choice, expert fees and all other costs and expenses of litigation.
- 10.3 City shall have the right to offset against any compensation due Consultant under this Agreement any amount due City from Consultant as a result of Consultant's failure to pay City promptly any indemnification arising under this Section 10 and any amount due City from Consultant arising from Consultant's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 10.4 The obligations of Consultant under this Section 10 are not limited by the provisions of any workers' compensation statute or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.
- 10.5 Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth in this Section 10 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity

obligations from others as required herein, Consultant agrees to be fully responsible and to indemnify, hold harmless and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Consultant's subcontractors or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of City's choice.

- 10.6 City does not, and shall not; waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies apply to the claim, demand, damage, liability, loss, cost or expense.

## 11. INSURANCE

- 11.1 During the term of this Agreement, Consultant shall carry, maintain, and keep in full force and effect insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with Consultant's performance of this Agreement. Such insurance shall be of the types and in the amounts as set forth below:
- 11.1.1 Comprehensive General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) including products and operations hazard, contractual insurance, broad form property damage, independent consultants, personal injury, underground hazard, and explosion and collapse hazard where applicable.
  - 11.1.2 Automobile Liability Insurance for vehicles used in connection with the performance of this Agreement with minimum limits of One Million Dollars (\$1,000,000) per claimant and One Million dollars (\$1,000,000) per incident.
  - 11.1.3 Worker's Compensation insurance if and as required by the laws of the State of California.
  - 11.1.4 Professional Errors and Omissions Insurance with coverage limits of not less than One Million Dollars (\$1,000,000).
- 11.2 Consultant shall require each of its subcontractors to maintain insurance coverages that meet all of the requirements of this Agreement.

- 11.3 The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A:VII in the latest edition of Best's Insurance Guide.
- 11.4 Consultant agrees that if it does not keep the aforesaid insurance in full force and effect, City may either (i) immediately terminate this Agreement; or (ii) take out the necessary insurance and pay the premium(s) thereon at Consultant's expense.
- 11.5 At all times during the term of this Agreement, Consultant shall maintain on file with City's Risk Manager a certificate or certificates of insurance showing that the policies required by this Agreement are in effect in the required amounts and naming the City and its officers, employees, agents and volunteers as additional insureds. Consultant shall file with City's Risk Manager such certificate(s) prior to commencement of work under this Agreement.
- 11.6 Consultant shall provide proof to the City's Risk Manager that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage at least two weeks prior to the expiration of the coverages.
- 11.7 The general liability and automobile policies of insurance required by this Agreement shall contain endorsements naming City and its officers, employees, agents and volunteers as additional insureds. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to City. Consultant agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.
- 11.8 The insurance provided by Consultant shall be primary to any other coverage available to City. Any insurance or self-insurance maintained by City and/or its officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.
- 11.9 All insurance coverage provided pursuant to this Agreement shall not prohibit Consultant, and Consultant's employees, agents or subcontractors, from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against the City.
- 11.10 Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of City, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond guaranteeing payment of losses and expenses.

- 11.11 Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duties to indemnify, hold harmless and defend under Section 10 of this Agreement.

**12. MUTUAL COOPERATION**

- 12.1 City shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant's services under this Agreement.
- 12.2 If any claim or action is brought against City relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that City may require in the defense of that claim or action.

**13. RECORDS AND INSPECTIONS**

Consultant shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of three years after the expiration or termination of this Agreement. City shall have the right to access and examine such records, without charge, during normal business hours. City shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

**14. PERMITS AND APPROVALS**

Consultant shall obtain, at its sole cost and expense, all permits and regulatory approvals necessary for Consultant's performance of this Agreement. This includes, but shall not be limited to, professional licenses, encroachment permits and building and safety permits and inspections.

**15. NOTICES**

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during Consultant's and City's regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to City:  
City of Los Alamitos  
3191 Katella Ave.  
Los Alamitos, CA 90720  
Attn: City Manager  
Telephone: (562) 431-3538  
Facsimile: (562) 493-1255

If to Consultant:  
Keeton Kreitzer  
P. O. Box 3905  
Tustin, CA 92781-3905  
Telephone: (714) 665-8509  
Facsimile: (714) 665-8539

With courtesy copy to:

Cary S. Reisman, City Attorney  
Wallin, Kress, Reisman & Kranitz, LLP  
2800 28<sup>th</sup> Street, Suite 315  
Santa Monica, CA 90405-6201  
Telephone: (310) 450-9582  
Facsimile: (320) 450-0506

**16. SURVIVING COVENANTS**

The parties agree that the covenants contained in Section 9, Section 10, Paragraph 12.2 and Section 13 of this Agreement shall survive the expiration or termination of this Agreement.

**17. TERMINATION**

- 17.1. City may terminate this Agreement for any reason on five calendar days' written notice to Consultant. Consultant may terminate this Agreement for any reason on sixty calendar days' written notice to City. Consultant agrees to cease all work under this Agreement on or before the effective date of any notice of termination. All City data, documents, objects, materials or other tangible things shall be returned to City upon the termination or expiration of this Agreement.
- 17.2 If City terminates this Agreement due to no fault or failure of performance by Consultant, then Consultant shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the services required by this Agreement.

**18. GENERAL PROVISIONS**

- 18.1 Consultant shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Consultant.
- 18.2 In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability medical condition or any other unlawful basis.
- 18.3 The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this

Agreement. Should there be any conflict between such heading, and the section or paragraph at the head of which it appears, the section or paragraph, and not such heading, shall govern construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular and vice versa, in any place or places herein in which the context requires such substitution(s).

- 18.4 The waiver by City or Consultant of any breach of any term, covenant or condition of this Agreement shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition of this Agreement. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in writing signed by one authorized to bind the party asserted to have consented to the waiver.
- 18.5 Consultant shall not be liable for any failure to perform if Consultant presents acceptable evidence, in City's sole judgment that such failure was due to causes beyond the control and without the fault or negligence of Consultant.
- 18.6 Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance from the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies. If legal action shall be necessary to enforce any term, covenant or condition herein contained, the party prevailing in such action, whether or not reduced to judgment, shall be entitled to its reasonable court costs, including any accountants' and attorneys' fees incurred in such action. The venue for any litigation shall be Orange County, California and Consultant hereby consents to jurisdiction in Orange County for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.
- 18.7 If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

- 18.8 This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 18.9 All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between City and Consultant with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed by City and Consultant.

**19 PREVAILING WAGE LAW**

- 19.1 Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the services under this Agreement are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify, and hold the City, its elected officials, officers, employees, and agents free and harmless from any claim or liability arising out of any failure or alleged failure of Consultant to comply with the Prevailing Wage Laws.

**TO EFFECTUATE THIS AGREEMENT**, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

**"City"**  
**City of Los Alamitos**

**"Consultant"**  
**Keeton Kreitzer Consulting**

By \_\_\_\_\_  
Gerri L. Graham-Mejia, Mayor

By: \_\_\_\_\_  
*Keeton Kreitzer, Sole Proprietor*

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Professional Services Agreement  
*City of Los Alamitos/Keeton Kreitzer Consulting*

Attest:

By \_\_\_\_\_  
Windmera Quintanar, CMC, City Clerk

Date: \_\_\_\_\_

Approved as to form:

By \_\_\_\_\_  
Cary S. Reisman, City Attorney

EXHIBIT A  
SCOPE OF SERVICES

**Los Alamitos Boulevard Mixed Use Project  
Los Alamitos, CA**

**Preparation of an Environmental Impact Report**

**Draft EIR Budget Summary (Estimated)  
10650 Los Alamitos Boulevard Mixed Use Project  
Los Alamitos, CA**

Task	Description	Estimated Budget
1	Project Management	\$ 4,500.00
2	Initial Study/Notice of Preparation	\$ 9,800.00 <sup>1</sup>
3	Sub-Consultant Studies	
	Air Quality Analysis	\$ 2,000.00
	Noise Analysis	\$ 1,500.00
	Sub Total - Sub-Consultant Studies	\$ 3,500.00
4	Preparation of Screencheck EIR	\$13,700.00 <sup>2</sup>
5	Preparation of Draft EIR	\$ 2,760.00
6	Response to Public Comments	\$ 4,600.00 <sup>3</sup>
7	Preparation of Final EIR	\$ 1,380.00
8	Preparation of Findings/Mitigation Monitoring Program/Statement of Overriding Considerations/Board of Supervisors EIR Certification Resolution	\$ 4,600.00
9	Public Hearings	\$ 2,400.00
	Printing and Reproduction	
	Printing/Reproduction	\$ 4,500.00
	Certified Mail/Delivery/Supplies	500.00
	Total Printing and Reproduction	\$ 5,000.00
	<b>Total Estimated Budget</b>	<b>\$49,840.00</b>

<sup>1</sup>Reflects budget to prepare the initial study in Tasks 3 and 4 of the Budget Estimate for the Initial Study/Negative Declaration above.

<sup>2</sup>Draft EIR analysis will include the analysis presented in the initial study. The EIR also requires the preparation of "baseline" (i.e., existing conditions) conditions and requires more extensive analysis as well as the preparation of several additional required sections, including cumulative impacts, alternatives, growth-inducing impacts, etc.

<sup>3</sup>Estimate only. Estimated budget reflects 40 hours. Fee is subject to review and negotiation based on nature and extent of public comments received during the public review period.

EIR assumes inclusion and analysis of the following topical issues:

- Aesthetics
- Air Quality
- Geology and Soils
- Greenhouse Gas/Climate Change
- Hazards and Hazardous Materials
- Hydrology/Water Quality
- Land Use
- Noise

**Los Alamitos Boulevard Mixed Use Project  
Los Alamitos, CA**

The tables below provide a "ball park" estimate of the costs necessary to prepare (1) an Initial Study/Negative Declaration and a Draft EIR for the Mixed Use project located at 10650 Los Alamitos Boulevard in the City of Los Alamitos. These estimated budgets are subject to revision based on a detailed review of the project.

**Preparation of the Initial Study/Negative Declaration (or Mitigated Negative Declaration)**

**IS/MND Budget Summary (Estimated)  
10650 Los Alamitos Boulevard Mixed Use Project  
Los Alamitos, CA**

Title	Man-Hours	Billing Rate	Estimated Budget
<b>Task One - Project Management/Coordination</b>			
Principal	8	\$150.00/Hour	\$ 1,200.00
<b>Task Two - Sub-Consultant Studies</b>			
Air Quality/GHG Analysis			\$ 2,000.00
Noise Analysis			\$ 1,500.00
Sub-Total			\$ 3,500.00
<b>Task Three - Preliminary Initial Study</b>			
Principal/Project Manager	8	\$150.00/Hour	\$ 1,200.00
Report Preparation	40	\$115.00/Hour	\$ 4,600.00
Research and Analysis	20	\$ 90.00/Hour	\$ 1,800.00
Graphics	8	\$ 60.00/Hour	\$ 480.00
Word Processing	16	\$ 40.00/Hour	\$ 640.00
Sub-Total	92		\$ 8,720.00
<b>Task Four - Draft Initial Study/Negative Declaration</b>			
Report Preparation	8	\$115.00/Hour	\$ 920.00
Word Processing	4	\$ 40.00/Hour	\$ 160.00
Sub-Total	12		\$ 1,080.00
<b>Task Five - Response to Public Comments/MMRP</b>			
Project Manager	16	\$115.00/Hour	\$ 1,840.00
Word Processing	4	\$ 40.00/Hour	\$ 160.00
Sub-Total	20		\$ 2,000.00
<b>Task Six - Public Hearings</b>			
Principal	8	\$150.00/Hour	\$ 1,200.00 <sup>1</sup>
<b>Task Seven - Legal Notices</b>			
Word Processing	4	\$ 40.00/Hour	\$ 160.00

**PROFESSIONAL SERVICES AGREEMENT**  
(City of Los Alamitos/ *MIG / Hogle-Ireland*)

**1. IDENTIFICATION**

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered into by and between the City of Los Alamitos, a California municipal corporation (“City”), and MIG / Hogle-Ireland a *California Corporation* (“Consultant”).

**2. RECITALS**

- 2.1 City has determined that it requires the following professional services from a consultant: Contract Planning Services.
- 2.2 Consultant represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and conditions herein contained, City and Consultant agree as follows:

**3. DEFINITIONS**

- 3.1 “Scope of Work”: Such professional services as are set forth in Consultant’s *November 25, 2013* proposal to City attached hereto as Exhibit A and incorporated herein by this reference.
- 3.2 “Cost Proposal”: Such compensation rates as are set forth in Consultant’s *November 25, 2013* cost proposal to City attached hereto as Exhibit B and incorporated herein by this reference.
- 3.3 “Commencement Date”: January 22, 2014
- 3.4 “Expiration Date”: January 21, 2015

**4. TERM**

The term of this Agreement shall commence at 12:00 a.m. on the Commencement Date and shall expire at 11:59 p.m. on the Expiration Date unless extended by written agreement of the parties or terminated earlier in accordance with Section 17 (“Termination”) below.

**5. CONSULTANT’S SERVICES**

- 5.1 Consultant shall perform the services identified in the Scope of Work. City shall have the right to request, in writing, changes in the Scope of Work. Any such

changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement. In no event shall the total compensation and costs payable to Consultant under this Agreement exceed the sum of Thirty-four thousand, seven-hundred, eighty-seven Dollars (\$34,787.00) unless specifically approved in advance and in writing by City.

- 5.2 Consultant shall perform the services in accordance with professional standards of Consultant's profession and in a manner reasonably satisfactory to City. Consultant shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*).
- 5.3 During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working at the Commencement Date if both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute and (ii) City has not consented in writing to Consultant's performance of such work.
- 5.4 Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Work. All such services shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. Project Associate Jose M. Rodriguez shall be Consultant's project administrator and shall have direct responsibility for management of Consultant's performance under this Agreement. No change shall be made in Consultant's project administrator without City's prior written consent.

## 6. COMPENSATION

- 6.1 City agrees to compensate Consultant for the services provided under this Agreement, and Consultant agrees to accept in full satisfaction for such services, payment in accordance with the Approved Cost Proposal and Section 5.1 of this Agreement above.
- 6.2 Consultant shall submit to City an invoice, on a monthly basis or less frequently, for the services performed pursuant to this Agreement. Each invoice shall itemize the services rendered during the billing period and the amount due. Within ten business days of receipt of each invoice, City shall notify Consultant in writing of any disputed amounts included on the invoice. Within thirty calendar days of receipt of each invoice, City shall pay all undisputed amounts included on the invoice. City shall not withhold applicable taxes or other payroll deductions from payments made to Consultant unless otherwise required by law.

- 6.3 Payments for any services requested by City and not included in the Scope of Work shall be made to Consultant by City on a time-and-materials basis using Consultant's standard cost proposal. Consultant shall be entitled to increase the fees in this cost proposal at such time as it increases its fees for its clients generally; provided, however, in no event shall Consultant be entitled to increase fees for services rendered before the thirtieth day after Consultant notifies City in writing of an increase in that cost proposal nor to claim payment other than in compliance with this Agreement, including Section 5.1 above.. Fees for such additional services shall be paid within sixty days of the date Consultant issues an invoice to City for such services

## **7. OWNERSHIP OF WRITTEN PRODUCTS**

All reports, documents or other written material ("written products" herein) developed by Consultant in the performance of this Agreement shall be and remain the property of City without restriction or limitation upon use or dissemination by City. Consultant may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Consultant.

## **8. RELATIONSHIP OF PARTIES**

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

Under no circumstances shall Consultant look to the City as his employer. Consultant shall not be entitled to any benefits. City makes no representation as to the effect of this independent contractor relationship on Consultant's previously earned PERS retirement benefits, and Consultant specifically assumes the responsibility for making such a determination. Consultant shall be responsible for all reports and obligations including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation.

## **9. CONFIDENTIALITY**

All data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without prior written consent by City. City shall grant such consent if disclosure is legally required. Upon request, all City data shall be returned to City upon the termination or expiration of this Agreement.

**10. INDEMNIFICATION**

- 10.1 The parties agree that City, its officers, employees and volunteers should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, taxes, or any other cost arising out of the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the parties to be interpreted and construed to provide the City with the fullest protection possible under the law. Consultant acknowledges that City would not enter into this Agreement in the absence of Consultant's commitment to indemnify and protect City as set forth herein.
- 10.2 To the fullest extent permitted by law, Consultant shall indemnify, hold harmless, and when the City requests with respect to a claim, provide a deposit for the defense of, and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person, whether physical, emotional, consequential or otherwise, and injury to any property arising out of Consultant's alleged negligence, recklessness or willful misconduct or other wrongful acts, errors or omissions of Consultant or any of its officers, employees, servants, agents, or subcontractors, or anyone directly or indirectly employed by either Consultant or its subcontractors, in the performance of this Agreement or its failure to comply with any of its obligations contained in this Agreement, excluding such loss or damage which is caused by the sole or primary negligence or willful misconduct of the City, the CEQA consultant, or others. Such costs and expenses shall include reasonable attorneys' fees due to counsel of City's choice, expert fees and all other costs and expenses of litigation.
- 10.3 City shall have the right to offset against any compensation due Consultant under this Agreement any amount due City from Consultant as a result of Consultant's failure to pay City promptly any indemnification arising under this Section 10 and any amount due City from Consultant arising from Consultant's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 10.4 The obligations of Consultant under this Section 10 are not limited by the provisions of any workers' compensation statute or similar act.
- 10.5 Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth in this Section 10 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity obligations from others as required herein, Consultant agrees to be fully responsible and to indemnify, hold harmless and defend City, its officers, agents,

employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Consultant's subcontractors or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of City's choice.

- 10.6 City does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies apply to the claim, demand, damage, liability, loss, cost or expense.

## 11. INSURANCE

- 11.1 During the term of this Agreement, Consultant shall carry, maintain, and keep in full force and effect insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with Consultant's performance of this Agreement. Such insurance shall be of the types and in the
- 11.1.1 Comprehensive General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) including products and operations hazard, contractual insurance, broad form property damage, independent consultants, personal injury, underground hazard, and explosion and collapse hazard where applicable.
  - 11.1.2 Automobile Liability Insurance for vehicles used in connection with the performance of this Agreement with minimum limits of One Million Dollars (\$1,000,000) per claimant and One Million dollars (\$1,000,000) per incident.
  - 11.1.3 Worker's Compensation insurance if and as required by the laws of the State of California.
  - 11.1.4 Professional Errors and Omissions Insurance with coverage limits of not less than One Million Dollars (\$1,000,000).
- 11.2 Consultant shall require each of its subcontractors to maintain insurance coverages that meet all of the requirements of this Agreement.
- 11.3 The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A:VII in the latest

edition of Best's Insurance Guide.

- 11.4 Consultant agrees that if it does not keep the aforesaid insurance in full force and effect, City may either (i) immediately terminate this Agreement; or (ii) take out the necessary insurance and pay the premium(s) thereon at Consultant's expense.
- 11.5 At all times during the term of this Agreement, Consultant shall maintain on file with City's Risk Manager a certificate or certificates of insurance showing that the policies required by this Agreement are in effect in the required amounts and naming the City and its officers, employees, agents and volunteers as additional insureds. Consultant shall file with City's Risk Manager such certificate(s) prior to commencement of work under this Agreement.
- 11.6 Consultant shall provide proof to the City's Risk Manager that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage at least two weeks prior to the expiration of the coverages.
- 11.7 The general liability and automobile policies of insurance required by this Agreement shall contain endorsements naming City and its officers, employees, agents and volunteers as additional insureds. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to City. Consultant agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.
- 11.8 The insurance provided by Consultant shall be primary to any other coverage available to City. Any insurance or self-insurance maintained by City and/or its officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.
- 11.9 All insurance coverage provided pursuant to this Agreement shall not prohibit Consultant, and Consultant's employees, agents or subcontractors, from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against the City.
- 11.10 Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of City, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond guaranteeing payment of losses and expenses.
- 11.11 Procurement of insurance by Consultant shall not be construed as a limitation of

Consultant's liability or as full performance of Consultant's duties to indemnify, hold harmless and defend under Section 10 of this Agreement.

**12. MUTUAL COOPERATION**

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

12.2 If any claim or action is brought against City relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that City may require in the defense of that claim or action.

**13. RECORDS AND INSPECTIONS**

Consultant shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of three years after the expiration or termination of this Agreement. City shall have the right to access and examine such records, without charge, during normal business hours. City shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

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Consultant shall obtain, at its sole cost and expense, all permits and regulatory approvals necessary for Consultant's performance of this Agreement. This includes, but shall not be limited to, professional licenses, encroachment permits and building and safety permits and inspections.

**15. NOTICES**

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during Consultant's and City's regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to City:  
City of Los Alamitos  
3191 Katella Ave.  
Los Alamitos, CA 90720  
Attn: City Manager  
Telephone: (562) 431-3538  
Facsimile: (562) 493-1255

If to Consultant:  
Jose M. Rodriguez  
MIG / Hogle-Ireland  
169 N. Marengo Avenue  
Pasadena, CA 91101-1703  
Telephone: (626) 744-9872  
Email: Joser@migcom.com

With courtesy copy to:

Cary S. Reisman, City Attorney  
Wallin, Kress, Reisman & Kranitz, LLP  
2800 28<sup>th</sup> Street, Suite 315  
Santa Monica, CA 90405-6201  
Telephone: (310) 450-9582  
Facsimile: (320) 450-0506

**16. SURVIVING COVENANTS**

The parties agree that the covenants contained in Section 9, Section 10, Paragraph 12.2 and Section 13 of this Agreement shall survive the expiration or termination of this Agreement.

**17. TERMINATION**

- 17.1. City may terminate this Agreement for any reason on five calendar days' written notice to Consultant. Consultant may terminate this Agreement for any reason on sixty calendar days' written notice to City. Consultant agrees to cease all work under this Agreement on or before the effective date of any notice of termination. All City data, documents, objects, materials or other tangible things shall be returned to City upon the termination or expiration of this Agreement.
- 17.2 If City terminates this Agreement due to no fault or failure of performance by Consultant, then Consultant shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the services required by this Agreement.

**18. GENERAL PROVISIONS**

- 18.1 Consultant shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Consultant.
- 18.2 In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability medical condition or any other unlawful basis.
- 18.3 The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this

Agreement. Should there be any conflict between such heading, and the section or paragraph at the head of which it appears, the section or paragraph, and not such heading, shall govern construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular and vice versa, in any place or places herein in which the context requires such substitution(s).

- 18.4 The waiver by City or Consultant of any breach of any term, covenant or condition of this Agreement shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition of this Agreement. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in a writing signed by one authorized to bind the party asserted to have consented to the waiver.
- 18.5 Consultant shall not be liable for any failure to perform if Consultant presents acceptable evidence, in City's sole judgment, that such failure was due to causes beyond the control and without the fault or negligence of Consultant.
- 18.6 Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance from the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies. If legal action shall be necessary to enforce any term, covenant or condition herein contained, the party prevailing in such action, whether or not reduced to judgment, shall be entitled to its reasonable court costs, including any accountants' and attorneys' fees incurred in such action. The venue for any litigation shall be Orange County, California and Consultant hereby consents to jurisdiction in Orange County for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.
- 18.7 If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

18.8 This Agreement shall be governed and construed in accordance with the laws of the State of California.

18.9 All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between City and Consultant with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed by City and Consultant.

**19 PREVAILING WAGE LAW**

19.1 Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the services under this Agreement are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify, and hold the City, its elected officials, officers, employees, and agents free and harmless from any claim or liability arising out of any failure or alleged failure of Consultant to comply with the Prevailing Wage Laws.

**TO EFFECTUATE THIS AGREEMENT**, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

**"City"**  
City of Los Alamitos

**"Consultant"**  
MIG / Hogle-Ireland

By \_\_\_\_\_  
Gerri L. Graham-Mejia, Mayor

By: \_\_\_\_\_  
*Laura R. Stetson, AICP, Principal*

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name, Title

Professional Services Agreement  
City of Los Alamitos/MIG / Hogle-Ireland

Date: \_\_\_\_\_

Attest:

By \_\_\_\_\_  
Windmera Quintanar, CMC, City Clerk

Date: \_\_\_\_\_

Approved as to form:

By \_\_\_\_\_  
Cary S. Reisman, City Attorney

EXHIBIT A  
SCOPE OF WORK

# Scope of Work

We have prepared a scope of work based upon our conversations with Highland Pointe Partners, Inc. and our previous experiences with the City of Los Alamitos. Based on subsequent discussions with Highland Pointe Partners, Inc. and City staff, the scope can be expanded, contracted, or otherwise modified.

## TASK 1 - TASK 1 - STAFF SUPPORT/EXPEDITED PROCESSING

### 1.1 - Project Kick-off and Work Program Refinement

MIG will meet with Highland Pointe Partners, Inc. and City staff in one meeting to discuss the application, submittal requirements, overall timing. The meeting should also include Highland Pointe Partners' architect, engineer, traffic engineer, landscape architect, and other team members responsible for preparing plans or materials required for the application submittal. We also recommend that the City's environmental consultant be available at this meeting as well.

#### Deliverables

- Meeting: Kick-off Meeting Agenda (electronic copy - PDF)

### 1.2 - Determination of Completeness

Upon submittal of an application to the City, MIG | Hogle Ireland will provide expedited review of the text and plans provided for the submittal package for completeness, as determined by applicable City requirements. A letter of completeness will be provided. If the application is incomplete, a second review of additional materials will be made and a letter sent to the applicant.

#### Deliverables

- Letter of Completeness

### 1.3 - Plan Distribution

MIG | Hogle Ireland will coordinate with Los Alamitos staff to distribute the plans and other related project information as required to the applicable City and other public and service agencies for their review and comment. Working with City staff, we will prepare the routing forms and distribution. Anticipated agencies include the Orange County Fire Authority, Police, Public Works Department, and City traffic engineer. Due to the proposed General Plan amendment request, MIG | Hogle Ireland will also conduct the required Tribal Consultation under SB18 early in the process to avoid

project delays. In accordance with California Government Code section 65352.3, we will request a review from any California Native American Tribe identified by the Native American Heritage Commission as being on their contact list for the area in question.

#### Deliverables

- Tribal Consultation Letter

### 1.4 - Plan Review and Evaluation

MIG | Hogle Ireland will review the General Plan Amendment, Zone Change applications, Site Plan, and related project information for compliance with the City of Los Alamitos codes and applicable City standards, and will coordinate with the Community Development Director and Public Works Director on findings and appropriate conditions of approval. The budget assumes that City staff will review the engineering aspects of the plan (traffic mitigation/studies, water quality requirements).

### 1.5 - Preparation of Staff Reports and Conditions of Approval

MIG's staff will coordinate with the City to identify the appropriate conditions of approval for the project, as well as ensuring that any mitigation measures identified in the environmental documentation are adopted as conditions of approval concurrent with project approval. MIG | Hogle Ireland shall prepare two staff reports (one Planning Commission report and one City Council report), one set of Draft Resolutions, and corresponding Conditions of Approval for the Site Plan review. The draft conditions shall be based upon professional engineering analysis, planning regulations, applicable laws, agency comments, and City policies/standard conditions. The staff report will include analysis of project conformance with the General Plan and relevant project issues. Draft Resolutions with necessary findings for Commission and Council consideration will be prepared for the General Plan Amendment, Zone Change, and Site Plan review. The Zone Change would require Ordinance drafting in consultation with the City attorney. The Draft Conditions of Approval are anticipated for these project development components: infrastructure, grading, traffic and circulation, parking, road improvements, utilities, drainage, mapping, landscaping, and public facilities and services.

**Deliverables**

- Draft Planning Commission and City Council Staff Reports (Word)
- Draft Conditions of Approval (Word)
- Draft Resolutions/Ordinance for Planning Commission and City Council (Word)

**1.6 - Applicant Review Meeting**

Upon completion of the Draft Conditions of Approval, we anticipate that the staff report and conditions will be presented to City staff for review and approval. MIG | Hogle Ireland shall consult with the City staff and Highland Pointe Partners to discuss and explain conditions proposed to be placed on the project. It is anticipated that one meeting would be held with Highland Pointe Partners to discuss draft conditions and make modifications as appropriate and acceptable to the City (such as condition timing/triggers).

**Deliverables**

- Meeting: One (1) face-to-face meeting with applicant

**TASK 2 - ENVIRONMENTAL DOCUMENTATION**

This proposal assumes that the City will select an environmental consultant from its on-call list to prepare the environmental documentation and meet the requirements of CEQA. At this time, it has not been determined if a mitigated negative declaration or environmental impact report will be required.

**2.1 - Technical Studies**

We will review the technical studies prepared for the project and the environmental documentation. This includes Phase I environmental site assessment reporting, traffic report, noise analysis, and other technical studies or reports.

**2.2 - Review Environmental Documentation**

Our team will review the environmental documentation prepared by the City's on-call environmental consultant. We will review the document against the California Environmental Quality Act (CEQA) 1970 (Public Resources Code, Section 21000 et seq.), and the State CEQA Guidelines (California Code of Regulations, Section 15000 et. seq.).

**Deliverables**

- Memorandum (electronic version - Word)

**TASK 3 - PROJECT MANAGEMENT, COORDINATION, AND HEARINGS**

MIG anticipates ongoing meetings and conference calls with the City Staff, including progress meetings. We also anticipate possible meetings/consultation with adjacent property owners to ensure that any potential concerns are addressed. We also anticipate two public hearings, one before the Planning Commission and one before the City Council. MIG assumes the Project Manager and one other MIG team members will attend the identified meetings. Mr. Jose M. Rodriguez, along with other key project team personnel, can also be available to attend meetings with affected jurisdictions, agencies, and organizations as needed to identify issues and assess impacts. MIG will work with City staff to arrange any desired public meetings, and we will provide appropriate materials. The following is an outline of anticipated meeting attendance needs.

**3.1 - Project Management/Staff Meetings/Coordination**

Mr. Rodriguez will be responsible for the management and supervision of the Project Team, as well as consultation with the City. City consultation may require weekly conference calls and face-to-face meetings with City staff. Mr. Rodriguez will undertake consultation and coordination of the project. Status updates to the applicant on the entitlement process are included in this task. Mr. Rodriguez will work with our internal environmental team to review the environmental documentation for compliance with CEQA requirements and guidelines and City CEQA procedures. As the Project Manager, Mr. Rodriguez will coordinate with all support staff and word processing toward the timely completion of the project and completion of staff reports and materials. Laura Stetson will be available to provide quality control, technical assistance, and conflict resolution.

**Deliverables**

- Ongoing project coordination and management
- Ongoing meetings/consultation with City staff to review project description, resolve issues, and receive any necessary direction from City staff. We are prepared to assign our Senior Associate Project Manager to work at City Hall if requested by the City.

### 3.2 - Public Hearing Preparation and Attendance

MIG | Hogle-Ireland will provide public hearing attendance at one Planning Commission hearing and one City Council hearing for the project (one second hearing could be required for the second reading of the Zone Change Ordinance). It is anticipated that attendance at these hearings would be as an extension of City staff regarding the Staff Report, Conditions of Approval, Resolutions, and Ordinance. We will prepare a PowerPoint presentation to be used during the public hearings.

#### *Deliverables*

- PowerPoint Presentation
- Meetings: One Planning Commission public hearing and one City Council public hearing

### TASK 4 - OPTIONAL TASK

#### 4.1 - Issue Resolution

If a major technical issue arises that requires additional analysis or review with staff, applicant, or agencies, the MIG | Hogle Ireland manager and/or principal will assist in resolution of these issues in coordination with the City.

EXHIBIT B  
APPROVED COST PROPOSAL

# Cost Proposal

Below is the budget summary. The matrix identifies the cost to complete each task and subtask as outlined in the Scope of Work. Our services will be billed on a time-and-materials basis, not to exceed the budget identified below. We included an optional task for issue resolution, as described under Task 4.1. We also included a 20 percent contingency that will be applied to work performed beyond the scope of work, and will only be used with approval by the applicant and Community Development Director.

Tasks	Principal Laura Stetson \$ 195.00	Project Manager Jose Rodriguez \$ 115.00	Environmental Review Christopher Brown \$ 132.00	Word Processing \$ 80.00	Total
<b>Task 1 - Staff Support/Expedited Processing</b>					<b>\$ 15,980.00</b>
1.1 Kickoff Meeting		4			\$ 460.00
1.2 Determination of Completeness		16			\$ 1,840.00
1.3 Plan Distribution		10			\$ 1,150.00
1.4 Plan Review and Evaluation	2	40			\$ 4,990.00
1.5 Preparation of Staff Reports and Draft Conditions of Approval	4	48		4	\$ 6,620.00
1.6 Applicant Review Meeting		8			\$ 920.00
<b>Task 2 - Environmental Documentation</b>					<b>\$ 6,417.00</b>
2.1 Technical Studies Review	1	4	12		\$ 2,239.00
2.2 Review Environmental Documentation Review	4	2	24		\$ 4,178.00
<b>Task 3 - Project Management, Coordination, and Hearings</b>					<b>\$ 12,390.00</b>
3.1 Project Management and Staff Meetings	10	60			\$ 8,850.00
3.2 Public Hearing Preparation and Attendance	4	24			\$ 3,540.00
	<b>21</b>	<b>192</b>	<b>36</b>	<b>4</b>	<b>\$ 34,787.00</b>
<b>Optional Task and Contingency</b>					
4.1 Issue Resolution	16	40			\$ 7,720.00
20% Contingency					\$ 6,950.00