

PROFESSIONAL SERVICES AGREEMENT
FOR [Water Cost of Service Study]

THIS PROFESSIONAL SERVICES AGREEMENT (the "Agreement") is made and entered into this 13th day of June, 2016 (the "Effective Date"), by and between the City of San Clemente, a municipal corporation, hereinafter referred to as the "CITY", and Carollo Engineers, Inc. of 3150 Bristol Street, Suite 500, Costa Mesa, CA 92626 hereinafter referred to as the "CONSULTANT".

RECITALS:

A. CITY requires professional **consulting** services to be performed at or in connection with the City of San Clemente's Water Cost-of-Service Study.

B. CONSULTANT has represented to CITY that CONSULTANT is qualified to perform said services and has submitted a proposal to CITY for same.

C. CITY desires to have CONSULTANT perform said services on the terms and conditions set forth herein.

COVENANTS:

Based on the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by both parties, CITY and CONSULTANT agree as follows:

ARTICLE 1
RESPONSIBILITIES OF CONSULTANT

1.1 Term.

The term of this Agreement shall commence on the Effective Date, and shall continue and remain in effect, until **the Scope of Work defined in Exhibit "A" is completed**, unless terminated earlier pursuant to the terms hereof. Notwithstanding the forgoing, the City Manager or his or her designee shall have the authority on behalf of the City to administratively approve extensions to the term hereof not to exceed a cumulative total of one hundred eighty (180) days.

1.2 Scope of Services.

CONSULTANT shall perform any and all work necessary for the completion of the tasks and services set forth in the "Scope of Services" attached hereto and incorporated herein as Exhibit "A" in a manner reasonably satisfactory to CITY. By execution of this Agreement, CONSULTANT agrees that (i) it has thoroughly investigated and considered

the work to be performed; (ii) it has carefully examined the location or locations at or with respect to which the work is to be performed, as applicable; and (iii) it fully understands the difficulties and restrictions attending the performance of the work provided for under this Agreement. CONSULTANT acknowledges that certain refinements to the Scope of Services may, on occasion, be necessary to achieve CITY's goals hereunder, and CONSULTANT shall cooperate with and assist the CITY to identify and make such refinements prior to undertaking any tasks or services that may require refinement.

1.3 Schedule of Performance.

Prior to the City's execution of this Agreement, and as a condition to the effectiveness hereof, CONSULTANT shall furnish to CITY proof of insurance coverage as required under Article 5, Insurance. Upon CITY's release to CONSULTANT of a fully executed copy hereof and issuance of a written Notice to Proceed, CONSULTANT shall promptly commence performance of the work. Until such time, CONSULTANT is not authorized to perform and will not be paid for performing any work under this Agreement. CONSULTANT shall exercise reasonable diligence to have the services as set forth in Exhibit "A" completed and submitted to CITY for final approval as soon as reasonably practicable and in accordance with the schedule of performance attached hereto and incorporated herein as Exhibit "B", provided that CONSULTANT shall be entitled to an extension of time for any delays caused by events or occurrences beyond CONSULTANT's reasonable control.

1.4 Identity of Persons Performing Work.

CONSULTANT represents that it employs or will employ at its own expense all personnel required for the satisfactory performance of any and all tasks and services required hereunder. CONSULTANT shall not replace any of the principal members of the Project team, including any of the persons listed in Exhibit "A" (if CONSULTANT'S personnel is listed on Exhibit "A"), or any successors to any of such persons, without CITY's prior written approval.

CONSULTANT represents that the tasks and services required hereunder will be performed by CONSULTANT or under its direct supervision, and that all personnel engaged in such work shall be fully qualified and shall be authorized and permitted under applicable State and local law to perform such tasks and services. In carrying out such tasks and services, CONSULTANT shall not employ any undocumented aliens (i.e., persons who are not citizens or nationals of the United States).

This Agreement contemplates the personal services of CONSULTANT and CONSULTANT's employees, and it is recognized by the parties hereto that a substantial inducement to CITY for entering into this Agreement was, and is, the professional reputation and competence of CONSULTANT and CONSULTANT's employees. Neither this Agreement nor any interest therein may be assigned by CONSULTANT, except upon written consent of CITY.

Furthermore, CONSULTANT shall not subcontract any portion of the performance contemplated and provided for herein without the prior written approval of CITY, except for those subcontractors named in the proposal for the project. Nothing herein contained is intended to or shall be construed as preventing CONSULTANT from employing or hiring as many employees as CONSULTANT may deem necessary for the proper and efficient execution of this Agreement.

1.5 Cooperation and Coordination of Work With CITY.

CONSULTANT shall work closely with CITY's designated representative, either individual or committee, who shall have the principal responsibility for liaison and who shall, on a continuous basis, review and approve CONSULTANT's work. CONSULTANT shall provide that CITY has reviewed and approved all required work as the project progresses.

1.6 Compliance With Laws.

CONSULTANT shall comply with all applicable Federal, State and local laws, ordinances and regulations, including without limitation all applicable fair labor standards. CONSULTANT shall not discriminate against any employee or applicant for employment or any approved subcontractor, agent, supplier or other firm or person providing services to CONSULTANT in connection with this Agreement on the basis of race, color, creed, ancestry, national origin, religion, sex, sexual orientation, marital status, or mental or physical disability. CONSULTANT shall take affirmative action to provide that applicants are employed, and that employees are treated during their employment, without regard to their race, color, creed, ancestry, national origin, religion, sex, sexual orientation, marital status, and mental or physical disability. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

Prior to execution of this Agreement, CONSULTANT shall furnish to CITY proof that CONSULTANT and all of its subcontractors have a current, valid business license issued by CITY.

1.7 Standard of Performance.

CONSULTANT acknowledges and understands that the services and work contracted for under this Agreement require specialized skills and abilities and that, consistent with this understanding, CONSULTANT's services and work shall be held to a standard of quality and workmanship prevalent in the industry for such service and work. CONSULTANT represents to CITY that CONSULTANT holds the necessary skills and abilities to satisfy the standard of work as set forth in this Agreement. CONSULTANT shall perform the work and services under this Agreement in accordance with such standard of work and in accordance with the prevailing consulting standard of care by exercising the skill and

ability ordinarily required of consultants performing the same or similar services, under the same or similar circumstances, in the State of California. All work shall be completed to the reasonable satisfaction of CITY. If CITY reasonably determines that the work is not satisfactory, CITY shall have the right to: (i) meet with CONSULTANT to review CONSULTANT's work and resolve matters of concern; and/or (ii) require CONSULTANT to repeat unsatisfactory work at no additional charge until it is satisfactory.

In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for potential projects, CONTRACTOR has no control over cost or price of labor and material; unknown or latent conditions of existing equipment or structures that may affect operation and maintenance costs; competitive bidding procedures and market conditions; time or quality of performance of third parties; quality, type, management, or direction of operating personnel; and other economic and operational factors that may materially affect the ultimate project cost or schedule. Therefore, CONTRACTOR makes no warranty that CITY's actual project costs, financial aspects, economic feasibility, or schedules will not vary from CONTRACTOR's opinions, analyses, projections, or estimates.

CONTRACTOR's services hereunder do not include providing legal advice and/or a legal determination as to whether current rates and/or proposed future rates are in accordance with any law and/or regulation related thereto.

1.8 Consultant Ethics.

CONSULTANT represents and warrants that it has not provided or promised to provide any gift or other consideration, directly or indirectly, to any officer, employee, or agent of CITY to obtain CITY's approval of this Agreement. CONSULTANT shall not, at any time, have any financial interest in this Agreement or the project that is the subject of this Agreement other than the compensation to be paid to CONSULTANT pursuant to Article 3, Compensation. In the event the work and/or services to be performed hereunder relate to a project and/or application under consideration by or on file with the City, (i) CONSULTANT shall not possess or maintain any business relationship with the applicant or any other person or entity which CONSULTANT knows to have a personal stake in said project and/or application, (ii) other than performing its work and/or services to CITY in accordance with this Agreement CONSULTANT shall not advocate either for or against said project and/or application, and (iii) CONSULTANT shall immediately notify CITY in the event CONSULTANT determines that CONSULTANT has or acquires any such business relationship with the applicant or other person or entity which has a personal stake in said project and/or application. The provisions in this Section 1.8 shall be applicable to all of CONSULTANT's officers, directors, employees, and agents, and shall survive the termination of this Agreement.

1.9 Changes and Additions to Scope of Services.

CITY may make changes within the general scope of services provided for in this Agreement. CONSULTANT shall agree to any such changes that are reasonable.

CONSULTANT shall make no change in or addition to the character or extent of the work required by this Agreement except as may be authorized in advance in writing by CITY. Such supplemental authorization shall set forth the specific changes of work to be performed and related extension of time and/or adjustment of fee to be paid to CONSULTANT by CITY.

1.10 Hiring of Illegal Aliens Prohibited

CONSULTANT shall not hire or employ any person to perform work within the City of San Clemente or allow any person to perform work required under this Agreement unless such person is a United States citizen or is properly documented and legally entitled to be employed within the United States.

1.11 Endorsement on PS&E/Other Data

CONSULTANT shall sign all plans, specifications, estimates (PS&E) and engineering data furnished by CONSULTANT, and where appropriate will indicate CONSULTANT's authorized signature and professional registration number.

ARTICLE 2
RESPONSIBILITIES OF CITY

2.1 Provision of Information.

CITY shall provide full information regarding its requirements for the project, and it shall furnish, without charge to CONSULTANT, any and all information, data, plans, maps and records which are available to CITY and are necessary for the provision by CONSULTANT of the tasks and services set forth herein.

2.2 Cooperation With CONSULTANT.

CITY shall cooperate with CONSULTANT in carrying out the work and services required hereunder without undue delay. In this regard, CITY, including any representative thereof, shall examine plans and documents submitted by CONSULTANT, shall consult with CONSULTANT regarding any such plans and documents, and shall render any necessary decisions pertaining to such plans and documents as promptly as is practicable.

ARTICLE 3
PAYMENT

3.1 Payment Schedule: Maximum Payment Amount.

Prior to the tenth of the month, CONSULTANT shall submit to CITY a monthly status report and invoices itemizing the services rendered during the previous month. Within fifteen (15) working days after receipt of an invoice from CONSULTANT, CITY shall



determine whether and to what extent CONSULTANT has adequately performed the services for which payment is sought. If CITY determines that CONSULTANT has not adequately performed such services, CITY shall inform CONSULTANT of those acts which are necessary for satisfactory completion. Subject to the provisions of Section 5.2 below, which provide for the City to withhold payment in the event CONSULTANT's insurance expires during the term of this Agreement, CITY shall cause payment to be made to CONSULTANT within fifteen (15) working days from CITY's determination that CONSULTANT has adequately performed those services for which CITY has been invoiced. In no case shall CITY pay in excess of each line item set forth in Exhibit "A" for any particular task unless approved and authorized by the CITY in writing (applicable only if Exhibit "A" breaks down the Scope of Services on a line item basis). The total compensation for the Scope of Services set forth in Exhibit "A" shall not exceed Eighty-Six Thousand and Twenty-Seven dollars and Zero cents (\$86,027.00), including all amounts payable to CONSULTANT for its overhead, payroll, profit, and all costs of whatever nature, including without limitation all costs for subcontracts, materials, equipment, supplies, and costs arising from or due to termination of this Agreement (the "Total Compensation").

3.2 Changes in Work.

If CONSULTANT estimates that any proposed change within the general scope of services set forth in Exhibit "A" causes an increase or decrease in the cost and/or the time required for performance of this Agreement, CONSULTANT shall so notify CITY of that fact in advance of commencing performance of such work. Any such change, and the cost for such change, shall be agreed upon by CITY and CONSULTANT, and reduced to a writing that, once signed by both CITY and CONSULTANT, shall modify this Agreement accordingly. In determining the amount of any cost increase for such change, the value of the incomplete portions of the original tasks and services affected by the change shall be credited back to CITY.

3.3 Additional Work.

CITY may request CONSULTANT to perform additional services not covered by the specific scope of services set forth in Exhibit "A", and CONSULTANT shall perform such extra services and will be paid for such extra services when the extra services and the cost thereof are reduced to writing, signed by both CITY and CONSULTANT, and made a part of this Agreement. CITY shall not be liable for payment of any extra services nor shall CONSULTANT be obligated to perform any extra services except upon such written amendment. To the extent that the extra services render all or a portion of the original tasks and services unnecessary, the value of the unnecessary and incomplete portions of original tasks and services shall be credited back to CITY.

ARTICLE 4 INDEPENDENT CONTRACTOR

CONSULTANT is an independent contractor and not an employee of the CITY. Neither the CITY nor any of its employees shall have any control over the conduct of the CONSULTANT or any of CONSULTANT's employees, except as herein set forth, and CONSULTANT expressly warrants not to, at any time or in any manner, represent that CONSULTANT, or any of CONSULTANT's agents, servants or employees, are in any manner agents, servants or employees of the CITY, it being distinctly understood that CONSULTANT is and shall at all times remain as to the CITY a wholly independent contractor and that CONSULTANT's obligations to the CITY are solely such as are prescribed by this Agreement.

ARTICLE 5
INDEMNITY AND INSURANCE

5.1 Indemnification

FOLLOWING PARAGRAPH APPLICABLE TO AGREEMENTS WHERE CONSULTANT IS A "LICENSED DESIGN PROFESSIONAL" AND IS PROVIDING DESIGN PROFESSIONAL SERVICES:

To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.6), CONSULTANT shall defend (with legal counsel reasonably acceptable to the CITY), indemnify, and hold free and harmless CITY and CITY's agents, officers, and employees, and the San Clemente Redevelopment Agency and its agents, officers, and employees (collectively, the "Indemnitees") from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of CONSULTANT or any officers, agents, employees, representatives, or subconsultants of CONSULTANT [collectively, the "CONSULTANT ENTITIES"]), expense and liability of every kind, nature and description (including, without limitation, consequential damages, court costs, attorney's fees, litigation expenses and fees of expert Consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of CONSULTANT, any of the CONSULTANT ENTITIES, anyone directly or indirectly employed by any of them, or anyone that they control (collectively, the "Liabilities"). Such obligation to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused in part by the sole negligence, active negligence, or willful misconduct of such Indemnitee.

Notwithstanding the foregoing, for any claim alleging CONSULTANT's negligent performance of professional services, CONSULTANT's obligations regarding CITY's defense under this paragraph include only the reimbursement of CITY's reasonable defense costs incurred to the extent of CONSULTANT's negligence as expressly determined by a final judgment, arbitration, award, order, settlement, or other final resolution. Additionally, CONSULTANT shall not be responsible for acts and decisions of third parties, including governmental agencies, other than CONSULTANT's subcontractors, that impact project completion and/or success.



FOLLOWING PARAGRAPH APPLICABLE TO AGREEMENTS WHERE CONSULTANT IS NOT A “LICENSED DESIGN PROFESSIONAL”:

CONSULTANT shall defend (with legal counsel reasonably acceptable to the CITY), indemnify, and hold free and harmless CITY and CITY's agents, officers, and employees, and the San Clemente Redevelopment Agency and its agents, officers, and employees from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of CONSULTANT or CONSULTANT's officers, agents, employees, representatives, or subcontractors [collectively, the “CONSULTANT ENTITIES”]), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert Consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the actions or failure to act of CONSULTANT, any of the CONSULTANT ENTITIES, anyone directly or indirectly employed by any of them, or anyone that they control, under this Agreement.

For purposes of this Agreement, a “Licensed Design Professional” shall be limited to licensed architects, registered professional engineers, licensed professional land surveyors and landscape architects, all as defined under current law, and as may be amended from time to time by California Civil Code § 2782.8.

5.2 Insurance.

Prior to the City's execution of this Agreement, and as a condition to the effectiveness hereof, CONSULTANT shall submit certificates and endorsements to CITY indicating compliance with the following minimum insurance requirements, and CONSULTANT shall maintain such insurance in effect during the entire term of this Agreement:

- A. Workers' Compensation insurance to cover CONSULTANT's employees as required by the California Labor Code with employer's liability limits not less than One Million Dollars (\$1,000,000) per accident or disease. Before execution of this Agreement by CITY, CONSULTANT shall file with CITY the attached signed Worker's Compensation Insurance Certification. CONSULTANT shall require all subcontractors similarly to provide such compensation insurance for the respective employees.

None of the CITY, the San Clemente Redevelopment Agency, or any of their respective officers, employees, and agents will be responsible for any claims in law or equity occasioned by failure of CONSULTANT to comply with this paragraph.

- B. Commercial General Liability, personal injury and property damage liability, contractual liability, independent contractor's liability, and



automobile liability insurance, with minimum combined liability limits of One Million Dollars (\$1,000,000) per occurrence for all covered losses, and Two Million Dollars (\$2,000,000) in the aggregate. Any deductible or self-insured retention in excess of Five Thousand Dollars (\$5,000) shall be declared to the City and requires the prior approval of the City's Risk Manager. Each such policy of insurance shall:

- (1) be issued by companies that hold a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by CITY's Risk Manager for all coverages except surety.
- (2) name and list as additional insureds CITY, CITY's officers, employees, and agents and, if the CITY's Risk Manager so requires, the City of San Clemente Redevelopment Agency and its officers, employees, and agents. An endorsement shall accompany the insurance certificate naming such additional insureds.
- (3) specify it acts as primary insurance and that no insurance held or owned by CITY (or, if applicable, the San Clemente Redevelopment Agency) shall be called upon to cover a loss under said policy;
- (4) contain a clause substantially in the following words: "it is hereby understood and agreed that this policy may not be canceled or materially changed except upon thirty (30) days prior written notice to CITY of such cancellation or material change as evidenced by a return receipt for a registered letter;"
- (5) cover the operations of CONSULTANT pursuant to the terms of this Agreement; and
- (6) be written on an occurrence and not a claims made basis.

C. Professional Liability or Errors and Omissions insurance specifically designed to protect against acts, errors or omissions of the CONSULTANT and "covered professional services" as designated in the policy must specifically include work performed under this Agreement. The policy limit shall be not less than One Million Dollars (\$1,000,000) per claim and One Million Dollars (\$1,000,000) in the aggregate. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

If this box is checked and CITY has initialed below, the requirement for Professional Liability or Errors and Omissions insurance set forth in

paragraph C above is hereby waived.

CITY's Initials: _____

Notwithstanding anything herein to the contrary, in the event any of CONSULTANT's insurance as required pursuant to this Section 5.2 expires during the term of this Agreement, CITY shall withhold any payment due to CONSULTANT hereunder until such time as CONSULTANT obtains replacement insurance that meets all of the applicable requirements hereunder and submits certificates and endorsements evidencing such insurance to CITY.

CONSULTANT shall require all of its subcontractors to procure and maintain during the course of their subcontract work with CONSULTANT insurance that complies with the foregoing minimum insurance requirements. CONSULTANT shall obtain from such subcontractors and retain in its files certificates evidencing such compliance.

ARTICLE 6 TERMINATION

This Agreement may be terminated by CITY for any reason, with or without cause, upon written notice to CONSULTANT. In such event, CONSULTANT shall be compensated for all services performed and costs incurred up to the date of notification for which CONSULTANT has not been previously compensated, plus termination expenses reasonably incurred and properly accounted for (but in no event to exceed the amount which, when combined with other amounts paid, exceeds the amount for any uncompleted task set forth in Exhibit "A", as applicable). Upon receipt of notice of termination from CITY, CONSULTANT shall immediately stop its services, unless otherwise directed, and deliver to CITY all data, drawings, reports, estimates, summaries and such other information and materials as may have been accumulated by CONSULTANT in the performance of this Agreement, whether completed or in process.

ARTICLE 7 MISCELLANEOUS

7.1 Ownership of Documents.

All reports, software programs, as well as original data collected, original reproducible drawings, plans, studies, memoranda, computation sheets and other documents assembled or prepared by CONSULTANT or furnished to CONSULTANT in connection with this Agreement shall be the property of CITY and delivered to CITY at completion of the project or termination of this Agreement, whichever occurs first. Copies of said documents may be retained by CONSULTANT, but shall not be made available by CONSULTANT to any individual or organization without the prior written approval of CITY.



Any use of completed documents for projects other than that covered by this Agreement and/or any use of uncompleted documents without specific written authorization from CONSULTANT will be at CITY's sole risk and without liability or legal exposure to CONSULTANT.

7.2 Notices.

Any notices to be given under this Agreement shall be given by enclosing the same in a sealed envelope, postage prepaid, and depositing the same in the United States mail, addressed to CONSULTANT at 3150 Bristol Street, Suite 500, Costa Mesa, CA 92626, and to the City of San Clemente, 100 Avenida Presidio, San Clemente, California 92672, Attention: Tom Rendina.

7.3 Covenant Against Contingent Fees.

CONSULTANT warrants that it has not employed or retained any company or person to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person any fee or commission from the award or making of this Agreement. For breach or violation of this warranty, CITY shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee or commission.

7.4 Liquidated Damages.

APPLICABLE ONLY IF THIS BOX HAS BEEN CHECKED AND BOTH PARTIES HAVE INITIALED BELOW.

If CITY seeks monetary damages for CONSULTANT'S failure to complete all of the services required hereunder by the completion date set forth in Exhibit "B" (the "Completion Date"), CONSULTANT shall be required to pay to CITY _____ Dollars (\$____) per day for each day beyond the Completion Date that any of such services remain uncompleted; provided, however, that nothing herein shall be deemed to limit CITY's remedy for CONSULTANT's failure to complete all services required hereunder by the Completion Date to seeking monetary damages, and CITY shall be entitled to pursue any other equitable remedy permitted by law, including, without limitation, specific performance.

THE PARTIES HERETO AGREE THAT THE AMOUNT SET FORTH IN THIS SECTION 7.4 (THE "DAMAGE AMOUNT") CONSTITUTES A REASONABLE APPROXIMATION OF THE ACTUAL DAMAGES THAT CITY WOULD SUFFER DUE TO CONSULTANT'S FAILURE TO COMPLETE ALL OF THE SERVICES REQUIRED HEREUNDER BY THE COMPLETION DATE, CONSIDERING ALL OF THE CIRCUMSTANCES EXISTING ON THE EFFECTIVE DATE OF THIS AGREEMENT, INCLUDING THE RELATIONSHIP OF THE DAMAGE AMOUNTS TO THE RANGE OF HARM TO CITY, THAT REASONABLY COULD BE ANTICIPATED AND THE ANTICIPATION THAT PROOF OF ACTUAL DAMAGES



WOULD BE COSTLY OR INCONVENIENT. THE DAMAGE AMOUNT SET FORTH IN THIS SECTION 7.4 SHALL BE THE SOLE DAMAGES REMEDY FOR CONSULTANT'S FAILURE TO COMPLETE ALL OF THE SERVICES REQUIRED HEREUNDER BY THE COMPLETION DATE, BUT NOTHING IN THIS SECTION 7.4 SHALL BE INTERPRETED TO LIMIT CITY'S REMEDY FOR CONSULTANT'S FAILURE TO COMPLETE ALL OF THE SERVICES REQUIRED HEREUNDER BY THE COMPLETION DATE TO SUCH A DAMAGES REMEDY. IN PLACING ITS INITIALS AT THE PLACES PROVIDED HEREINBELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY HAS BEEN REPRESENTED BY COUNSEL OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY COUNSEL TO EXPLAIN THE CONSEQUENCES OF THE LIQUIDATED DAMAGES PROVISION AT OR PRIOR TO THE TIME EACH EXECUTED THIS AGREEMENT.

CONSULTANT'S INITIALS: _____ CITY'S INITIALS: _____

Notwithstanding any of the above, nothing herein is intended to preclude the CITY's recovery of its attorney's fees and costs incurred to enforce this Section 7.4, as provided in Section 7.10 below.

7.5 Interpretation and Enforcement of Agreement.

This Agreement shall be construed and interpreted both as to validity and performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted and maintained in the Superior Court of the County of Orange, State of California, or in any other appropriate court with jurisdiction in such county, and CONSULTANT agrees to submit to the personal jurisdiction of such court.

7.6 Disputes.

In the event of any dispute arising under this Agreement, the injured party shall notify the defaulting party in writing of its contentions by submitting a claim therefor. The injured party shall continue performance of its obligations hereunder so long as the defaulting party immediately commences to cure such default and completes the cure of such default with reasonable diligence and in no event to exceed 30 days after service of the notice, or such longer period as may be permitted by the injured party; provided, that if the default results in an immediate danger to the health, safety, and general welfare, CITY may take such immediate action as CITY deems warranted.

7.7 Retention of Funds.

CITY may withhold from any monies payable to CONSULTANT sufficient funds to compensate CITY for any losses, costs, liabilities or damages suffered by CITY due to default of CONSULTANT in the performance of the services required by this Agreement.



7.8 Waiver.

No delay or omission in the exercise of any right or remedy by a nondefaulting party shall impair such right or remedy or be construed as a waiver. CITY's consent or waiver of one act or omission by CONSULTANT shall not be deemed to constitute a consent or waiver of CITY's rights with respect to any subsequent act or omission by CONSULTANT. Any waiver by either party of any default must be in writing.

7.9 Rights and Remedies are Cumulative.

Except as may be expressly set forth in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies or other rights or remedies as may be permitted by law or in equity shall not preclude the exercise by such party, at the same or different times, of any other rights or remedies to which such party may be entitled.

7.10 Attorneys' Fees.

In the event either party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party in such action shall be entitled to recover its reasonable costs and expenses, including without limitation reasonable attorneys' fees and costs. Attorneys' fees shall include attorneys' fees on any appeal, and in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, including the taking of depositions and discovery, expert witness fees, and all other necessary costs incurred in the litigation, suit, or other action requiring attorney time. All such fees shall be enforceable whether or not such action is prosecuted to final judgment.

7.11 Integrated Agreement.

This Agreement contains all of the agreements of the parties and cannot be amended or modified except by written agreement. No prior oral or written understanding shall be of any force or effect with respect to those matters covered in this Agreement.

7.12 Authority.

The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties.

7.13 Third Parties.

The services to be performed by CONSULTANT are intended solely for the benefit of CITY. No person or entity not a signatory to this Agreement shall be entitled to rely on CONSULTANT's performance of its services hereunder, and no right to assert a claim against CONSULTANT by assignment of indemnity rights or otherwise shall accrue to a

third party as a result of this Agreement or the performance of CONSULTANT's services hereunder.

[End – Signature page follows]



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the respective dates set forth opposite their signatures.

CITY OF SAN CLEMENTE

By: Bob Baker

Its: Mayor

Dated: JUNE 13, 20 16

ATTEST:

Jennifer Bane
CITY CLERK of the City of
San Clemente, California

APPROVED AS TO FORM:
BEST BEST & KRIEGER

By: [Signature]
City Attorney

APPROVED AS TO AVAILABILITY
OF FUNDING

By: [Signature]
Finance Authorization

Carolo Engineers
("CONSULTANT")

Consultant's License Number 23160

By: Dylan Holmes / Tracy Hill

Its: Vice president / Assoc. VP

Dated: _____, 20 _____

EXHIBIT "A"

SCOPE OF SERVICES

EXHIBIT "B"

SCHEDULE OF PERFORMANCE

Cost of Service Proposal
Dated March, 2016

WORKER'S COMPENSATION INSURANCE CERTIFICATION

Carollo Engineers

Project No. _____

WORKERS' COMPENSATION DECLARATION

I hereby affirm under penalty of perjury one of the following declarations:

(ONE OF THE BOXES BELOW MUST BE CHECKED)

I have and will maintain a certificate of consent from the California Labor Commission to self-insure for workers' compensation, as provided for by Section 3700 of the Labor Code, for the performance of the work to be performed under this contract.

I have and will maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work to be performed under this contract. My workers' compensation insurance carrier and policy number are:

Carrier _____

Policy Number _____

I certify that, in the performance of the work under this Agreement, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, and I hereby agree to indemnify, defend, and hold harmless the City of San Clemente and all of its officials, employees, and agents from and against any and all claims, liabilities, and losses relating to personal injury or death, economic losses, and property damage arising out of my failure to provide such worker's compensation insurance. I further agree that, if I should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions.

WARNING: FAILURE TO SECURE WORKERS' COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS (\$100,000), IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706 OF THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.

Dated: August 18, 2016

Carollo Engineers
Contracting Firm

By: Sydney Holmes / Tracy A Clark
Vice president / Assoc. VP
Title

Address
