



REQUEST FOR QUALIFICATIONS

FOR

**ON-CALL ENVIRONMENTAL CONSULTING
SERVICES**

OCTOBER 2018

**COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION
910 Calle Negocio, San Clemente, CA 92673
(949) 361-6100**

**Proposals Are Due No Later Than:
Thursday, November 1, 2018 at 5:00 PM (Pacific Time)**

CITY OF SAN CLEMENTE

REQUEST FOR QUALIFICATIONS

Introduction

The City of San Clemente (the City) is seeking a statement of qualifications from professional environmental consulting firms to provide on-call environmental consulting services for Planning related development projects. The City will be selecting firms with experience in preparation of environmental impact reports, negative declarations, initial studies, technical studies, and environmental mitigation. The City anticipates selecting a pool of firms to be included on a list to provide consulting services on an on-call basis, and each firm may subsequently be asked to prepare specific proposals for more than one project.

Background

The City of San Clemente Planning Division is looking for qualified consultants to provide services to assist with environmental reviews on an as needed basis. The firms will assist with projects including but not limited to: preparation of environmental impact reports, negative declarations, initial studies, technical studies, environmental mitigation, and other documents to comply with the California Environmental Quality Act (CEQA). Consultants would be required to perform studies and investigations, prepare plans and studies, specifications and cost estimates, write reports, and perform field inspections for various types of regulatory, environmental, and health and safety issues related to development projects. Firms will have the opportunity to provide their services on a project-by-project basis for both City-initiated and City-reviewed development projects.

Interested consultants who meet the minimum qualifications, are authorized to perform the required services under the applicable laws and who have successfully demonstrated their ability to provide environmental review services are invited to submit qualifications. Through this RFQ, the City will select a pool of qualified consultants to establish a list of professional environmental consultants to provide services for a three (3) year period commencing upon the creation of the list and/or the successful completion of contract negotiations with options for annual renewals following the three year period.

City Point of Contact and Submittal Guidelines

The sole source of contact regarding this RFQ is Carl Stiehl, Senior Planner by email at stiehlc@san-clemente.org. Please include in the subject heading of the email "Environmental On-Call RFQ." Individuals or firms interested in submitting qualifications are asked not to contact other members of the City of San Clemente staff or Councilmembers in connection with the RFQ prior to the announcement of those selected for the qualified consultants list.

RFQ - INSTRUCTIONS AND CONDITIONS

The submittal statement listing qualifications shall be printed on double-sided 8-1/2" x 11" recycled paper, with easy to read font size and style. Pages shall be numbered, tabbed, and presented in a three (3) ring binder or spiral bound. Tabbed dividers should separate and identify the response items described below in contents to be included and include the section title.

One (1) signed original, two (2) hard copies and one (1) electronic PDF version (on a flash drive) of the statement of qualifications shall be submitted confidentially in a sealed envelope clearly marked "Qualifications for On-Call Environmental Consulting Services" and addressed to:

CONFIDENTIAL

Carl Stiehl
Planning Division
City of San Clemente
910 Calle Negocio, Suite 100
San Clemente, CA 92673

A submittal will not be accepted by fax or email.

The last day to submit questions pertaining to this RFQ will be October 22, 2018, 5:00 P.M. PST. All questions and answers should be posted on the City web site (<http://www.san-clemente.org/departments-services/planning-services>) October 23, 2018 by 5 P.M. PST.

ALL STATEMENTS OF QUALIFICATIONS MUST BE RECEIVED AT THE CITY OFFICES NO LATER THAN 5 P.M. ON THURSDAY NOVEMBER 1, 2018. NO LATE PROPOSALS WILL BE ACCEPTED.

CITY OF SAN CLEMENTE REQUEST FOR QUALIFICATIONS

CONTENTS TO BE INCLUDED

Each statement of qualifications shall include the information described in this section. Additional information may be provided, but should be brief and relevant to the goals of this RFQ.

1) Cover Page

- a) Name of the firm.
- b) Firm contact information including e-mail address.
- c) Contact person with contact information.
- d) Name, title, contact information for person authorized to contractually obligate the proposer on behalf of the firm.

2) Summary

- a) A brief statement of the firm's understanding of the scope of work
- b) Length of time in business.
- c) Name, title, and contact information for the project manager during the evaluation period.
- d) Any other information that the proposer feels is appropriate.
- e) The signature of the person who is authorized to make offers of this nature in the name of the firm submitting the proposal.

3) Background and Experience

- a) Describe the firm's background, business expertise/experiences, specialties, and capabilities to perform professional consultant services with the application of CEQA related to development projects. This should include the preparation of various environmental documents, the ability to review technical studies and knowledge of CEQA processes as it relates to typical development projects. Please describe the firm's ability to prepare and review:
 - initial studies,
 - environmental exemptions,
 - negative declarations,
 - mitigated negative declarations,
 - environmental impact reports,
 - associated technical studies, such as air quality, biology, noise, traffic,
 - environmental mitigation and implementation measures.

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- The statement should also demonstrate the firm's understanding of the key issues related to environmental analysis and the firm's familiarity with the issues and challenges associated with development in the City of San Clemente. Please indicate how you ascertained this information.
- b) Provide a description of the firm's local, state and/or regional experience in preparing or reviewing environmental documents as described above.
 - c) Describe any characteristics of the firm that would be uniquely relevant in evaluating the experience of the proposer's firm to handle various potential environmental projects.
 - d) Provide a minimum of three references of public agencies for which similar work has been performed, including the name, title, agency, address and phone numbers for each reference. Briefly describe the work performed (and dates) for each reference.
 - e) Briefly describe the legal challenges your firm's environmental documents have been subject to and the success rate that the environmental documents prepared by your firm have held up to legal challenges.
 - f) As the City may need to initiate outsourced services upon the selection of consultants, please describe how the firm intends to prepare for and undertake potential future tasks.

4) Team Description

- a) Provide the name(s) of the key person(s) who would be assigned to work on the City of San Clemente and a summary of their education and experience to demonstrate their qualifications.
- b) Indicate the percentage of involvement of staff members/staff positions that would provide the services anticipated by this RFQ.
- c) Include a brief description of any sub-consultants with whom the firm partners and a description of the services those consultants provide (e.g. air quality, green house gas, noise, traffic, historic/cultural resource evaluation etc.). Provide specific examples of projects completed by the firm and sub-consultant as a team.
- d) Provide information regarding your firm's current staffing, current workload, and availability to perform the subject services.

5) Fee Schedule

- a) Provide a complete time and materials fee schedule for all services provided by the consultant, including hourly rates for all proposed staff. Please include all costs that are typically billed separately as direct expenses (e.g. copy or document delivery fees). Please include any information on subs typically used for specific services.
- b) Include the cost to respond to requests by the City to provide services; the methodology for addressing billing disputes; and the methodology by which the firm will allocate the cost of project management.

CITY OF SAN CLEMENTE REQUEST FOR QUALIFICATIONS

GENERAL CONDITIONS

1. Authority to Withdraw RFQ and/or Not Award Contract

The City of San Clemente reserves the right to withdraw this RFQ at any time without prior notice. Further, the City makes no representations that any agreement will be awarded to any contractor responding to this RFQ. The City expressly reserves the right to postpone the opening of submittals of statements of qualifications for its own convenience and to reject any and all submittals in response to this RFQ without indicating any reasons for such rejection(s). Any submittal of a statement of qualifications may be withdrawn or modified by a written request signed by the Consultant and received by the City prior to the final time and date for the receipt of a submittal. Once the deadline is past, consultants are obligated to fulfill the terms of their statement of qualifications as proposed.

2. Right to Reject Qualifications

The City of San Clemente reserves the right to reject any or all submittals of statements of qualifications or dispense with the review process. Any decision to add a consultant to the list or to prepare a contract made for this engagement will be made to the contractor(s) which, in the opinion of the City, is best qualified to conduct the project.

3. Evaluation and Contract Award

All timely received responsive submittals of qualifications will be reviewed and evaluated by the City in order to determine which consultants meet the City's needs by demonstrating the competence and qualifications necessary for the satisfactory performance of the required services.

Using the evaluation criteria listed below, all the submittals will be reviewed and evaluated based on their relative strengths, deficiencies, and weaknesses:

- a. Firm Experience
- b. Qualifications and Experience of Key Personnel
- c. Understanding of Work to be Performed
- d. Pricing/Cost of Services (efficient use of resources and subs, if any)
- e. Supportive Information/References

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If necessary, interviews may be scheduled with firms to help the City determine the consultants are qualified. Negotiations may be made with the selected consultants, with the intent to award on-call contracts. The City intends to have a number of consultants for an on-call list and to potentially award multiple contracts. Nothing herein shall obligate the City to award a contract to any responding consultant.

4. Insurance Coverage

Prior to commencement of any project activities, a consultant is to secure worker's compensation insurance, so as to be in compliance with State statutes and comprehensive commercial general liability insurance, including auto and contractual liability coverage, and professional liability or errors and omissions insurance as listed in the standard Professional Services Agreement (Attachment A).

5. Disclosure of Submitted Materials

After selection and execution of the contracts, (or prior thereto if required by law) all information and materials provided in each submittal received is subject to disclosure through a public records request pursuant to the California Public Records Act, or otherwise as may be required by law. The City, in its sole discretion, may release any submitted materials, regardless of whether such materials are marked by respondents as confidential or otherwise as protected.

6. RFQ Process Schedule

The City intends to follow, but will not be bound by, the following schedule:

Public Notification of RFQ:	October 3, 2018
Deadline for Written Questions:	October 22, 2018
Responses to Questions Posted:	October 23, 2018
Qualifications are Due:	5:00 p.m. on Thursday November 1, 2018
Consultant(s) Selection/Negotiation:	November 5 – November 29, 2018
List of On-Call Consultants:	December 3, 2018
Award of Contracts:	TBD

7. Waiver of Irregularities

The City retains the right, in its sole discretion, to waive any irregularities in submittals of qualifications that do not comply with the strict requirements of this RFQ, and the City reserves the right to add a consultant to the on-call list or award a contract(s) to a consultant(s) submitting any such non-compliant submittal, all in the City's sole discretion.

8. Validity of Pricing

Consultants are required to provide a fee structure including the hourly rate of the principles to be assigned to the matter, and proposed cost (line item descriptions and

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pricing), and expense reimbursements levels. No cost increases shall be passed onto the City after the qualifications have been submitted. No attempt shall be made to tie any item or items contained in this RFQ with any other business with the City; each statement of qualifications must stand on its own.

9. No Guarantee of Usage

Any anticipated projects listed in this RFQ are estimated or projected and are provided for tabulation and information purposes only. No guarantee of usage is given or implied by the City. It is understood that the consultant(s) shall furnish the City's needs as they arise with an on-call basis.

10. Use of Other Governmental Contracts

The City reserves the right to reject any part or all of any statement of qualifications received and utilize other available governmental contracts, if such action is in the City's best interest.

11. Term of Contract

The term of each contract may be for a specific period time, a specific service, and/or based on a "not-to-exceed" dollar amount. The City reserves the right to set the term for a period deemed to be in the best interest of the City and terminate a contract as set forth therein. Each contract may be extended by mutual consent of both parties.

12. Contract Amendments

If, in the course of the performance of the contract, consultant or the City proposes changes to the services provided, and informal consultation with the other party indicates that a change in the terms and conditions of the contract may be warranted, consultant or the City may request a change in the contract. The parties to the contract will meet to discuss and negotiate the required documents. Upon completion of those negotiations, the negotiated documents will be submitted to the City for approval. Upon approval by the City, an amendment to the contract will be approved by all parties for the change to be implemented. An amendment shall not render ineffective or invalidate any unaffected portions of the contract. Nothing in this section obligates the City to agree to any change order or other amendment, and the City may withhold such agreement in its sole discretion.

13. Records

The consultant shall maintain complete and accurate records with respect to labor costs, material expenses, and other such information required by City that relates to the performance of services under the contract. The consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of the services. All such records shall be maintained in accordance with generally accepted accounting

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principles and shall be clearly identified and readily accessible and in a form acceptable to the City, which the City may specify and change from time to time. The consultant shall provide free access to the representatives of City or its designees, at reasonable times, to such books and records, shall give City the right to examine and audit said books and records, shall permit City to make transcripts there from as necessary, and shall allow inspection of all work, data, documents, proceedings, and activities related to the contract. Such records, together with supporting documents, shall be maintained for the City's inspection for a period of at least three (3) years after receipt of final payment for contracted work.

14. Professional Services Agreement

Attached to the RFQ (Attachment A) is a copy of the City's standard Professional Services Agreement (Agreement). The City's standard Agreement may be modified, in the City's sole discretion with City Attorney approval, to address the specific provisions of this RFQ and consultants should note that any specifications or other requirements specific to this RFQ shall be included in the Agreement and Agreement's exhibits following an award of a contract. Please review the Agreement carefully and note in your proposal any exceptions or alterations to the Agreement. Alterations or changes to the Agreement that are not in the consultant's response shall not be allowed after the selection of the consultant. By requiring these requests up front, the City can compare all respondents on an equal basis. However, the City reserves the right, in its sole discretion, to accept or reject any and all proposed changes to the City's standard Agreement.

PROFESSIONAL SERVICES AGREEMENT
FOR **[IDENTIFY PROJECT]**

THIS PROFESSIONAL SERVICES AGREEMENT (the "Agreement") is made and entered into this _____ day of _____, 20__ (the "Effective Date"), by and between the City of San Clemente, a municipal corporation, hereinafter referred to as the "CITY", and _____ of _____ **[address]** hereinafter referred to as the "CONTRACTOR".

RECITALS:

- A. CITY requires professional **[identify type of service]** services to be performed at or in connection with **[identify project]**.
- B. CONTRACTOR has represented to CITY that CONTRACTOR is qualified to perform said services and has submitted a proposal to CITY for same.
- C. CITY desires to have CONTRACTOR 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 CONTRACTOR agree as follows:

ARTICLE 1
RESPONSIBILITIES OF CONTRACTOR

1.1 Term.

The term of this Agreement shall commence on the Effective Date, and shall continue and remain in effect, until **[Insert Termination Date]**, 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.

CONTRACTOR 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 satisfactory to CITY. By execution of this Agreement, CONTRACTOR warrants 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. CONTRACTOR acknowledges that certain refinements to the Scope of Services may, on occasion, be necessary to achieve CITY's goals hereunder, and CONTRACTOR 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, CONTRACTOR shall furnish to CITY proof of insurance coverage as required under Article 5, Insurance. Upon CITY's release to CONTRACTOR of a fully executed copy hereof and issuance of a written Notice to Proceed, CONTRACTOR shall promptly commence performance of the work. Until such time, CONTRACTOR is not authorized to perform and will not be paid for performing any work under this Agreement. CONTRACTOR 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 CONTRACTOR shall be entitled to an extension of time for any delays caused by events or occurrences beyond CONTRACTOR's reasonable control.

1.4 Identity of Persons Performing Work.

CONTRACTOR 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. CONTRACTOR shall not replace any of the principal members of the Project team, including any of the persons listed in Exhibit "A" (if CONTRACTOR'S personnel is listed on Exhibit "A"), or any successors to any of such persons, without CITY's prior written approval.

CONTRACTOR represents that the tasks and services required hereunder will be performed by CONTRACTOR 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, CONTRACTOR 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 CONTRACTOR and CONTRACTOR'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 CONTRACTOR and CONTRACTOR's employees. Neither this Agreement nor any interest therein may be assigned by CONTRACTOR, except upon written consent of CITY.

Furthermore, CONTRACTOR 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 CONTRACTOR from employing or hiring as many employees as CONTRACTOR may deem necessary for the proper and efficient execution of this Agreement.

1.5 Cooperation and Coordination of Work With CITY.

CONTRACTOR 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 CONTRACTOR's work. CONTRACTOR shall ensure that CITY has reviewed and approved all required work as the project progresses.

1.6 Compliance With Laws.

CONTRACTOR shall comply with all applicable Federal, State and local laws, ordinances and regulations, including without limitation all applicable fair labor standards. CONTRACTOR shall not discriminate against any employee or applicant for employment or any approved subcontractor, agent, supplier or other firm or person providing services to CONTRACTOR 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. CONTRACTOR shall take affirmative action to ensure 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, CONTRACTOR shall furnish to CITY proof that CONTRACTOR and all of its subcontractors have a current, valid business license issued by CITY.

1.7 Standard of Performance.

CONTRACTOR acknowledges and understands that the services and work contracted for under this Agreement require specialized skills and abilities and that, consistent with this understanding, CONTRACTOR's services and work shall be held to a standard of quality and workmanship prevalent in the industry for such service and work. CONTRACTOR represents to CITY that CONTRACTOR holds the necessary skills and abilities to satisfy the standard of work as set forth in this Agreement. CONTRACTOR shall perform the work and services under this Agreement in accordance with such standard of work and in accordance with the accepted standards of the professional disciplines involved in the project. 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 CONTRACTOR to review CONTRACTOR's work and resolve matters of concern; and/or (ii) require CONTRACTOR to repeat unsatisfactory work at no additional charge until it is satisfactory.

1.8 Contractor Ethics.

CONTRACTOR 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. CONTRACTOR 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 CONTRACTOR 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) CONTRACTOR shall not possess or maintain any business relationship with the applicant or any other person or entity which CONTRACTOR 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 CONTRACTOR shall not advocate either for or against said project and/or application, and (iii) CONTRACTOR shall immediately notify CITY in the event CONTRACTOR determines that CONTRACTOR 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 CONTRACTOR'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. CONTRACTOR shall agree to any such changes that are reasonable. CONTRACTOR 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 CONTRACTOR by CITY.

1.10 Hiring of Illegal Aliens Prohibited

CONTRACTOR 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

CONTRACTOR shall sign all plans, specifications, estimates (PS&E) and engineering data furnished by CONTRACTOR, and where appropriate will indicate CONTRACTOR'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 CONTRACTOR, any and all information, data, plans, maps and records which are available to CITY and are necessary for the provision by CONTRACTOR of the tasks and services set forth herein.

2.2 Cooperation With CONTRACTOR.

CITY shall cooperate with CONTRACTOR 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 CONTRACTOR, shall consult with CONTRACTOR 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, CONTRACTOR 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 CONTRACTOR, CITY shall determine whether and to what extent CONTRACTOR has adequately performed the services for which payment is sought. If CITY determines that CONTRACTOR has not adequately performed such services, CITY shall inform CONTRACTOR 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 CONTRACTOR's insurance expires during the term of this Agreement, CITY shall cause payment to be made to CONTRACTOR within fifteen (15) working days from CITY's determination that CONTRACTOR 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 _____ (\$_____), including all amounts payable to

CONTRACTOR 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 CONTRACTOR 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, CONTRACTOR 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 CONTRACTOR, and reduced to a writing that, once signed by both CITY and CONTRACTOR, 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 CONTRACTOR to perform additional services not covered by the specific scope of services set forth in Exhibit "A", and CONTRACTOR 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 CONTRACTOR, and made a part of this Agreement. CITY shall not be liable for payment of any extra services nor shall CONTRACTOR 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

CONTRACTOR 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 CONTRACTOR or any of CONTRACTOR's employees, except as herein set forth, and CONTRACTOR expressly warrants not to, at any time or in any manner, represent that CONTRACTOR, or any of CONTRACTOR's agents, servants or employees, are in any manner agents, servants or employees of the CITY, it being distinctly understood that CONTRACTOR is and shall at all times remain as to the CITY a wholly independent contractor and that CONTRACTOR'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 CONTRACTOR 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), CONTRACTOR 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 CONTRACTOR or any officers, agents, employees, representatives, or subcontractors of CONTRACTOR [collectively, the “CONTRACTOR 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 Contractors 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 CONTRACTOR, any of the CONTRACTOR 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.

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

CONTRACTOR 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 CONTRACTOR or CONTRACTOR’s officers, agents, employees, representatives, or subcontractors [collectively, the “CONTRACTOR 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 Contractors 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 CONTRACTOR, any of the CONTRACTOR 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, CONTRACTOR shall submit certificates and endorsements to CITY indicating compliance with the following minimum insurance requirements, and CONTRACTOR shall maintain such insurance in effect during the entire term of this Agreement:

- A. Workers' Compensation insurance to cover CONTRACTOR'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, CONTRACTOR shall file with CITY the attached signed Worker's Compensation Insurance Certification. CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR's insurance as required pursuant to this Section 5.2 expires during the term of this Agreement, CITY shall withhold any payment due to CONTRACTOR hereunder until such time as CONTRACTOR obtains replacement insurance that meets all of the applicable requirements hereunder and submits certificates and endorsements evidencing such insurance to CITY.

CONTRACTOR shall require all of its subcontractors to procure and maintain during the course of their subcontract work with CONTRACTOR insurance that complies with the foregoing minimum insurance requirements. CONTRACTOR 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 CONTRACTOR. In such event, CONTRACTOR shall be compensated for all services performed and costs incurred up to the date of notification for which CONTRACTOR 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, CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR or furnished to CONTRACTOR 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 CONTRACTOR, but shall not be made available by CONTRACTOR 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 CONTRACTOR will be at CITY's sole risk and without liability or legal exposure to CONTRACTOR.

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 CONTRACTOR at [address] , and to the City of San Clemente, [address] , San Clemente, California , Attention: [specify] .

7.3 Covenant Against Contingent Fees.

CONTRACTOR 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 CONTRACTOR’S failure to complete all of the services required hereunder by the completion date set forth in Exhibit “B” (the “Completion Date”), CONTRACTOR 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 CONTRACTOR’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 CONTRACTOR’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 CONTRACTOR’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 CONTRACTOR’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.

CONTRACTOR’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 CONTRACTOR 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 CONTRACTOR sufficient funds to compensate CITY for any losses, costs, liabilities or damages suffered by CITY due to default of CONTRACTOR 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 CONTRACTOR shall not be deemed to constitute a consent or waiver of CITY's rights with respect to any subsequent act or omission by CONTRACTOR. 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.

[APPLICABLE TO INDIVIDUAL CONTRACTORS ONLY]

7.13 Compliance with California Unemployment Insurance Code Section 1088.8:

Prior to signing the Contract, CONTRACTOR shall provide to CITY a completed and signed Form W-9, Request for Taxpayer Identification Number and Certification. CONTRACTOR understands that pursuant to California Unemployment Insurance Code Section 1088.8, the CITY will report the information from Form W-9 to the State of California Unemployment Development Department, and that the information may be used for the purposes of establishing, modifying, or enforcing child support obligations, including collections, or reported to the Franchise Tax Board for tax enforcement purposes.

[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: _____

Its: _____

Dated: _____, 20__

ATTEST:

CITY CLERK of the City of
San Clemente, California

APPROVED AS TO FORM:
BEST BEST & KRIEGER

By: _____
City Attorney

APPROVED AS TO AVAILABILITY
OF FUNDING

By: _____
Finance Authorization

("CONTRACTOR")

Contractor's License Number _____

By: _____

Its: _____

Dated: _____, 20__

EXHIBIT "A"

SCOPE OF SERVICES

[To be inserted by CITY]

[Scope of Services should include complete description of scope of work, identification of Project team, and payment schedule by task. See Sections 1.2, 1.4, and 3.1 of Agreement]

EXHIBIT “B”

SCHEDULE OF PERFORMANCE

[To be inserted by CITY]

[See 1.3 of Agreement]

WORKER'S COMPENSATION INSURANCE CERTIFICATION

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: _____, 20____

Contracting Firm

By: _____

Title

Address
