



AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: June 7, 2022

Agenda Item 4V
Approvals:
City Manager ES
Dept. Head _____
Attorney CJ
Finance [Signature]

Department: Beaches, Parks & Recreation
Prepared By: Samantha Wylie, Beaches, Parks & Recreation Director

Subject: *CONTRACT AWARD – ENVIRONMENTAL CONSULTING SERVICES FOR PARK MASTER PLAN UPDATE*

Fiscal Impact: Yes. The total cost of services is \$51,570, which will be funded through staff salary savings budgeted in the current fiscal year.

Summary: Staff recommends that Council approve a contract with UltraSystems Environmental Inc. in an amount not to exceed \$51,570. The purpose of the Agreement is to provide professional consulting services in connection with environmental studies required for the completion of the Richard T. Steed Memorial Park (“Steed Park”) master plan update and future park improvements. At Council direction, staff are prioritizing the master plan update and approval for Steed Park. The remaining four park site environmental studies will be addressed at a later date.

Background: At its December 21, 2021 meeting, the City Council directed staff to prioritize improvements at Richard T. Steed Memorial Park.

On April 22, 2022, staff released a Request for Proposal (“RFP”) for consultant services to review the proposed update to the site-specific park master plan for Richard T. Steed Memorial Park (“Steed Park”) and prepare corresponding environmental documents. The City received three responses by the May 6, 2022 response due date. Staff evaluated the proposals based on selection criteria, including project schedule, related experience, costs, and the approach to meet the City’s needs.

Discussion: As required by the California Environmental Quality Act (“CEQA”), the City must review all potential environmental impacts to any proposed project prior to plan adoption and approval. While the Steed Park site-specific plan has previous environmental documents on file and approved, the documents are dated 2002 and require review to ensure compliance with current CEQA requirements.

- The deliverables of this contract will include, but are not limited to, the following:
1. The consultant will prepare a draft/final initial study for City staff review.
 2. Provide for any necessary or related technical studies that may be required as an outcome of the analysis.
 3. Distribute hard copies of the IS/ND/MND or EIR as required in the CEQA Guidelines. Prepare Notice of Intent or Notice of Preparation as required and file with County and City Clerk. Complete required consultations.

4. Consultant to prepare and distribute notice of determination.

Upon completion of the environmental analysis, staff will bring the findings and master plan site update to Council for final approval.

Recommended

Action: STAFF RECOMMENDS THAT the City Council Approve, and authorize the City Manager to execute Contract _____, by and between the City of San Clemente and UltraSystems Environmental Inc., providing for professional consultant services in connection with the park master plan update for Richard T. Steed Memorial Park, in the amount of \$51,570.

Attachments: Professional Services Agreement with UltraSystems Environmental Inc.

Notification: UltraSystems Environmental Inc.

CITY OF SAN CLEMENTE

PROFESSIONAL CONSULTANT SERVICES AGREEMENT

1. PARTIES AND DATE.

This Agreement is made and entered into this ____ day of _____, 20____, by and between the City of San Clemente, a municipal corporation, organized under the laws of the State of California, with its principal place of business at 910 Calle Negocio , San Clemente, California, 92673 ("City") and UltraSystems Environmental Inc., a corporation in California, with its principal place of business at 16431 Scientific Way, Irvine, CA 92618 ("Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of certain professional environmental consulting services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing professional environmental consulting services to public clients, is licensed in the State of California, if applicable, and is familiar with the plans of City.

2.2 Project.

City desires to engage Consultant to render such professional environmental consulting services for the Richard T. Steed Memorial Park/Baron Von Willard Dog Park Master Plan Update project ("Project") as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional environmental consulting services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations. Term. The term of this Agreement shall commence on the Effective Date, and shall continue and remain in effect until June 7, 2023, unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

3.2 Responsibilities of Consultant.

3.2.1 Independent Contractor; Control and Payment of Subordinates. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of

this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of City and shall at all times be under Consultant's exclusive direction and control. Neither City, nor any of its officials, officers, directors, employees or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, City shall respond to Consultant's submittals in a timely manner. Upon request of City, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 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.

3.2.4 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of City.

3.2.5 Substitution of Key Personnel. Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the City. The key personnel for performance of this Agreement are as follows: [INSERT NAME AND TITLE].

3.2.6 City's Representative. The City hereby designates Samantha Wylie, Beaches, Parks & Recreation Director or his/her designee, to act as its representative in all matters pertaining to the administration and performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for review and approval of all products submitted by Consultant but not the authority to enlarge the Scope of Work or change the total compensation due to Consultant under this Agreement. The City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Scope of Work or change the Consultant's total compensation subject to the provisions contained in Section 3.3 of this Agreement. Consultant shall not accept direction or orders from any person other than the City Manager, City's Representative or his/her designee.

3.2.7 Consultant's Representative. Consultant hereby designates Betsy Lindsay, President/CEO or his/her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full

to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his/her best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.8 Coordination of Services. Consultant agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

3.2.9 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.10 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If Consultant performs any work knowing it to be contrary to such laws, rules and regulations, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold City, its officials, directors, officers, employees, agents, and volunteers free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.11 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions, where applicable, shall include, but shall not be limited to: (A) adequate life protection and lifesaving equipment and procedures; (B) instructions in accident prevention for all employees and subconsultants, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.2.12 Insurance. Consultant agrees to procure and maintain, at Consultant's expense all insurance specified in Exhibit "C" attached hereto and by this reference incorporated herein. Consultant shall require all subconsultants to carry the same policies and limits of insurance that the Consultant is required to maintain, unless otherwise approved in writing by the City.

3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "D" attached hereto and incorporated herein by reference. The total compensation shall not exceed fifty-five thousand dollars (\$55,000) without written approval of the City Council or City Manager as applicable. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit to City a monthly invoice which indicates work completed and hours of Services rendered by Consultant. The invoice shall describe the amount of Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the invoice. City shall, within 30 days of receiving such invoice, review the invoice and pay all non-disputed and approved charges thereon. If the City disputes any of Consultant's fees, the City shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth therein.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by City, or included in Exhibit "D" of this Agreement.

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from the City.

3.3.5 Rate Increases. In the event that this Agreement is renewed pursuant to Section 3.1.2, the rate set forth in Exhibit "D" may be adjusted each year at the time of renewal as set forth in Exhibit "D."

3.3.6 Labor Code Requirements.

3.3.6.1 Prevailing Wages. 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 "public works" and "maintenance" projects. **If** the Services 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 make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold the City, its officials, officers, employees, agents, and volunteers free and harmless from any claim or liability arising out of any failure or

alleged failure to comply with the Prevailing Wage Laws.

3.3.6.2 Registration. If the Services are being performed as part of an applicable "public works" or "maintenance" project, in addition to the foregoing, then pursuant to Labor Code sections 1725.5 and 1771.1, the Consultant and all subconsultants must be registered with the Department of Industrial Relations ("DIR"). Consultant shall maintain registration for the duration of the project and require the same of any subconsultants. This project may also be subject to compliance monitoring and enforcement by the DIR. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code sections 1725.5 and 1771.1 shall not apply to Services performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code sections 1725.5 and 1771.1.

3.4 Accounting Records.

3.4.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of four (4) years from the date of final payment under this Agreement.

3.5 General Provisions.

3.5.1 Termination of Agreement.

3.5.1.1 Grounds for Termination. City may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time, with or without cause, by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to City, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Consultant: UltraSystems Environmental Inc.
16431 Scientific Way

Irvine, CA 92618
ATTN: Betsy Lindsay, President/CEO

City: City of San Clemente
910 Calle Negocio
San Clemente, CA 92673
ATTN: Samantha Wylie, Beaches, Parks & Recreation
Director

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5.3 Ownership of Materials and Confidentiality.

3.5.3.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). Consultant shall require all subconsultants to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by the City. City shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

3.5.3.2 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents & Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of City, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

3.5.3.3 Confidential Information. The City shall refrain from releasing Consultant's proprietary information ("Proprietary Information") unless the City's legal counsel determines that the release of the Proprietary Information is required by the California Public Records Act or other applicable state or federal law, or order of a court of competent jurisdiction, in which case the City shall notify Consultant of its intention to release Proprietary Information. Consultant shall have five (5) working days after receipt of the Release Notice to give City written notice of Consultant's objection to the City's release of Proprietary Information. Consultant shall indemnify, defend and hold harmless the City, and its officers, directors, employees, and agents

from and against all liability, loss, cost or expense (including attorney's fees) arising out of a legal action brought to compel the release of Proprietary Information. City shall not release the Proprietary Information after receipt of the Objection Notice unless either: (1) Consultant fails to fully indemnify, defend (with City's choice of legal counsel), and hold City harmless from any legal action brought to compel such release; and/or (2) a final and non-appealable order by a court of competent jurisdiction requires that City release such information.

3.5.4 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.5 Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.5.6 Indemnification.

3.5.6.1 To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

3.5.6.2 If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

3.5.7 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

3.5.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Orange County.

3.5.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.5.10 City's Right to Employ Other Consultants. City reserves right to employ other consultants in connection with this Project.

3.5.11 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.5.12 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.13 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.5.14 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.15 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.5.16 No Third-Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.17 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.18 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.19 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of City's Minority Business

Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.5.20 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.5.21 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.22 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.6 Subcontracting.

3.6.1 Prior Approval Required. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

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

City Attorney

**APPROVED AS TO AVAILABILITY
OF FUNDING:**

Finance Authorization

("CONSULTANT")

By: _____

Its: _____

Dated: _____, 20__

EXHIBIT "A"
SCOPE OF SERVICES

MAJOR TASK 1.0: PROJECT INITIATION

Task 1.1 - Project Kick-Off Meeting. UltraSystems' assigned Project Director, Betsy Lindsay, MURP and Project Director and Michael Milroy, MS, Project Manager will attend one (1) project kick-off meeting with the City Staff. Due to Covid, this meeting may be conducted via Zoom versus in-person.

UltraSystems will be responsible for taking the minutes of the meeting and distributing those minutes to City staff and any other persons/entities deemed appropriate by the City. The purpose of the orientation meeting is to: (1) introduce the key participants in the environmental review process; (2) establish lines of authority and the chain of command (3) review and verify the project schedule with all parties; (4) review and verify all project deliverables with all parties; (5) receive all technical studies, along with any other materials the City deems pertinent to the project; and, (6) verify project communication and data/document transfer protocols. We assume that the City will provide us with the following plans and technical studies:

- Geotechnical Investigation Report
- Hydrology Study
- Preliminary Water Quality Management Plan (WQMP)
- Landscape Plan (in final form)
- Renderings

Task 1.2 – Progress Meetings, Public Hearings and Project Management/Coordination.

This Task facilitates the project management functions of our Project Manager. Efforts would include but not necessarily be limited to: coordinating with the City, sub-consultants and any other entities the City deems appropriate; monitoring and controlling labor and other direct costs; monitoring Task execution and completion per the plan; and the preparation of routine correspondence to the City.

This Task also facilitates the attendance by our Project Manager at two (2) face to face progress meetings with City Staff. Typically, these will be scheduled after submittal of a key document. In addition, This Task also facilitates attendance and participation by our Project Manager at two (2) public hearings (Planning Commission and City Council). We have also provided time in the budget for a weekly conference call with City staff throughout the contract performance period.

Task 1.3 – Prepare Project Description. Based on information provided by the Project Applicant and/or the City, UltraSystems will prepare a Project Description in full compliance with the content provisions set forth in §15124 of the State CEQA Guidelines, as amended. The Project Description will graphically and textually identify the location and boundaries of the Proposed Project on both an area-wide and local basis. The Project Description will then identify the objectives of the Proposed Project and follow that with a discussion of the Project's technical, economic and environmental characteristics including principal engineering proposals and supporting public service facilities. The Project Description will describe entitlements requiring approval for the proposed project to be implemented.

UltraSystems will submit a draft Project Description to the City for review and comment and then prepare a Final Project Description pursuant to any comments or edits made by the City. UltraSystems will then use the Final Project Description as the basis for environmental analysis for the proposed project.

MAJOR TASK 2.0: BACKGROUND DATA COLLECTION/PREPARE TECHNICAL STUDIES

Task 2.1 - Background Data Collection/Evaluation. For those issues in the Initial Study requiring evaluation but for which no technical study will either be prepared or made available by the project applicant, UltraSystems will conduct a literature search and field visit to document existing conditions on the Project Site and surrounding area. Sources of data to be used in this analysis include, the City's General Plan and its attendant Program EIR, interviews and/or responses to service/utility letters of inquiry, CEQA compliance documents prepared for other projects in the immediate area, among other items.

In addition to the foregoing, The UltraSystems Project Team will prepare the following technical assessments: 1) Air Quality and Greenhouse Gas Emissions Assessment; 2) Cultural Resources Records Search; 4) Noise Impact Assessment; and 5) Traffic Impact Analysis. UltraSystems will also obtain a Vertebrate Paleontology Overview from the Los Angeles County Museum of Natural History.

UltraSystems is also proposing a Phase I Environmental Site Assessment as an Optional Task.

Task 2.2 - Air Quality and Greenhouse Gas Emissions Impact Assessment. An air quality technical assessment would be prepared to establish existing conditions and assess the potential environmental effects of the Project. Existing conditions would be established by assessing ambient air quality monitoring data available during the past three years from the regional Air Quality Management District (AQMD), California Air Resources Board (CARB), and U.S. Environmental Protection Agency (EPA) for the nearest monitoring station(s) to the project site. The influence of area topography and meteorology on attainment of federal and California ambient air quality standards (AAQS) will be evaluated. The assessment would identify: (1) existing and reasonably foreseeable sensitive receptors near the Project site or near roadway/intersections that could be affected by Project traffic and stationary source emissions, and (2) existing major sources of air pollutants in the Project vicinity, including sources of toxic air contaminants and odorous emissions.

Using CalEEMod version 3016.3.2 and information from the traffic assessment, UltraSystems will estimate criteria pollutant and greenhouse gas (GHG) emissions from Project construction and operation. Criteria pollutant emissions will be compared with published significance thresholds. Where significant impacts are identified, mitigation measures in the form of equipment use, transportation provisions, energy efficiency, and other measures would be recommended to reduce or avoid potential Project-specific or cumulative impacts on air quality and/or greenhouse gases to less than significant levels. Effectiveness of the mitigation measures would be quantified, and compared to significance thresholds, to the extent practicable.

Task 2.3 - Cultural Resources Records Search. A literature and records search will be conducted at the local South Central Coastal Information Center at California State University, Fullerton, and other information repositories. This prehistoric and historic archaeological literature and record review will include cultural technical reports, site records, previous assessments, historic USGS topo maps, and related cultural and historical documentation to identify cultural resources within the Area of Potential Effect (APE). The Native American Heritage Commission (NAHC) will be contacted to request a search to identify culturally significant sites in their Sacred Lands File, if any, and obtain a list of Native American tribes, organizations and interested individuals that should be contacted to provide information on culturally important sites within the one-half mile Area of Potential Effect (APE).

The Records Search findings will be discussed in the Initial Study Cultural Resources section;

the section will also provide recommendations for avoidance or preservation of cultural resources that may be encountered during construction or other Project activities, and provide mitigation measures to protect and preserve cultural resources in compliance with CEQA and local standards if avoidance is not feasible.

Task 2.4 - Noise Impact Assessment. UltraSystems will document existing ambient noise levels at the property line and along roadway segments that could be affected by the proposed Project. Ambient noise levels would be measured using a Quest Technologies, SoundPro, DL-1-1/3 noise meter that satisfies standards outlined in American National Standard Institute (ANSI) S1.13-1995 (standard measurement of sound pressure levels in Air). Current and future traffic noise levels along studied roadway segments without and with the Project will be estimated using Federal Highway Administration (FHWA) Traffic Noise Model (TNM®), Version 2.5.

Noise levels generated by construction activities will be calculated for each phase of development. UltraSystems has substantial experience with calculating noise levels from all phases of construction, including any type of trenching, site preparation, excavation, and framing for any structures. When data are available, UltraSystems will obtain information on the length of each phase of construction and the types and numbers of pieces of equipment to be used. Otherwise, equipment requirements and scheduling on the basis of our past experience and our in-house library of noise emissions characteristics of most types of construction equipment will be used. The significance of construction noise exposures will be determined by comparing absolute levels with standards in the noise element of the local general plan and municipal code, or by comparing increases in exposure with other relevant criteria.

UltraSystems will determine the potential for buildout of the proposed project to cause a substantial permanent noise increase above levels without the project at the property line, near any sensitive receptors, and along studied arterial roadways. Consideration will be given to both point (stationary) and non-point (mobile) noise sources. Predicted noise levels will be compared to adopted thresholds and goals, policies, and objectives in local general plan, municipal code or other relevant criteria. Conclusions will be drawn as to whether any potential increase would represent a significant impact requiring mitigation. Measures will be recommended as needed to mitigate the impacts of the project. An evaluation of the effectiveness of potential mitigation measures will also be provided.

Task 2.5 – Paleontological Resources Assessment. The project would involve deeper excavations than were done for paving the site; thus, project development could affect buried paleontological resources. UltraSystems will contact The Los Angeles County Natural History Museum (LACM) to request previously recorded paleontological resources for the project site and vicinity. A field survey is unnecessary, as the entire site is paved and surface soil conditions are not visible. The Paleontological Overview from the LACM will be discussed in the Initial Study and will be included as an appendix to the Initial Study.

Task 2.6 - Traffic Impact Analysis. The scope of work detailed below will be in compliance the City guidelines set forth by the California Environmental Quality Act (CEQA), the City of San Clemente, Public Works requirements.

Task 2.6.1 - Trip Generation Memorandum. A trip generation will be prepared for the proposed project using the ITE Trip Generation Manual, 11th Edition. The proposed trips will be converted to passenger car equivalents (PCE) using the Southern California Air Quality Management District's recommended truck mix by axle type vehicle mix calculations or an equivalent standard. A draft trip generation memorandum will be completed on official letterhead for the City to review. If the City has any comments on the memorandum, the trip generation will be adjusted

accordingly before the submittal of a final PDF to the City.

Task 2:6.2 - VMT Screening Level Analysis. If upon completion of the trip generation memorandum, it is determined that the proposed park Master Plan Update will require a vehicle miles traveled (VMT) analysis per CEQA guidelines. The VMT analysis will include the following:

- Screening: The proposed project will be screened per the County of Orange's screening requirements for non-retail project trip generation. If this threshold is exceeded, then further analysis will be required to determine impact.
- Impact Criteria: Based on the County's guidelines, this usage would fall under Office, Manufacturing, or Industrial Projects. The County defines the following impact thresholds to determine significance.

Task 2.6.3 - Develop Project Mitigations. If it is determined that significant impacts are created by the proposed project, potential mitigation measures for a development project's VMT impacts will be proposed per the County's recommended transportation demand management (TDM) strategies.

MAJOR TASK 3.0 - INITIAL STUDY/MITIGATED NEGATIVE DECLARATION (IS/MND) AND MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

Task 3.1 – Administrative Draft Initial Study. UltraSystems will prepare an Administrative Draft IS pursuant to the requirements of CEQA § 21080 and §§ 15060 through 15065 of the State CEQA Guidelines, both as amended. Based on our review of other similar documents previously prepared for the City, the Admin. Draft IS will open with an introduction that: identifies what the document is, explains CEQA, and then the role it plays in the environmental review process. Next, the document will describe the proposed project. The project description will be followed by a page identifying what determination the City (as Lead Agency) has made regarding the significance of the effects attributable to the proposed project.

As mentioned previously, the City has already preliminarily determined that the proposed project is unlikely to yield environmental impacts which cannot be mitigated to less than significant levels. Our firm agrees with the City's preliminary determination at this time. The next section of the Administrative Draft IS contains the environmental review of the proposed project. This environmental assessment portion of the Admin. Draft IS patterned after State CEQA Guidelines Appendix G.

Assuming that the City's current preliminary determination holds, the information developed in the IS will serve as substantial evidence that supports a preliminary conclusion that: (1) the project would not produce a significant effect on the environment, and a Negative Declaration (ND) may be issued, or (2) the project would not produce a significant effect on the environment provided that recommended proposed mitigation measures are implemented, and a Mitigated Negative Declaration (MND) may be issued. It is noted that the environmental assessment portion of the Admin. Draft IS will be based on a combination of the technical studies identified in previous Major Task 2.0, information obtained while engaging in previous Task 2.1, other technical studies, applicant provided information, and other informational sources. Upon completion, the Admin. Draft IS will be submitted to the City for review and comment.

Task 3.2 – Administrative Draft MND and Mitigation Monitoring and Reporting Program MMRP. UltraSystems would use the Initial Study as the basis for preparation of the Screencheck Draft MND. Mitigation measures would be selected to avoid or reduce potential environmental

impacts to less than significant levels, where feasible. UltraSystems will also prepare a draft Mitigation Monitoring and Reporting Program (MMRP) pursuant to CEQA Guidelines Section 15097. The MMRP will specify: (1) the responsibility for implementation; (2) the timing for implementation; (3) the mechanisms of monitoring activities, including the frequency, contact and format for reporting requirements; and (4) the content, requirements and ultimate disposition of a Final MMRP. Upon completion, UltraSystems will submit the administrative draft IS/MND and MMRP to City staff for review and comment.

Task 3.3 – Draft Initial Study, Draft MND and Draft MMRP. Upon receipt of City comments on the Administrative Draft Initial Study, Administrative Draft IS/MND, and Administrative Draft MMRP, UltraSystems will make the appropriate revisions and then resubmit the revised documents for final City approval and permission to notice, print and circulate the Draft IS/MND/MMRP document.

Task 3.4 – Notice and Circulate Draft IS/MND/MMRP. UltraSystems will work with the City to compile the distribution list for the Draft IS/MND. UltraSystems will identify Local, Responsible and Trustee agencies defined in CEQA Guidelines §§ 15381 and 15386, and will consult with each, as appropriate, to satisfy Public Resource Code (PRC) § 21080.3 and CEQA Guidelines § 15063(g). UltraSystems will submit the draft distribution list to the City for review and comment. UltraSystems will also prepare a master copy of the Public Draft IS/MND/MMRP for reproduction. UltraSystems will coordinate the production of copies for public distribution and deliver the environmental document (IS/MND/MMRP) to the State Clearinghouse. UltraSystems will complete the following tasks on behalf of the City.

- Prepare and distribute a Notice of Intent to Adopt an MND (NOI) to the County Clerk and State Clearinghouse to announce the 30-day public review period as required by Public Resources Code § 21091(b) and CEQA Guidelines § 15073(a). UltraSystems will send the NOI by certified mail or Federal Express to verify receipt. UltraSystems will also post the NOI in a local paper of general circulation.
- Prepare and distribute a Notice of Completion (NOC) which will also serve as the environmental document transmittal form to all recipients of the NOI, public review Draft IS/MND/MMRP, NOI, and Draft MMRP.
- Mail up to 25 required notices to affected agencies and interested persons or stakeholders. Mailings will be via certified mail (return receipt requested). Proof of delivery will be assembled, and provided to the City to document compliance. The NOI will indicate the final day for accepting written comments.

MAJOR TASK 4.0 - FINAL IS/MND, MMRP AND NOTICING

Task 4.1 - Response to Comments. UltraSystems will prepare responses to environmental comments received on the Draft IS/MND/MMRP. UltraSystems would review the content of the letters to determine the nature and extent of the comments received. We have assumed a level of effort on response to comments commensurate with a relatively low amount of public comments. UltraSystems will prepare responses for up to twenty environmental comments received on the Draft IS/MND/MMRP. The RTCs would be provided to the City, and after receiving one set of consolidated comments from the City, the RTCs would be finalized.

Task 4.2 - Final IS/MND/MMRP. UltraSystems will prepare the final IS/MND/MMRP that will include revisions to the Draft IS/MND/MMRP based on comments received. If required, UltraSystems will assist the City in soliciting and incorporating the views of Responsible

Agencies regarding the scope and effectiveness of the monitoring and reporting program and finalize the MMRP.

Task 4.3 – Prepare and File Notice of Determination. UltraSystems will draft a Notice of Determination for City Staff review prior to the final City Council hearing on proposed project. Within 5 working days of IS/MND/MMRP approval, UltraSystems' staff will post the NOD with the Office of the County Clerk. The Payment of County Clerk filing fees (\$75) necessary to file the NOD with the County Clerk and be reimbursed by the City. The City assumes that the project will qualify for a No Effect Determination (NED) from the California Department of Fish and Wildlife; UltraSystems agrees, since the site is paved. UltraSystems will assist the City with preparation of an application for an NED. A copy of the NOD will also be sent to the State Clearinghouse.

OPTIONAL TASK

Phase I Environmental Site Assessment

UltraSystems would retain Citadel EHS to conduct a Phase I Environmental Site Assessment (ESA) of the project site. The ESA would adhere to the standards set forth in American Society for Testing and Materials (ASTM) E-1527-13, Standard Practice for Environmental Site Assessments, and the All Appropriate Inquiry (AAI) Rule published in 40 CFR Part 312 (November 1, 2013). The ESA would consist of the following tasks:

- Perform a building walk around to identify any obvious visual signs of on-site contamination, and investigate adjacent land use for possible source(s) of contamination;
- Review pertinent, readily available documents and maps regarding geologic and hydrogeologic conditions for the Site;
- Review, interpret, and provide copies of available historical aerial photographs of the Site and vicinity;
- Review U.S. Environmental Protection Agency (EPA), State, County, and local lists of known potential hazardous waste sites or landfills, and sites currently under investigation for environmental violations;
- Review results from a search of available current land title records for environmental cleanup liens and other activity and use limitations, such as engineering controls and institutional controls;
- Conduct inquiries with applicable State, County, and Municipal regulatory agencies for information regarding building or environmental permits, environmental violations or incidents, and/or status of enforcement actions at the Site;
- Conduct interviews with key personnel to evaluate site history, site operations and maintenance procedures, waste stream generation, and presence of above ground and underground storage tanks, (ASTs/USTs), polychlorinated biphenyls (PCBs) in light ballasts, transformers, capacitors, and hydraulic systems; and
- Prepare a summary of findings. The summary of findings shall include a project narrative, illustrations, copies of applicable historical aerial photographs, topographic maps, fire insurance maps, Site vicinity photographs, regulatory database search results, telephone logs, and/or copies of pertinent building permits.

Following is a table depicting our contractual deliverables to the City organized by major Work Program Task.

SCOPE OF WORK PROGRAM - DELIVERABLES MATRIX BY MAJOR TASK

| | |
|--|---|
| MAJOR TASK 1.0 – PROJECT INITIATION | <ul style="list-style-type: none"> • One (1) electronic copy in pdf of kickoff meeting minutes. • One (1) electronic copy in pdf format each of the draft and final project description. |
| MAJOR TASK 2.0 – BACKGROUND DATA COLLECTION/ PREPARE TECHNICAL STUDIES | <ul style="list-style-type: none"> • No separate deliverables; the findings of the cultural resources records search and the traffic impact assessment will be discussed in the relevant sections of the initial study. |
| MAJOR TASK 3.0 – INITIAL STUDY, MITIGATED NEGATIVE DECLARATION AND MITIGATION MONITORING AND REPORTING PROGRAM | <ul style="list-style-type: none"> • One (1) printed and one (1) electronic copy in MSWord and PDF each of the administrative draft initial study and draft initial study. • One (1) electronic copy in pdf each of the draft and final NOI and NOC • Certified mail receipts for those notices sent agencies, stakeholders and others who may have requested to be notified |
| MAJOR TASK 4.0 – FINAL IS/MND/NOTICING | <ul style="list-style-type: none"> • One (1) electronic copy each in MSWord and PDF of the admin. Draft and final response to comments • One electronic copy each of the draft and final NOD |
| OPTIONAL TASK (Phase I Environmental Site Assessment) | <ul style="list-style-type: none"> • One (1) electronic copy of draft phase i ESA report; one (1) electronic and 1 printed copy of final phase I ESA report |

EXHIBIT "B"
SCHEDULE OF SERVICES

| TASK NO. | TASK NAME | TASK DURATION (WEEKS) | CUMULATIVE DURATION (WEEKS) |
|-----------------|---|------------------------------|------------------------------------|
| 1.0 | PROJECT INITIATION | | |
| 1.1 | Project Kick-Off Meeting | 0.1 | < 1 |
| 1.2 | Progress Meetings | <i>Continuous</i> | <i>Continuous</i> |
| 1.2 | Public Hearings | n/a | n/a |
| 1.2 | Project Management/Coordination | <i>Continuous</i> | <i>Continuous</i> |
| 1.3 | Project Description | 3-4 | 3-4 |
| 2.0 | BACKGROUND DATA COLLECTION/TECHNICAL STUDIES | | |
| 2.1 | Background Data Collection/Evaluation | 2-3 | 4-6 |
| 2.2 | Air Quality/Greenhouse Gas Emissions Impact Assessment | 2 | 12 |
| 2.3 | Cultural Resources Record Search | 12 | 14 |
| 2.4 | Noise Impact Assessment | 2 | 12 |
| 2.5 | Paleontological Resources Assessment | 12 | 14 |
| 2.6 | Traffic Impact Assessment | 4-6 | 10 |
| 2.7 | OPTIONAL TASK: Phase I Environmental Site Assessment | 4 | TBD |
| 3.0 | INITIAL STUDY/MITIGATED NEGATIVE DECLARATION/MITIGATION MONITORING & REPORTING PROGRAM | | |
| 3.1 | Administrative Initial Study | 4-6 | 17 |
| 3.2 | Administrative Draft MND/EA and MMRP | 2 | 19 |
| 3.3 | Draft IS/Draft MND/EA/Draft MMRP | 4 | 23 |
| 3.4 | Notice and Circulate Draft IS/MND/MMRP | < 1 | 24 |
| 4.0 | FINAL IS/MNDEA/MMRP AND NOTICING | | |
| 4.1 | Response to Comments | 2 | 26 |
| 4.2 | Final IS/MND/MMRP | 2 | 28 |
| 4.3 | Prepare and File NOD | TBD | TBD |

EXHIBIT "C"
INSURANCE REQUIREMENTS

3.2.12 Insurance. **[CITY RISK MANAGER TO REVIEW PRIOR TO EACH USE]**

3.2.12.1 Time for Compliance. Consultant shall not commence work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required under this section.

3.2.12.2 Types of Insurance Required. As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder, and without limiting the indemnity provisions of the Agreement, the Consultant, in partial performance of its obligations under such Agreement, shall procure and maintain in full force and effect during the term of the Agreement the following policies of insurance. If the existing policies do not meet the insurance requirements set forth herein, Consultant agrees to amend, supplement or endorse the policies to do so.

(A) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 0001, or the exact equivalent, with limits of not less than \$1,000,000 per occurrence and no less than \$2,000,000 in the general aggregate. Defense costs shall be paid in addition to the limits. The policy shall contain no endorsements or provisions (1) limiting coverage for contractual liability; (2) excluding coverage for claims or suits by one insured against another (cross-liability); or (3) containing any other exclusion(s) contrary to the terms or purposes of this Agreement.

(B) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1), or the exact equivalent, covering bodily injury and property damage for all activities with limits of not less than \$1,000,000 combined limit for each occurrence. Workers' Compensation: Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 per accident for bodily injury and disease.

(C) Professional Liability (Errors & Omissions): Professional Liability insurance or Errors & Omissions insurance appropriate to Consultant's profession with limits of not less than \$1,000,000 per claim. Covered professional services shall specifically include all work to be performed under the Agreement and delete any exclusions that may potentially affect the work to be performed (for example, any exclusions relating to lead, asbestos, pollution, testing, underground storage tanks, laboratory analysis, soil work, etc.). If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least three (3) years from termination or expiration of this Agreement.

3.2.12.3 Insurance Endorsements. Required insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms approved by the City to add the following provisions to the insurance policies:

(A) Commercial General Liability:

(1) Additional Insured: The City, its officials, officers, employees, agents, and volunteers shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement.

Additional Insured Endorsements shall not (1) be restricted to "ongoing operations"; (2) exclude "contractual liability"; (3) restrict coverage to "sole" liability of Consultant; or (4) contain any other exclusions contrary to the terms or purposes of this Agreement. For all policies of Commercial General Liability insurance, Consultant shall provide endorsements in the form of ISO CG 20 10 10 01 (or endorsements providing the exact same coverage) to effectuate this requirement.

(2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(B) Automobile Liability:

(1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

3.2.12.4 Professional Liability (Errors & Omissions):

(A) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(B) Contractual Liability Exclusion Deleted: This insurance shall include contractual liability applicable to this Agreement. The policy must "pay on behalf of" the insured and include a provision establishing the insurer's duty to defend.

3.2.12.5 Workers' Compensation:

(A) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

3.2.12.6 Primary and Non-Contributing Insurance. All policies of Commercial General Liability and Automobile Liability insurance shall be primary and any other insurance, deductible, or self-insurance maintained by the City, its officials, officers, employees, agents, or volunteers shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

3.2.12.7 Waiver of Subrogation. All policies of Commercial General Liability and Automobile Liability insurance shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against the City, its officials, officers, employees, agents, and volunteers, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

3.2.12.8 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention greater than \$5,000 must be approved in writing by the City and shall protect the City, its officials, officers, employees, agents, and volunteers in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

3.2.12.9 Evidence of Insurance. The Consultant, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates on forms approved by the City, together with all endorsements affecting each policy. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15 days) prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced and not replaced immediately so as to avoid a lapse in the required coverage, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

3.2.12.10 Failure to Maintain Coverage. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced immediately so as to avoid a lapse in the required coverage, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement effective upon notice.

3.2.12.11 Acceptability of Insurers. Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A- VII and authorized to transact business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

3.2.12.12 Enforcement of Agreement Provisions (non estoppel). Consultant acknowledges and agrees that actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligation on the City nor does it waive any rights hereunder.

3.2.12.13 Requirements Not Limiting. Requirement of specific coverage or minimum limits contained in this Appendix are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance.

3.2.12.14 Insurance for Subconsultants. Consultant shall include all subconsultants engaged in any work for Consultant relating to this Agreement as additional insureds under the Consultant's policies, or the Consultant shall be responsible for causing subconsultants to purchase the appropriate insurance in compliance with the terms of these Insurance Requirements, including adding the City, its officials, officers, employees, agents, and volunteers as additional insureds to the subconsultant's policies. All policies of Commercial General Liability insurance provided by Consultant's subconsultants performing work relating to this Agreement shall be endorsed to name the City, its officials, officers, employees, agents and

volunteers as additional insureds using endorsement form ISO CG 20 38 04 13 or an endorsement providing equivalent coverage. Consultant shall not allow any subconsultant to commence work on any subcontract relating to this Agreement until it has received satisfactory evidence of subconsultant's compliance with all insurance requirements under this Agreement, to the extent applicable. The Consultant shall provide satisfactory evidence of compliance with this section upon request of the City.

EXHIBIT "D"
COMPENSATION

| TASK NUMBER | TASK NAME | FEE (\$) |
|---|--|-----------------|
| 1.0 | Project Initiation, Project Management, Coordination, Project Description | |
| 1.1 | Project Kick-Off Meeting | \$1,440 |
| 1.2 | Progress Meetings, Public Hearings, Project Management/Coordination | \$1,940 |
| 1.3 | Project Description | \$2,170 |
| 2.0 | Background Data Collection Prepare Technical Studies | |
| 2.1 | Background Data Collection and Evaluation | \$2,260 |
| 2.2 | Air Quality/GHG Emissions | \$8,450 |
| 2.3 | Cultural Resources Records Search | \$4,450 |
| 2.4 | Noise Impact Assessment | \$5,880 |
| 2.5 | Paleontological Records Search | \$460 |
| 2.6 | Trip Generation Memorandum and VMT Assessment | \$5,610 |
| 3.0 | Initial Study, Mitigated Negative Declaration Environmental Assessment, Mitigation Monitoring and Reporting Program | |
| 3.1 | Administrative Draft Initial Study | \$5,630 |
| 3.2 | Administrative Draft MND and Draft MMRP | \$1,710 |
| 3.3 | Draft IS/Draft MND and Draft MMRP | \$2,880 |
| 3.4 | Notice and Circulate Draft IS/MND/MMRP | \$1,620 |
| 4.0 | Final IS/MND/EA/MMRP, and Noticing | |
| 4.1 | Response to Comments | \$2,400 |
| 4.2 | Final IS/MND/MMRP | \$920 |
| 4.3 | Prepare and File NOD | \$320 |
| TOTAL LABOR AND DIRECT COSTS | | \$48,140 |
| OPTIONAL TASK | | |
| | Phase I Environmental Site Assessment | \$3,430 |
| TOTAL LABOR AND DIRECT COSTS INCLUDING OPTIONAL TASK | | \$51,570 |

WORKER'S COMPENSATION INSURANCE CERTIFICATION

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____

Consultant

By: _____

Title

Address
