



AGENDA REPORT

CITY OF SAN CLEMENTE

CITY COUNCIL MEETING

910 Calle Negocio
2nd Floor
San Clemente, California
www.san-clemente.org

Meeting Date: April 16, 2024

Agenda Item: 10G

Submitted By: Utilities

Prepared By: Niki Beach, Environmental Programs Analyst

Subject:

CONSIDERATION OF A RESOLUTION AWARDING A CONTRACT FOR LAND USE SOFTWARE WATER USE COMPLIANCE TO EAGLE AERIAL SOLUTIONS IN AN AMOUNT NOT TO EXCEED \$140,800 FOR THREE YEARS, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT AND FINDING THE ACTION EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

Fiscal Impact:

The total amount of the contract is not to exceed \$140,800 for three years. The first year of services will cost \$42,300, for which there are sufficient funds in Account No. 052-464-43890-000-00000 of the Fiscal Year 2024 budget. The costs of subsequent years of the software subscription will be requested during the annual budget process and billed on an annual basis.

Summary:

Before the City Council is the adoption of Resolution No. 24-53 to authorize the City Manager to execute a Professional Services Agreement with Eagle Aerial Solutions in an amount not to exceed \$140,800 for three subsequent years of subscription to the WaterView Software-as-a-Service online portal. This agreement would provide Utilities staff with the set-up of, and three years of updates and access to, a customized GIS-based portal that integrates water consumption data, landscape area, vegetation type, and census data to provide a real-time snapshot of water conservation performance at the parcel, neighborhood, or City-wide level. It will also provide a means by which to benchmark water use to water conservation objectives imposed on the City by State regulations beginning in 2024. In addition, the software will have capabilities to filter the City's customers by efficiency of water use, eligibility for conservation rebates, underserved community status, and other characteristics that would help staff deliver more targeted and effective outreach to its diverse range of water users.

Background:

Since the passage of SB 606 and AB 1668 in 2018, the State Water Resources Control Board (SWRCB) has developed water conservation regulations that mandate each urban water supplier, such as the City of San Clemente, to develop and report on compliance with an annual aggregate Water Use Objective (WUO) beginning January 1, 2025.

The WUO is being developed by the City and will be self-reported to the SWRCB based on irrigated and/or irrigable areas and population. Water suppliers that are not meeting their WUO will begin to receive Conservation Orders from the SWRCB beginning in 2026. By January 1, 2027, noncompliant water providers may be liable for fines of up to \$1,000 per day, and up to \$10,000 per day if emergency drought conditions exist at the time. Utilities Department staff have been investigating tools to assist with compliance and customer outreach, as the development of

and compliance with a WUO by staff will heavily depend on the ability to view and analyze State-provided irrigated landscape data in a graphical, GIS-based format. Thus, the scope of work for a Request for Proposals in early 2023 focused on development of and access to a software portal that could synthesize State-provided imagery and land use classifications with U.S. Census population data and the City's monthly water meter read/water consumption data.

Following research regarding whether there were any local software vendors and the release of a Request for Proposals for Land Use Software for WUO Compliance, the City received written responses from two firms: Software Staffers and Eagle Aerial Solutions, in the amounts of approximately \$110,000 and \$140,800, respectively. Based on the proposals and interviews, Eagle Aerial Solutions' WaterView subscription is recommended due the software being more effective at assisting staff with managing regulatory compliance and targeting specific residents for water efficiency messaging, rebate opportunities, and other such programs, using analysis of water use by parcel and neighborhood to locate high use relative to customer type and parcel size to improve outreach for customers to improve water use efficiency.

Initially, the software will import data for and assess the performance of residential parcels. Staff has negotiated the contract with Eagle Aerial Solutions to include commercial and institutional landscape water use efficiency in the portal during the second and third years, since water use by both of these customer types will be incorporated into the City's annual WUO performance report to the State beginning in 2024.

Council Options:

- Adopt Resolution No. 24-53 to approve and authorize the City Manager to execute the Professional Services Agreement with Eagle Aerial Solutions for the WaterView Software-as-a-Service online portal and finding the action exempt from CEQA.
- Request modifications to the Professional Services Agreement with Eagle Aerial Solutions and have staff return with a new Resolution for City Council consideration.
- Deny the adoption of Resolution No. 24-53 to authorize execution of the Professional Services Agreement with Eagle Aerial Solutions and provide direction to staff.
- Continue the item with direction to staff to provide additional information.

Environmental Review/Analysis:

The recommended action is categorically exempt from CEQA pursuant to 14 CCR 15306 - Information Collection, which includes basic data collection, research, experimental management and resource evaluation activities, which do not result in a serious or major disturbance to an environmental resource.

Recommended Actions:

Staff recommends that the City Council adopt Resolution No. 24-53, which would:

1. Find the project categorically exempt from CEQA pursuant to 14 CCR 15306 - Information Collection;
2. Award a three-year Professional Services Agreement to Eagle Aerial Solutions for WaterView subscriptions; and
3. Authorize the City Manager to execute a Professional Services Agreement with Eagle Aerial Solutions in an amount not to exceed \$140,800.

Attachment:

1. Resolution No. 24-53
2. Professional Consultant Services Agreement with Eagle Aerial Solutions

Notification:

All proposers

RESOLUTION NO. 24-53

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AWARDED A PROFESSIONAL SERVICES AGREEMENT TO EAGLE AERIAL SOLUTIONS FOR THREE SUBSEQUENT YEARS OF SUBSCRIPTION TO THE WATERVIEW SOFTWARE-AS-A-SERVICE PORTAL, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT IN AN AMOUNT NOT TO EXCEED \$140,800, AND FINDING THE PROJECT CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT UNDER 14 CCR SECTION 15306 – CLASS 6 (INFORMATION COLLECTION)

WHEREAS, the City of San Clemente Utilities Department houses a Water Conservation Program consisting of one full-time staff member; and

WHEREAS, in 2018, the Governor of the State of California signed into law AB 1668 and SB 606, collectively known as the “Making Conservation a California Way of Life” legislation; and

WHEREAS, on March 22, 2023, and again on October 4, 2023 the State Water Resources Control Board (“Water Board”) held rulemaking workshops to propose final regulations for the implementation of AB 1668 and SB 606; and

WHEREAS, the proposed Water Board regulations will require all urban retail water suppliers, including the City of San Clemente, to develop and comply with an annual water use objective (WOU) that is a function of, among other inputs, residential population and aggregate landscape area throughout its water service area; and

WHEREAS, the City currently has over 17,700 diverse and unique potable and recycled water connections to consider when determining which customers to reach out to on conservation issues, and how; and

WHEREAS, City staff will require additional resources to evaluate, and if necessary, educate and/or enforce on, individual cases of excessive water use that may be impeding the City from achieving or maintaining aggregate compliance with the State Board’s WOU; and

WHEREAS, the City conducted a Request for Proposals (RFP) in February 2023 for Land Use Software for WOU Compliance, following which Eagle Aerial Solutions was determined to be best qualified to meet the City’s needs with their WaterView platform, and their price was fair and reasonable.

NOW, THEREFORE, the City Council of the City of San Clemente does hereby find, determine and resolve as follows:

Section 1. That based on a review of the record as a whole, the City Council finds that the project is categorically exempt from the California Environmental Quality Act pursuant to 14 CCR section 15306 – Class 6 (Information Collection) because it consists of basic data collection, research, experimental management and resource evaluation activities that do not result in a serious or major disturbance to an environmental resource.

Section 2. That the City Council hereby awards a professional services agreement to Eagle Aerial Solutions for an annual subscription to the WaterView water conservation/land use portal for three years in an amount not to exceed \$140,800.

Section 3. That the City Manager is authorized and directed to execute a professional services agreement with Eagle Aerial Solutions for an annual subscription to the WaterView water conservation/land use portal in a form substantially similar to that presented to the City Council on April 16, 2024.

Section 4. That the City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED AND ADOPTED this _____ day of _____, _____.

ATTEST:

City Clerk of the City of
San Clemente, California

Mayor of the City of San
Clemente, California

STATE OF CALIFORNIA)
 COUNTY OF ORANGE) §
 CITY OF SAN CLEMENTE)

I, LAURA CAMPAGNOLO, City Clerk of the City of San Clemente, California, do hereby certify that Resolution No. 24-53 was adopted at a regular meeting of the City Council of the City of San Clemente held on the _____ day of _____, _____, by the following vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this _____ day of _____, _____.

 CITY CLERK of the City of
 San Clemente, California

Approved as to form:

 Elizabeth A. Mitchell, City Attorney

CITY OF SAN CLEMENTE
PROFESSIONAL CONSULTANT SERVICES AGREEMENT

1. PARTIES AND DATE.

This Agreement is made and entered into this ____ day of _____, 2024, 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 Eagle Aerial Photography, Inc., a Delaware corporation, dba Eagle Aerial Solutions, with its principal place of business at 3333 Michelson Drive, Suite 300, Irvine, CA 92612 ("Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.**2.1 Consultant.**

Consultant desires to provide a subscription on the terms set forth herein to a web-based, Software-as-a-Service ("SaaS") water conservation software solution called WaterView and certain professional SaaS consulting services with respect to the use of the WaterView solution required by the City on the terms and conditions set forth in this Agreement (collectively, "WaterView"). Consultant represents that it is experienced in providing WaterView to public clients, is licensed in the State of California, if applicable, is duly organized and existing under the laws of the State of Delaware, and is registered and authorized to do business in the State of California.

2.2 Project.

City desires to engage Consultant to provide WaterView such subscription and render such professional Software-as-a-Service (SaaS) consulting services with respect to the WaterView solution to assist City with its Water Use Objective ("WUE") Compliance 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 WaterView for the Project. WaterView is more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. WaterView shall be provided 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.

3.1.2 Term. The term of this Agreement shall be for three years from _____, 2024 to _____, 2027 unless earlier terminated as provided herein. The City shall have the unilateral option, at its sole discretion, to renew this Agreement automatically for no more than 2 additional one-year terms at the same prices listed on Exhibit "D." Consultant shall provide WaterView 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. WaterView shall be provided by Consultant or under its supervision. Consultant will determine the means, methods and details of providing WaterView 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 providing WaterView 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 provide WaterView 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 provide WaterView 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 provision of WaterView 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 provide WaterView 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: Wayne Tate, President; or Jazmine Molloy, Rob Whipple, Matt Schaeffer, Marisela Lopez and/or Sierra Terrabonne, Customer Service team members.

3.2.6 City's Representative. The City hereby designates Dustin Burnside, Utilities Manager, 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 Wayne Tate, President, or his/her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority 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 provision of WaterView 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 provide WaterView 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 provide WaterView. 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 provide WaterView, 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 provide WaterView in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to provide WaterView 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 WaterView, 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 providing WaterView, 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 WaterView at the rates set forth in Exhibit "D" attached hereto and incorporated herein by reference. The total compensation for the initial three (3)-year term of this Agreement shall not exceed One Hundred Forty Thousand Eight Hundred dollars (\$140,800) without written approval of the City Council. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement. Authorized Extra Work may not exceed 10% of the value of this Agreement without City Council approval.

3.3.2 Payment of Compensation. Payment in accordance with the terms of Exhibit "D" shall be made at the beginning of each year of the subscription period for WaterView as set forth in Exhibit D.

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 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 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 if Consultant has failed to comply with its obligations under this Agreement after having been given at least seven (7) days' notice of City's belief that Consultant has failed to perform its obligations hereunder and if Consultant has failed to cure such failure within a reasonable period thereafter not to exceed thirty (30) days. Upon termination for cause, the City shall be entitled to be reimbursed for any prepaid subscription fees on a pro rata basis from the date of termination. City may also terminate this Agreement for convenience at any time upon at least thirty (30) days' written notice, but if it does, shall not be entitled to recover any prepaid subscription fees. 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 provision of WaterView 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: Eagle Aerial Solutions
3333 Michelson Dr. Ste. 300
Irvine, CA 92612
ATTN: Wayne Tate

City: City of San Clemente
910 Calle Negocio
San Clemente, CA 92673
ATTN: Laura Campagnolo, City Clerk, and
Dustin Burnside, Utilities Manager

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. Notwithstanding the foregoing, City shall have no right to the WaterView software solution or any portion thereof, other than as licensed for use hereunder, or any dataset procured by Consultant under license from third party vendors in connection with the provision of the WaterView solution.

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 provision of WaterView. Nor shall such materials be disclosed to any person or entity not connected with the provision of WaterView 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 WaterView 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 provision of WaterView, the Project, this Agreement or Consultant's failure to meet any of its obligations under 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.

3.5.6.3 **Intellectual Property and Cyber Liability Indemnity.** With

respect to the use of WaterView by City, Consultant shall indemnify, defend and hold harmless City from and against any claim, action, expense or liability arising from:

a) The theft, dissemination and/or use of confidential or personally identifiable information; including but not limited to personally identifiable information (PII), protected health information (PHI), security codes, access codes, passwords, etc.;

b) Network security liability arising from the unauthorized use of, access to, or tampering with computer systems, including hacker or denial of service attacks;

c) Liability arising from introducing a computer virus into or otherwise causing damage to City's (first-party) or customer's (third party) computer, computer system, network, or similarly related property and the data, software, and programs;

d) Liability arising from professional misconduct or lack of the skill required for performing services defined in this Agreement;

e) Costs associated with restoring, updating, or replacing data;

f) Costs associated with a privacy breach, including notification costs, customer support, forensics, crisis management, public relations consulting, legal services of a privacy attorney, credit monitoring, and identity fraud resolution services for affected individuals; and

g) Liability associated with infringement of intellectual property rights.

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 provision of WaterView.

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/Electronic Signatures. This Agreement may be signed electronically and 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.

[CONTINUED ON FOLLOWING PAGE]

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

ATTEST:

CITY CLERK of the City of
San Clemente, California

By: _____
Andy Hall, City Manager

Dated: _____, 2024

APPROVED AS TO FORM:

Elizabeth A. Mitchell, City Attorney

**APPROVED AS TO AVAILABILITY
OF FUNDING:**

Finance Authorization

Eagle Aerial Photography, Inc. dba Eagle
Aerial Solutions, a Delaware corporation,
("CONSULTANT")

By: _____
Wayne Tate, CEO/CFO

Dated: _____, 2023

By: _____
Paul Clark, Secretary

Dated: _____, 2023

EXHIBIT "A"

SCOPE OF SERVICES

Consultant shall provide WaterView to the City under the Agreement, which shall include the following:

WaterView is an existing web-based program with GIS functionality that is both easy to use and designed to assist with compliance with legislation AB1668/AB606. It utilizes Land Area Measurement (LAM) data from the California Department of Water Resources (DWR), the City's water consumption data, current demographic data, as well as local weather (ET). It will also stay current with the latest California water conservation regulations. The software will assist City staff with targeting water conservation outreach to specific sets of its water customers and tracking, based not only on their water use, but also on their water use efficiency. It will allow the City to assess efficiency at scales ranging from its entire service area to the individual homeowner by applying the calculations used in DWR's Water Use Objective (WUO) indoor and outdoor standards, which in aggregate are a function of population and of local weather data and irrigated and irrigable landscape area.

Platform Overview. The WaterView platform is a cloud-based platform that enables rapid configuration and deployment of geospatial applications. End users can access the WaterView platform from modern browsers including Google Chrome, Microsoft Edge and Mozilla Firefox. The WaterView platform provides a dashboard suitable for water managers to view per-parcel and aggregate statistics over their entire service area. Managers can easily filter any data to gain instant insight into trends relating to land cover and water budgeting, along with the standard dashboards WaterView will provide. WaterView's platform is data-agnostic and can ingest data from a variety of sources. Retail agencies can connect their water meter data, as well as previously acquired aerial imagery and geospatial parcel data. This imported data will be view only and cannot at this time be queried together with other WaterView data in the system. The platform is also very flexible, allowing it to rapidly address policy changes.

Onboarding and Setup. Upon receipt by Consultant of water use data from City, Consultant will normalize and clean up that dataset to at least the 95% level in order to ingest the data into the WaterView system. Consultant will also use the data received from City to assure that meter data is properly geo-located in the WaterView GIS system for accurate mapping. Consultant will consult with City as needed to assure a smooth on-boarding process. Consultant will engage in training and support as described below.

Consultant will update the software with additional capabilities and datasets in service to the WUO water conservation goals. The sequential steps required to implement the work plan are those set forth above with respect to the normalization of datasets received from City and the correction, if necessary, of any geographic datasets that are utilized as part of the functionality of WaterView within the City water service area to the 95th percentage, as indicated above.

Dashboards and Logins. City will have access to several dynamic WaterView datasets, some of which will be displayed on dashboards. These include: Water Efficiency by Parcel, Water Use by Parcel, Land Cover by Parcel using available datasets, Summary Water Use and Efficiency by Agency with performance trends, and Summary Land Cover data. Water budget

data is shown in tabular format, while land cover classification data is visualized through a raster layer on the map if Land Use Cover Data (LUCD) is available, otherwise, in tabular form. WaterView also provides a geospatial map layer that visually highlights the most wasteful parcels using tiered color ramps. Efficiency data is also tied to each individual parcel in tabular format.

Feature functionality. The platform provides on-the-fly filtering and search capabilities, access to in-system recent aerial imagery for every parcel, and the actual imagery used by DWR in creating the LAM dataset, export of tabular and chart data, and pre-defined filters for quick use. Export capability is being developed for map features as well, so users can export .jpg “map snapshots” of individual parcels. City can export any filtered data in tabular (.csv) format.

Technical support. Technical support will be provided through the duration of the contract. The Consultant support teams will review any and all requests within 24 hours and communicate the results to City. Knowledge-transfer meetings and training services will be provided by Consultant. Phone support through a screen share meeting will be provided in addition to the workshop on an ad hoc basis, as reasonably needed. A kick-off meeting will be held to finalize project schedule, after which meetings by conference call will occur as needed. In addition, the software training will be done by a series of onboarding virtual meetings. City will be assigned a Customer Success Advocate that will provide any additional training(s) or campaign development support via virtual meeting platforms and screensharing throughout the life of the WaterView subscription.

Platform Security. WaterView’s platform servers reside in the ISO-27001 and SOC-2 certified Amazon Web Services™ data centers and all communications are encrypted through Public Key Infrastructure (PKI) and standard secure web protocols. In addition, the WaterView platform uses a secure, encrypted, high- performance connection to web-based map tile services to store and display geospatial information.

Consultant developed the WaterView portal in partnership with Digital Map Products, now LightBox, using their existing stable and robust online mapping technology. DMP/LightBox has been providing mapping services for nearly 20 years to large enterprise and government customers including Zillow, Google, Apple, CBRE and the State of California.

Access to WaterView applications and their corresponding associated components is restricted to authenticated users with appropriate permissions. Permissions can be defined at the user-, group-, department-, and organization-level. Furthermore, customer-defined password and security policies are implemented on a per-organization basis. In evaluating the security environment at Amazon Web Services, WaterView reviewed the following information with Amazon:

- Security policies and procedures, both physical and electronic
- IT policy administration and security credentials for the same
- Penetration testing and threat/intrusion detection and response
- Multi-tenant segmentation via secure keys

Amazon maintains significant physical and environmental security measures. Please review the Amazon Security Whitepaper.

Data Integration. Consultant will incorporate the following data into the WaterView portal for City:

1. High-resolution aerial imagery of at least 6-inch pixel resolution
2. City of San Clemente water service area boundaries
3. Parcel boundary, ownership, and lot sizes within the service area
4. Most recent Census-based demographic information specific to household occupancy and annual income down to the greatest available granularity from the data provided at the Census block tract dataset.
5. DWR's own aerial imagery and residential landscape area measurement (LAM) data from DWR's 2018 (or more recent, as available) flyover studies
6. LUCD for polygon-level irrigated areas within Dedicated Irrigation Meter (DIM) parcels (to be provided by the City prior to Year 2 of the contract)
7. Water account usage, customer name and address, account type, and other billing data, updated at least monthly (to be provided by the City on a monthly basis)

Data Analysis and Outputs. Consultant will provide the following analyses and outputs through the WaterView portal for City:

1. Analytical and reporting tools to evaluate individual residential customer water use for comparison to the State's formula for a WUO, based on customer water usage data submitted the City in conjunction with Census data, parcel data and irrigated landscape area provided by DWR, as well as local evapotranspiration (ET) data.
2. Ability to filter and identify specific sets of water customers, such as those who are below their budget as calculated by the above parameters, or those who exceed their water use allowance, for targeted customer outreach and program evaluations
3. Ability to assess potential water use objective compliance inclusive of residential indoor and outdoor performance on a parcel or City-wide basis, or between different demographic parameters.
4. Assessment at-a-glance of compliance with the WUO water budget components at the parcel, neighborhood/HOA, and service area-wide levels.
5. Ability to quickly evaluate how the City is performing in meeting the WUO on the basis of a single billing cycle or set time frame, e.g. the past 6 months, or the most recently complete calendar year.
6. Ability to generate WUO performance components for streamlined reporting to the State Regional Water Resources Control Board (SWRCB) for the annual report to be mandated beginning on January 1, 2024.
7. The ability to filter and create and save an unlimited number of specific lists of parcels for targeted outreach of other water use efficiency campaigns; in particular, the ability to create a list of parcels with the highest proportion of existing turfgrass, in order to produce a targeted marketing list for turf removal rebate programs. Once these lists are created, there will be an ability to compare and track WUO compliance for these parcels over time, or before and after a campaign is implemented.

Representations and Warranties. Consultant represents and warrants that it owns title to WaterView or has the right to license and provide WaterView to City as contemplated by this Agreement. Consultant further represents and warrants that WaterView does not and will not infringe on the intellectual property rights of any third parties.

WaterView will:

- Analyze total water allocation for the water agencies' entire residential service area and at an individual residential parcel level, in compliance with new DWR standards.
- Spot water use trends, track and manage over allocation users within the City's water service area.

- Identify targeted land classifications types, like high turf areas, for effective rebate program promotion.
- Aid in upcoming DWR data review and reporting requirements.
- Continually, billing period to billing period, calculate water use efficiency (per DWR standards) across the residential service area and at a customer/parcel level.
- Host both high resolution aerial imagery and the actual imagery used in DWR's study for the subscribers to access at any time.
- Import and calculate daily ET readings.
- Supply detailed demographic data for more accurate indoor water use efficiency measurements and water use analytics by supplying the average number of residents in the household at the census block tract level.
- Provide various GIS tools along with sophisticated data mining and multi-level querying function.

City will:

- Provide meter location and water use data to be imported into the WaterView portal, including a Unique ID (UID) for each meter location to tie the usage data to the meter address.
- Provide customer names, only if desiring to prepare direct mailings for outreach to target certain customers for water-efficient incentives and consistent with applicable law.
- Provide water usage related to the Unique ID every billing period to keep the data up to date. This data will be delivered in a format agreed to by both teams and prepared consistently the same way every month.

WATERVIEW CII (YEARS 2-3)

In addition to the WaterView solution for residential water use efficiency data management, beginning in Year 2 of this Agreement, Consultant will provide WaterView CII, which is a data management solution to address conservation objectives in the Commercial, Industrial, and Institutional (CII) environment that is subject to the requirements of SB606 and AB1668.

The LUCD and premises data will be seamlessly integrated into WaterView CII to manage this data and estimate water budgets, as well as provide analytical tools that districts can use to compare actual water use against estimated budgets.

WaterView Residential has been designed in cooperation with the non-profit California Water Efficiency Partnership to create a web-based software solution whose purpose is to maximize the conservation value of the irrigated vegetation dataset that will be generated through this project. It has been specifically designed to allow for seamless integration of these datasets. Consultant has held many focus groups with water districts throughout the state to try to develop this solution in the most helpful way possible for water conservation professionals throughout California. WaterView CII has been developed to mirror the capabilities of WaterView Residential for use in the CII context as required for legislative compliance. WaterView CII will be continually updated with new features and capabilities, which will be added to the utilized solution as developed at no additional charge.

WaterView CII provides an easy-to-use, GIS-based mapping solution that incorporates imagery data, ET data, water use data, and irrigated vegetation data. Its tools provide a wide

range of up to date and historical performance analysis of CII irrigation and track the efficiency of water conservation efforts. WaterView CII allows the user to see the attribute data collected for each polygon. It has access control so only selected users can use it and will allow the user to view the Meter Service Areas, Irrigable and Irrigated areas generated through this Project, as well as the Meter Service Area Points and any Meter Location points. The application contains a base map of aerial color imagery over which project data can be overlaid. WaterView CII also provides water efficiency budget calculations for the customers included in this Project.

EXHIBIT "B"
SCHEDULE OF SERVICES

The WaterView software solution is an existing program that will be available for immediate use. City will provide Consultant with customer water use data on a regular basis so that this data can be incorporated into the solution as a condition to its functionality.

Consultant shall provide WaterView on the following schedule:

Year 1:

Month 1: Initial Setup

- City and Consultant to meet to discuss specific data needs and formatting and any additional customizations.
- Consultant to provide one, 1-hour demo session over teleconference to introduce all registered users to the software's functionality and abilities.
- Consultant to also record the session and deliver that video file to the City for later use.

Months 2-12: Upkeep

- By the 10th calendar day, or any other day agreeable to the City and Consultant, of the first month and every month thereafter, the City shall provide to Consultant its monthly billing data export for inclusion into the software.
- By the 15th calendar day, or any other day agreeable to the City and Consultant, of the month, Consultant shall have fully uploaded most recent billing data for inclusion in all of the software's analytical capabilities.
- On an as-needed basis, Consultant shall obtain from the City, DWR, or another pertinent state agency any additional data that may need to be incorporated into the software to continue to accurately reflect the current regulatory requirements for water conservation imposed on the City, and its performance in complying with them.
- As reasonably needed by City, Consultant shall participate in:
 - Project status update meetings
 - Additional training sessions
 - Troubleshooting sessions
 - Presentations to City stakeholders

Years 2-3:

Month 13: WaterView CII Setup

- City and Consultant to meet to discuss and, if applicable, transfer specific data needs for CII module. This will include formatting and any additional customizations that are reasonable within the existing WaterView CII parameters.

Months 13-36: Upkeep

- By the 10th calendar day, or any other day agreeable to the City and Consultant, of the first month and every month thereafter, the City shall provide to Consultant its monthly billing data export for inclusion into the software.
- By the 15th calendar day, or any other day agreeable to the City and Consultant, of the month, Consultant shall have fully uploaded most recent billing data for inclusion in all of the software's analytical capabilities.
- On an as-needed basis, Consultant shall obtain from the City, DWR, or another pertinent state agency any additional data that may need to be incorporated into the software to continue to accurately reflect the current regulatory requirements for water conservation imposed on the City, and its performance in complying with them.
- As reasonably needed by City, Consultant shall participate in:
 - Project status update meetings
 - Additional training sessions
 - Troubleshooting sessions
 - Presentations to City stakeholders

EXHIBIT "C"
INSURANCE REQUIREMENTS

3.2.13 Insurance.

3.2.13.1 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.

3.2.13.2 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.

(C) **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.

(D) **Cyber security, intellectual property and privacy liability:** Consultant shall procure and maintain insurance with limits of \$1,000,000 per occurrence/loss, \$2,000,000 general aggregate, which shall include the following coverage:

- a) Liability arising from the theft, dissemination and/or use of confidential or personally identifiable information; including but not limited to personally identifiable information (PII), protected health information (PHI), security codes, access codes, passwords, etc.;
- b) Network security liability arising from the unauthorized use of, access to, or tampering with computer systems, including hacker or denial of service attacks;

- c) Liability arising from introducing a computer virus into or otherwise causing damage to vendor (first-party) or customer's (third party) computer, computer system, network, or similarly related property and the data, software, and programs;
- d) Liability arising from professional misconduct or lack of the requires skill required for performing services defined in the contract or agreement;
- e) Costs associated with restoring, updating, or replacing data;
- f) Costs associated with a privacy breach, including notification costs, customer support, forensics, crisis management, public relations consulting, legal services of a privacy attorney, credit monitoring, and identity fraud resolution services for affected individuals; and
- g) Liability associated with infringement of intellectual property rights.

If coverage is maintained on a claims-made basis, the Consultant shall maintain such coverage for an additional three (3) years following termination of the contract.

3.2.13.3 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:

- a) 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.

- b) 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:

- 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.

3.2.13.4 Cyber Security and Privacy Liability:

(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.

3.2.13.5 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.

3.2.13.6 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.

3.2.13.7 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.

3.2.13.8 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.

3.2.13.9 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.

3.2.13.10 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.

3.2.13.11 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.

3.2.13.12 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.

3.2.13.13 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.

3.2.13.14 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.

**EXHIBIT “D”
COMPENSATION**

In complete compensation for services provided under the Agreement, City shall pay the Consultant:

Year 1	
WaterView Residential Annual Subscription Cost*	\$37,500
Initial WaterView Residential One-Time Setup Fee:	\$4,800
Total cost for Year 1	\$42,300
Year 2	
WaterView Residential Annual Subscription Cost*	\$37,500
<i>WaterView CII Module Annual Subscription</i>	<i>\$10,500</i>
<i>Initial WaterView CII One-Time Setup Fee:</i>	<i>\$2,500</i>
Total cost for Year 2	\$50,500
Year 3	
WaterView Residential Annual Subscription Cost*	\$37,500
<i>WaterView CII Module Annual Subscription</i>	<i>\$10,500</i>
Total cost for Year 3	\$48,000
<i>Total cost over 3-year agreement period including WaterView CII Module</i>	<i>\$140,800</i>

**Includes CalWEP member discount*

WaterView Software Costs Optional Years 4-5 (If City Renews)

Year 4	
WaterView Residential Annual Subscription Cost*	\$37,500
<i>WaterView CII Module Annual Subscription</i>	<i>\$10,500</i>
Total cost for Year 4	\$48,000
Year 5	
WaterView Residential Annual Subscription Cost*	\$37,500
<i>WaterView CII Module Annual Subscription</i>	<i>\$10,500</i>
Total cost for Year 5	\$48,000
<i>Total cost for Optional 2-year Renewal</i>	<i>\$96,000</i>

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
