

**CITY OF SAN CLEMENTE**

**PROFESSIONAL CONSULTANT SERVICES AGREEMENT**

**1. PARTIES AND DATE.**

This Agreement is made and entered into this 15th day of February, 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 **WSP USA ENVIRONMENT & INFRASTRUCTURE, INC., a Nevada Corporation**, with its principal place of business at **1075 BIG SHANTY ROAD, SUITE 100, KENNESAW, GA 30144** ("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 **GOLF COURSE IRRIGATION INSPECTION** 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 **GOLF COURSE IRRIGATION INSPECTION** 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 **GOLF COURSE IRRIGATION INSPECTION** consulting services for the **SHORECLIFFS GOLF COURSE IRRIGATION INSPECTION** 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 **GOLF COURSE IRRIGATION INSPECTION** 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.

3.1.2 Term. The term of this Agreement shall be from **THE DATE NOTED IN SECTION 1 UNTIL THE SERVICES ARE COMPLETED TO THE SATISFACTION OF THE CITY**, 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, the City being only concerned with the finished results of the work being performed. 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 solely 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. Neither Consultant nor Consultant's employees shall in any event be entitled to any benefits to which City employees are entitled, including, but not limited to, overtime, retirement benefits, workers' compensation benefits, injury leave or other leave benefits. Consultant is solely responsible for all such matters, as well as compliance with social security and income tax withholding and all other regulations and laws governing such matters.

3.2.2 PERS Eligibility and Employee Payments Indemnification. In the event that Consultant's employee providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employer and employee contributions for PERS benefits on behalf of the employee as well as for payment of any penalties and interest on such contributions that would otherwise be the responsibility of the City. Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant's employees providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation and benefit including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contributions to be paid by City for employer contributions and/or employee contributions for PERS benefits. Consultant agrees to defend and indemnify the City for any obligation, claim, suit or demand for tax, retirement contribution including any contribution to the PERS, social security, salary or wages, overtime payment, or workers' compensation payment that the City may be required to make for work done under this Agreement. The provisions of this section 3.2.2 are continuing obligations that shall survive expiration or termination of this Agreement.

3.2.3 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.

3.2.4 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.

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

3.2.6 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: **THEODORE VON BITNER, PROJECT MANAGER.**

3.2.7 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.

3.2.8 Consultant's Representative. Consultant hereby designates **THEODORE VON BITNER, PROJECT MANAGER**, 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.

3.2.9 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.

3.2.10 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.

3.2.11 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.

3.2.12 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.

3.2.13 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 **FIVE THOUSAND SIX HUNDRED AND THIRTY DOLLARS (\$5,630.00)** 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 **SINCE** 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: **WSP USA ENVIRONMENT & INFRASTRUCTURE, INC.  
3560 HYLAND AVENUE, SUITE 100  
COSTA MESA, CA 92626  
ATTN: THEODORE VON BITNER, PROJECT MANAGER**

City: **CITY OF SAN CLEMENTE  
380 AVENIDA PICO. BLDG N  
SAN CLEMENTE, CA 92672  
ATTN: JULIE SCHMIDT, MANAGEMENT ANALYST II**

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/Electronic Signatures. This Agreement may be signed in counterparts, each of which shall constitute an original. This Agreement may be signed with the same force and effect as an original ink signature.

### **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: Dave Rebensdorf  
Dave Rebensdorf (Apr 9, 2024 16:24 PDT)  
David Rebensdorf, Public Works

Director

**ATTEST:**

Laura Campagnolo  
Laura Campagnolo (Apr 15, 2024 09:58 PDT)

Dated: 4/9, 20 24

CITY CLERK of the City of  
San Clemente, California

**APPROVED AS TO FORM:**

Elizabeth A. Mitchell  
Elizabeth A. Mitchell, City Attorney

**APPROVED AS TO AVAILABILITY  
OF FUNDING:**

Matthew Schmalz  
Finance Authorization

**WSP USA ENVIRONMENT &  
INFRASTRUCTURE, INC.**  
("CONSULTANT")

By: Lytle C. Troutt, Jr.  
Lytle C. Troutt, Jr. (Feb 19, 2024 14:46 CST)  
Lytle C. Troutt, Jr.

Its: President  
Chief Executive Officer

Dated: 02/19/2024, 2023

By: Brad Knight  
Brad Knight (Feb 20, 2024 09:09 MST)  
Bradley J. Knight

Its: SVP & Secretary  
Secretary

Dated: 02/20/24, 2023

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

Consultant shall perform the services as set forth in the attached proposal from WSP USA Environment & Infrastructure, Inc. dated August 24, 2023, which is incorporated fully herein by this reference.



## **Scope of Work**

### **Tasks and Deliverables.**

WSP shall provide technical assistance to City with as-needed consultant and technical services related to implementation of the Clean Ocean Program over the period of performance.

#### **Task 1: Golf Course Inspections.**

Our services under this task focus on conducting walking or driving (by way of a golf cart if available) inspections of the Shorecliffs Golf Course.

We propose to conduct inspections of the golf course during scheduled watering times using the Fixed Facility inspection form provided by email on August 23, 2023. We do not anticipate that the golf course staff irrigates the entire project area on the same day and anticipate needing two field days to capture adequate documentation for walking based surveys.

For driving-based surveys, WSP would allocate a two-person team to conduct the surveys and complete the inspection on one work day. The two-person team can conduct the inspections with one staff focused on driving while the second staff members collects observations and records field notes. Observations at overwatering locations will include a GPS coordinate, a written description of the site conditions, photographs showing the overwatering issue, and a generalized estimate of the degree of ponding or flow volume (i.e., low, medium, high, very high volume) to prioritize follow up efforts.

Using a smartphone or iPad and our electronic inspection app, we can map various areas of the golf course to note any relevant best management practices that may be contributing to a condition of urban runoff (e.g., standing water, muddy soil in the grass from overwatering, improperly stored fertilizers, erosion and sediment issues, etc.). Our inspection app allows the field team to create polygons circumscribing the impacted areas to make communicating results easier with the City management team.

**Note.** The golf course does not qualify for enrollment under the statewide Industrial General Permit or the Construction General Permit, and a Storm Water Pollution Prevention Plan would not be required for water quality management purposes at the golf course, unless mandated by the City. Our services under this task do not assume that reviewing a Storm Water Pollution Prevention Plan is required.

#### *Task 1 deliverables:*

Inspection records in PDF format listing;

- GPS coordinate locations
- descriptions of flows/ponding observed during surveys.
- photographs showing both the ponded condition or locations of flowing water

Estimated budget to conduct inspections and prepare inspection form deliverables. \$5,630  
(includes mileage from WSP Costa Mesa office to golf course).



## **Schedule**

WSP proposes to begin the project schedule on August 28, 2023 or upon receipt of a written Notice to Proceed, whichever occurs first, and our services under this contract are expected to continue until October 30, 2023. Our proposed schedule is designed to accommodate potential delays in the surveys due to weather, golf course events, restricted hours, delays in receiving important data files (e.g., watering schedule from golf course), coordination time with the County of Orange project team, and coordination with relevant City staff (e.g., water conservation program and/or recycled water system coordinator). This schedule may be changed or extended by the City in response to findings at any stage in the project, a recognition of potential project outcomes, or alternate priorities assigned by Mr. Burnside or his designated point of contact. Any potential changes to the schedule will be made in consultation with Mr. Burnside and will have his approval prior to the schedule shift.

## **Costs**

The total cost for this services shall not exceed \$5,630 but may be amended for additional work upon approval of the City.

Please note that our services will be provided on a time and materials basis and the City will be only invoiced for the actual amounts required to complete the above tasks. Fees for services provided will be invoiced on a monthly basis according to the rate schedule included in Attachment 1. Our monthly invoice will include descriptions of the staff assigned, work performed and expense accrued.

We also understand that levels of services or program requirements may change at any time during the period of performance and would like to reiterate that our support will be provided on an as-needed basis at Mr. Burnside's discretion. Should the City appointed Project Manager or their staff decide to shift priorities for our services within this scope of work, we reserve the option to transfer project budgets between tasks, within the approved not-to-exceed project budget amount, should the need arise during the period of performance. The project budget amount may be modified by an amendment, if necessary.

## **Assumptions**

1. Shorecliffs Golf Course will provide the WSP team with the watering schedule in advance of the first scheduled survey. In the event that a watering schedule is not provided, WSP will consult with Mr. Burnside regarding alternative survey procedures prior to commencing work under Task 1.
2. Shorecliffs Golf Course may, at the direction of the City, provide an electronic golf cart to help facilitate the driving surveys at no cost to WSP. Any costs accrued by WSP to rent a golf cart for the survey period will be submitted to the City for reimbursement. A golf cart rental expense is not included as part of the initial budget request for the project.
3. As-needed services for the City may be performed by the senior level staff, junior level staff, or technical professionals (e.g., field inspectors) depending on the specific nature of the assignment as determined by WSP's Project Manager.
4. Mileage accrued on personal vehicles for City directed project activities will be charged at the IRS rate for the calendar year (e.g., 2023 is 65.5 cents per mile).
5. WSP reserves the right to request additional funding for work requested by the City and deemed to be larger in time and duration than the available budget scope.
6. Estimated project budgets for additional work will be submitted to Mr. Burnside should the need arise for this support, in advance of beginning the actual work.
7. All deliverables for this scope of work will consist of electronically submitted files formatted in Microsoft office based software or industry standard software (e.g., construction schematics).

**EXHIBIT "B"**  
**SCHEDULE OF SERVICES**

Consultant shall diligently perform the services to the City's satisfaction and as set forth in the attached proposal from WSP USA Environment & Infrastructure, Inc. dated August 24, 2023 which is incorporated fully herein by this reference.

**EXHIBIT "C"**  
**INSURANCE REQUIREMENTS**

3.2.12 Insurance.

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. **NOTE: If Consultant does not own any company vehicles or may not be able to purchase a Business Automobile Insurance Policy, the requirement may be satisfied by providing either of the following:** (1) a Personal Automobile Liability policy for the Consultant's own vehicle stipulating "Automobile Liability Insurance with a limit of not less than \$1,000,000 each accident"; and (2) a non-owned auto endorsement to the Commercial General Liability policy if Consultant uses vehicles of others (e.g., vehicles of employees).

(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) 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.

(E) Cyber Liability Insurance with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines and penalties as well as credit monitoring expenses.

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**

Compensation for the services provided under this Agreement shall be on a time and materials basis at the hourly rates listed in the attached proposal from WSP USA Environment & Infrastructure, Inc. dated August 24, 2023, which is incorporated fully herein by this reference. Total compensation under this Agreement shall not exceed \$5,630.00. Additional work shall require approval in writing in advance by the Public Works Director or the City Manager.



## Attachment 1. Rates for Water Quality Program Technical and Program Implementation Services

### Schedule of Charges

Labor charges are for technical work, including technical writing, monitoring, and project coordination involved in the preparation of reports and correspondence and for the time associated with production of such documents. Direct charges are not made for secretarial service, office management, accounting, and maintenance, because these items are included in overhead. Labor category charge rates for WSP are listed below. Regional and other factors may influence rates charged for certain individuals. Rates for individuals will be provided on request.

<b>LABOR CATEGORY</b>	<b>HOURLY RATE</b>
<b>Principal Engineer/Scientist</b>	\$310
<b>Senior Associate Engineer/Scientist</b>	\$260
<b>Associate Project Manager/Engineer/Scientist</b>	\$220
<b>Senior 2/Engineer / Scientist</b>	\$200
<b>Senior 1/Engineer/Scientist</b>	\$180
<b>Staff 3 Engineer / Scientist</b>	\$150
<b>Staff 2 Engineer / Scientist</b>	\$140
<b>Staff 1 Engineer / Scientist</b>	\$130
<b>Senior Technician*</b>	\$145
<b>Field Technician*</b>	\$130
<b>Project Controls Analyst</b>	\$130
<b>Project Support*</b>	\$110
<b>Technical Writer</b>	\$170

The hourly labor rates set forth are valid effective January 1, 2023. A 3% labor rate or the CPI, whichever is less, escalation will be applied yearly beginning for each subsequent year of the contract.

Time spent in travel in the interest of the client will be charged at hourly rates, except that no more than 8 hours of travel time will be charged in any day. When it is necessary for an employee to be away from the office overnight, actual costs, or a negotiated rate, will be charged for hotel expenses, if required. Employee expenses will be charged at cost multiplied by 1.05. Mileage for travel expenses will be charged at the IRS Mileage Rate multiplied by 1.05. Other expenses are listed below.

Charges for expert witness services will be at the hourly rates shown. However, for depositions and for court appearances, the rate is twice the amount shown. There will be a 4-hour minimum per-day charge



for depositions and an 8-hour minimum per-day charge for court appearances. Special accounting services will be billed at the Support Staff rate.

The following represents typical billing rates for expense not directly related to hourly fees, including reprographic services.

Outside Services

Outside services will be charged at cost multiplied by 1.05. Common outside items include: subconsultants, drilling services, laboratory testing, equipment and vehicle rental, printing and photographic work, postage and shipping, conference calls, travel, and transportation.

Reimbursables

Non-routine Photocopies.....	\$0.12/sheet
Specialized Computer Application.....	\$25.00/hour <sup>1</sup>

Payment Terms for Invoices

Invoices will be rendered at least monthly, either as a final or partial billing, and will be payable upon receipt. An additional payment charge of 2% per month or the maximum charge allowed by law, whichever is less, will be payable on accounts not paid within 30 days from billing date.

Other Expenses

Other expenses will be charged at cost multiplied by 1.05. Common other expense items include the following:

Travel Expenses and Miscellaneous Charges:

Truck/Passenger Car .....	\$100/day
Car/Truck Rental .....	Actual expense
Travel Expenses (Parking, Air, Cab, Public Transportation, Tolls) .....	Actual expense
Color Copies (up to 11 x 17) .....	Actual expense or \$2.10/page <sup>2</sup>
Oversize Plans.....	Actual expense or B&W: \$12/sheet, Color: \$55/sheet <sup>2</sup>

Special equipment or supplies, permits, shipping charges, special printing, or other items not customarily provided by WSP Environment & Infrastructure, Inc., will be charged at our cost multiplied by 1.05. The use of company-owned specialized equipment required by a project not listed above will be quoted separately to the City prior to the work and charged at an hourly rate or daily rate.

<sup>1</sup> Does not include commercially available software programs such as ArcGIS, ArcPro for GIS, Microsoft Office products, etc.

<sup>2</sup> Applies to plans not available for printing from commercial services

WORKER'S COMPENSATION INSURANCE CERTIFICATION

**WORKERS' COMPENSATION DECLARATION**

Lytle C. Troutt, Jr.  
Lytle C. Troutt, Jr. (Feb 19, 2024 14:46 CST)

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 Liberty Mutual

Policy Number WA7-62D-094060-013

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: February 19, 2024

Lytle C. Troutt, Jr.  
Lytle C. Troutt, Jr. (Feb 19, 2024 14:46 CST)  
\_\_\_\_\_  
("CONSULTANT")

By: WSP USA Environment & Infrastruc

President  
\_\_\_\_\_  
Title

1075 Big Shanty Road, Suite 100  
\_\_\_\_\_  
Address

Kennesaw, GA 30144  
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