



AGENDA REPORT

CITY OF SAN CLEMENTE

CITY COUNCIL MEETING

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

Meeting Date: July 17, 2024

Agenda Item: 11F

Submitted By: City Manager

Prepared By: Leslea Meyerhoff, Contract Coastal Administrator

Subject:

CONSIDERATION OF A RESOLUTION RATIFYING AMENDMENTS TO A PROFESSIONAL SERVICES AGREEMENT WITH COASTAL FRONTIERS CORPORATION APPROVED ON MAY 7, 2024 FOR PHASE 1 OF REESTABLISHING A SAND COMPATIBILITY AND OPPORTUNISTIC USE PROGRAM (SCOUP)

Fiscal Impact:

The cost to initiate the first tasks remains unchanged in a not to exceed amount of \$178,449 as approved at the May 7, 2024 City Council meeting.

Summary:

Following the City Council's award of a professional services agreement to Coastal Frontiers Corporation to provide technical assistance to the City in support of the first phase in re-establishment of a SCOUP program in San Clemente, Coastal Frontiers requested revisions to the insurance provisions that differed from those appearing in the agreement approved by the City Council on May 7, 2024. In order to avoid delaying the start date, the agreement was executed with the changes requested by Coastal Frontiers (Attachment 2). Before the City Council now is a resolution ratifying the agreement with Coastal Frontiers in the modified form.

Background:

At the May 7, 2024 City Council meeting, item (9C) appeared before the City Council and was approved unanimously to proceed with the re-establishment of the City's SCOUP program. Following the meeting, Coastal Frontiers requested certain minor edits to the professional services agreement that had been approved by the City Council, which specifically were:

1. Deletion of Cyber Liability Insurance; and
2. Change from an "any auto" policy to an unspecified type of auto policy.

All other changes were minor and substantially similar in nature to the originally approved provisions.

Discussion:

In line with the City Council's directive to prioritize the SCOUP project as a critical community initiative, the agreement with Coastal Frontiers was executed with the requested changes to continue to move the project along with all haste. These changes, thoroughly reviewed by City staff, bare no impact on the key terms or structure of the agreement and were minor in nature. The changes did not alter the substance, scope, or intent of the original agreement. Timely approval is crucial to maintain project momentum and avoid disruptions, ensuring seamless progress and maximizing the placement of quality sediments on San Clemente beaches.

Therefore, staff recommends that the City Council ratify the agreement with Coastal Frontiers with the revisions.

Council Options:

- Adopt Resolution No. 24-115, ratifying the changes to the professional services agreement for Coastal Frontiers Corporation to provide technical assistance to the City of San Clemente in support of Phase 1 of the re-establishment of SCOUP in San Clemente.
- Modify and adopt Resolution No. 24-115.
- Provide alternative direction.

Environmental Review/Analysis:

The amendment to the professional services agreement is not a “project” pursuant to 2024 State California Environmental Quality Act Guidelines section 15378. CEQA compliance would be required to support development of a SCOUP program for San Clemente and would occur in SCOUP Phase 2.

Recommended Actions:

Staff Recommendation

Staff recommends that the City Council adopt Resolution No. 24-115, which would:

1. Ratify the professional services agreement with Coastal Frontiers Corporation to provide technical assistance to the City in support of the re-establishment of SCOUP Phase 1 in its amended form as executed by the City Manager.

Attachment:

1. Resolution No. 24-115
2. Amended Professional Services Agreement with Coastal Frontiers Corporation
3. Redline Professional Services Agreement with Coastal Frontiers Corporation reflecting revisions from form approved on May 7, 2024

Notification:

Coastal Frontiers Corporation

RESOLUTION NO. 24-115

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, RATIFYING AMENDMENTS TO THE PROFESSIONAL SERVICES AGREEMENT APPROVED ON MAY 7, 2024 FOR PHASE 1 OF THE SAND COMPATIBILITY AND OPPORTUNISTIC USE PROGRAM, WITH COASTAL FRONTIERS CORPORATION

WHEREAS, on May 7, 2024, the City Council approved Resolution 24-69 and awarded a Professional Services Agreement to Coastal Frontiers Corporation for Phase 1 of the Sand Compatibility and Opportunistic Use Program (SCOUP) and authorized the City Manager to execute said agreement in a form substantially similar to that presented to the City Council on May 7, 2024; and

WHEREAS, following the meeting, Coastal Frontiers requested revisions that were not substantially similar to the form of the professional services agreement that had been approved by the City Council on May 7, 2024, including to the insurance provisions; and

WHEREAS, consistent with City Council priorities and in order to move forward with the project, the City Manager executed the professional services agreement with Coastal Frontiers in a form with the revisions requested by Coastal Frontiers, which revised form is in the City's and the public's best interests.

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

Section 1. The above recitals are true and correct and incorporated herein by reference.

Section 2. The Professional Services Agreement with Coastal Frontiers Corporation is approved as amended and in a form substantially similar to that presented to the City Council on July 17, 2024, and the City Manager's execution thereof is hereby ratified, authorized and approved.

Section 3. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

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. 24-115 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 7th day of May, 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 Coastal Frontiers Corporation, a California corporation, with its principal place of business at 882 A Patriot Drive, Moorpark, CA 93021 ("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 coastal consulting services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing coastal 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 coastal consulting services for Phase 1 of the Preparation of Sand Compatibility and Opportunistic Use Program (SCOUP) 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 coastal 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 May 7, 2024 to November 7, 2024, 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: Christopher Scott, Associate Principal Engineer.

3.2.7 City's Representative. The City hereby designates Andy Hall, City Manager, or his 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 Christopher Scott, Associate Principal Engineer, 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 represents 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 one hundred seventy eight thousand four hundred forty eight dollars and forty one cents (\$178,448.41) without written approval of the City Council or City Manager as applicable. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

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

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

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

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

3.3.6 Labor Code Requirements.

3.3.6.1 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold the City, its officials, officers, employees, agents, and volunteers free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

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

3.4 Accounting Records.

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

3.5 General Provisions.

3.5.1 Termination of Agreement.

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

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

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

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

Consultant:	Coastal Frontiers Corporation 882 A Patriot Drive Moorpark, CA 93021 ATTN: Gregory Hearon
City:	City of San Clemente 910 Calle Negocio San Clemente, CA 92673 ATTN: Laura Campagnolo, City Clerk

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 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 approval), 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 represents 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 represents 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 representation, 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 represents 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 original ink signatures.

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: Andy Hall
Andy Hall (Jun 24, 2024 08:39 PDT)
Andy Hall, City Manager

Dated: 6/24, 20 24

ATTEST:

Megan Jimenez/Deputy
Megan Jimenez/Deputy (Jun 27, 2024 08:40 PDT)
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 Sobus
Finance Authorization

Coastal Frontiers Corporation, a
California corporation
("CONSULTANT")

By: Gregory Hearon
Gregory Hearon (Jun 24, 2024 11:37 PDT)
Gregory Hearon, CEO/CFO

Dated: June 24, 20 24

By: Craig Leidersdorf
Craig Leidersdorf (Jun 27, 2024 09:38 PDT)
Craig B. Leidersdorf, Vice President

Dated: June 27, 20 24

EXHIBIT "A"
SCOPE OF SERVICES

Consultant shall perform the following services for the City (collectively, the "Services"):

Task 1.1: Receiver Site Evaluation

Consultant will evaluate each of the City's beaches to determine which are most suitable for inclusion in the SCOUP plan. The evaluation will be based on existing and available physical and environmental data/studies, such as the environmental documents prepared as part of the City's original SCOUP Plan, the City's shoreline monitoring data, the ongoing City of San Clemente Nature-Based Adaptation Project Feasibility Study, and environmental and biological monitoring data obtained as part of the U.S. Army Corps of Engineers' San Clemente Shoreline Project. Consultant will use the data to develop a ranking matrix based on the relative vulnerability of each site, construction feasibility, the potential benefit to downcoast beaches, and the potential effects on biological and surfing resources.

Task 1.2: Receiver Site Selection

Consultant will review the ranking matrix developed as part of Task 1.1 with City Staff to determine those sites to be included in Phase 2 of the project.

Task 1.3: Future Studies

Consultant will identify the technical and environmental studies needed to satisfy CEQA and permit acquisition. Consultant will prepare a scope of work and cost estimate to complete each study along with the scope and estimated fee to complete Phase 2 of the project.

Task 1.4: Reporting and Meetings

Consultant will summarize the results of Tasks 1.1 through 1.3 in a technical report. The report will include a summary of the data and studies used for Phase 1, the sites selected for SCOUP and basis for selection, and future steps to be undertaken in Phases 2 through 4. Consultant will deliver a draft report to the City for review and comments. Consultant will deliver the final report following up to two rounds of comments.

Members of the Consultant's Project Team will present the study findings and recommendations in a meeting that includes the City Council, City Manager, and/or employee groups. The Consultant's Project Team will also participate in up to three general meetings open to the public. All meetings are to be in-person unless otherwise requested by the City.

Task 1.5: As-Needed Support

The Consultant's Project Team will provide up to 120 hours of as-needed support to assist the City with obtaining permits for an emergency beach nourishment project similar to that conducted by the County of Orange at Capistrano Beach Park and Doheny State Beach in 2023. Work under this task will not be undertaken without prior written approval from the City.

EXHIBIT "B"
SCHEDULE OF SERVICES

Consultant shall diligently perform the Services to the City's satisfaction. The Scope of Work for Phase 1 (Tasks 1.1 through 1.4) will be completed within six months of notice to proceed. A detailed schedule to complete each task is provided in the table below.

Table 2. Phase 1 Schedule

Task Item	Completion Date
1.1 Kickoff Meeting	May 9, 2024
Receiver Site Evaluation	June 21, 2024
Memorandum	June 28, 2024
1.2 Meeting with City Staff to Review	July 9, 2024
Receiver Site Selection	
Memorandum	July 12, 2024
1.3 Identify future studies and develop scope	August 23, 2024
and cost	
Memorandum	August 30, 2024
1.4 Draft Report	October 11, 2024
Respond to Comments (2 rounds)	October 25, 2024
Final Report	November 1, 2024
1.5 As-Needed Support	TBD

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 non-owned and hired autos, 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) **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) [RESERVED]

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.

3.2.12.4 Professional Liability (Errors & Omissions):

(A) 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:

3.2.12.6 [RESERVED]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.

3.2.12.15 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.

EXHIBIT "D"
COMPENSATION

In full compensation for the Services rendered by the Consultant under the Agreement, the City shall pay the Consultant on a time and materials basis for actual work performed based on the following hourly rates:

Coastal Frontiers Corporation

Principal Engineer	Assoc. Principal Engineer	Senior Engineer/Scientist	Engineer/Scientist II	Engineer/Scientist I	Technician	Word Processor / Drafter	Support Services
\$ 270.00	\$ 245.00	\$ 210.00	\$ 197.00	\$ 184.00	\$ 128.00	\$ 98.00	\$ 88.00

Moffat & Nichol

Principal Eng/Sci	Supervisory Eng/Sci	Senior Eng/Sci	Eng/Sci-3	Eng/Sci-2	Eng/Sci-1	Staff Eng/Sci	Staff Eng/Sci
\$ 335.00	\$ 310.00	\$ 280.00	\$ 260.00	\$ 240.00	\$ 210.00	\$ 190.00	\$ 150.00

Merkel & Associates

Senior Biologist	GIS Technician
\$ 142.00	\$ 110.00

Consultant's total compensation under this Agreement shall not exceed \$178,448.41 and shall be based on the following maximum costs by task:

No.	Description	Labor Hrs	ODC	Total Costs
1.1	Receiver Site Evaluation	192	\$ -	\$ 41,124.00
1.2	Receiver Site Selection	63	\$ -	\$ 14,926.00
1.3	Future Studies	46	\$ -	\$ 10,732.00
1.4	Reporting and Meetings	294	\$ 1,253.17	\$ 70,033.17
1.5	As-Needed Support (Optional)	120	\$ -	\$ 28,690.00
-	Project Administration	18	\$ -	\$ 3,380.00
Totals =		733	\$ 1,253.17	\$ 168,885.17
				Sub-Consultant Markup (10%) = \$ 9,563.24
GRAND TOTAL				\$178,448.41

Othe than the ODC expenses set forth above, there are no reimbursable expenses under this Agreement.

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 Key Risk

Policy Number KEY0136566

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: June 24, 20 24

Coastal Frontiers Corporation
("CONSULTANT")

By: *Gregory Heaton*
Gregory Heaton (No. 21, 2021.11.30 PPT)

CEO/CFO
Title

882 A Patriot Drive
Address

Moorpark, CA 93021

CITY OF SAN CLEMENTE

PROFESSIONAL CONSULTANT SERVICES AGREEMENT

1. PARTIES AND DATE.

This Agreement is made and entered into this 13th day of May, 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 Coastal Frontiers Corporation, a California corporation, with its principal place of business at 882 A Patriot Drive, Moorpark, CA 93021 ("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 coastal consulting services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing coastal 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 coastal consulting services for Phase 1 of the Preparation of Sand Compatibility and Opportunistic Use Program (SCOUP) 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 coastal 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 May 7, 2024 to November 7, 2024, 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: Christopher Scott, Associate Principal Engineer.

3.2.7 City's Representative. The City hereby designates Andy Hall, City Manager, or his 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 Christopher Scott, Associate Principal Engineer, 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 represents warrants^[A1] 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 subconsultants 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 one hundred seventy eight thousand four hundred forty eight dollars and forty one cents (\$178,448.41) without written approval of the City Council or City Manager as applicable. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

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

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

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

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

3.3.6 Labor Code Requirements.

3.3.6.1 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold the City, its officials, officers, employees, agents, and volunteers free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

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

3.4 Accounting Records.

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

3.5 General Provisions.

3.5.1 Termination of Agreement.

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

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

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

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

Consultant: Coastal Frontiers Corporation
882 A Patriot Drive
Moorpark, CA 93021
ATTN: Gregory Hearon

City: City of San Clemente
910 Calle Negocio
San Clemente, CA 92673
ATTN: Laura Campagnolo, City Clerk

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 ~~approval~~^{heosing}_[A2]), 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 ~~represents 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 ~~represents 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 ~~warrantyrepresentation~~, 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 ~~represents 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 original ink signatures.

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: _____
Andy Hall, City Manager

Dated: _____, 20__

ATTEST:

CITY CLERK of the City of
San Clemente, California

APPROVED AS TO FORM:

Elizabeth A. Mitchell, City Attorney

**APPROVED AS TO AVAILABILITY
OF FUNDING:**

Finance Authorization

Coastal Frontiers Corporation, a
California corporation
("CONSULTANT")

By: _____
Gregory Hearon, CEO/CFO

Dated: _____, 20__

By: _____
Craig B. Leidersdorf,

Dated: _____, 20__

| ~~Secretary~~ Vice President

EXHIBIT "A"
SCOPE OF SERVICES

Consultant shall perform the following services for the City (collectively, the "Services"):

Task 1.1: Receiver Site Evaluation

Consultant will evaluate each of the City's beaches to determine which are most suitable for inclusion in the SCOUP plan. The evaluation will be based on existing and available physical and environmental data/studies, such as the environmental documents prepared as part of the City's original SCOUP Plan, the City's shoreline monitoring data, the ongoing City of San Clemente Nature-Based Adaptation Project Feasibility Study, and environmental and biological monitoring data obtained as part of the U.S. Army Corps of Engineers' San Clemente Shoreline Project. Consultant will use the data to develop a ranking matrix based on the relative vulnerability of each site, construction feasibility, the potential benefit to downcoast beaches, and the potential effects on biological and surfing resources.

Task 1.2: Receiver Site Selection

Consultant will review the ranking matrix developed as part of Task 1.1 with City Staff to determine those sites to be included in Phase 2 of the project.

Task 1.3: Future Studies

Consultant will identify the technical and environmental studies needed to satisfy CEQA and permit acquisition. Consultant will prepare a scope of work and cost estimate to complete each study along with the scope and estimated fee to complete Phase 2 of the project.

Task 1.4: Reporting and Meetings

Consultant will summarize the results of Tasks 1.1 through 1.3 in a technical report. The report will include a summary of the data and studies used for Phase 1, the sites selected for SCOUP and basis for selection, and future steps to be undertaken in Phases 2 through 4. Consultant will deliver a draft report to the City for review and comments. Consultant will deliver the final report following up to two rounds of comments.

Members of the Consultant's Project Team will present the study findings and recommendations in a meeting that includes the City Council, City Manager, and/or employee groups. The Consultant's Project Team will also participate in up to three general meetings open to the public. All meetings are to be in-person unless otherwise requested by the City.

Task 1.5: As-Needed Support

The Consultant's Project Team will provide up to 120 hours of as-needed support to assist the City with obtaining permits for an emergency beach nourishment project similar to that conducted by the County of Orange at Capistrano Beach Park and Doheny State Beach in 2023. Work under this task will not be undertaken without prior written approval from the City.

EXHIBIT "B"
SCHEDULE OF SERVICES

Consultant shall diligently perform the Services to the City's satisfaction. The Scope of Work for Phase 1 (Tasks 1.1 through 1.4) will be completed within six months of notice to proceed. A detailed schedule to complete each task is provided in the table below.

Table 2. Phase 1 Schedule

Task Item	Completion Date
1.1 Kickoff Meeting	May 9, 2024
Receiver Site Evaluation	June 21, 2024
Memorandum	June 28, 2024
1.2 Meeting with City Staff to Review	July 9, 2024
Receiver Site Selection	
Memorandum	July 12, 2024
1.3 Identify future studies and develop scope and cost	August 23, 2024
Memorandum	August 30, 2024
1.4 Draft Report	October 11, 2024
Respond to Comments (2 rounds)	October 25, 2024
Final Report	November 1, 2024
1.5 As-Needed Support	TBD

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 non-owned and hired autos"Any Auto"^[A3] (~~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) 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) ~~[RESERVED] 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.[A4]~~

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)~~(A) 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.[A5][RESERVED]~~

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.

3.2.12.14 3.2.12.15 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.^{A6}

EXHIBIT "D"
COMPENSATION

In full compensation for the Services rendered by the Consultant under the Agreement, the City shall pay the Consultant on a time and materials basis for actual work performed based on the following hourly rates:

Coastal Frontiers Corporation [A7]

Principal Engineer	Assoc. Principal Engineer	Senior Engineer/Scientist	Engineer/Scientist II	Engineer/Scientist I	Technician	Word Processor / Drafter	Support Services
\$ 276.00	\$ 245.00	\$ 219.00	\$ 197.00	\$ 184.00	\$ 128.00	\$ 98.00	\$ 88.00

Moffat & Nichol

Principal Eng/Sci	Supervisory Eng/Sci	Senior Eng/Sci	Eng/Sci-3	Eng/Sci-2	Eng/Sci-1	Staff Eng/Sci	Staff Eng/Sci
\$ 335.00	\$ 310.00	\$ 280.00	\$ 260.00	\$ 240.00	\$ 210.00	\$ 190.00	\$ 150.00

Merkel & Associates

Senior Biologist	GIS Technician
\$ 142.00	\$ 118.00

Consultant's total compensation under this Agreement shall not exceed \$178,448.41 and shall be based on the following maximum costs by task:

Table 1 - Task Summary				
No.	Description	Labor Hrs	ODC	Total Costs
1.1	Receiver Site Evaluation	192	\$ -	\$ 41,124.00
1.2	Receiver Site Selection	63	\$ -	\$ 14,926.00
1.3	Future Studies	46	\$ -	\$ 10,732.00
1.4	Reporting and Meetings *	294	\$ 1,253.17	\$ 70,033.17
1.5	As-Needed Support (Optional)	120	\$ -	\$ 28,690.00
-	Project Administration	18	\$ -	\$ 3,380.00
Totals =		733	\$ 1,253.17	\$ 168,885.17
Sub-Consultant Markup (10%) = \$				9,563.24
GRAND TOTAL				\$178,448.41

Othe than the ODC expenses set forth above, There are no reimbursable expenses under this Agreement[A8].

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
