



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

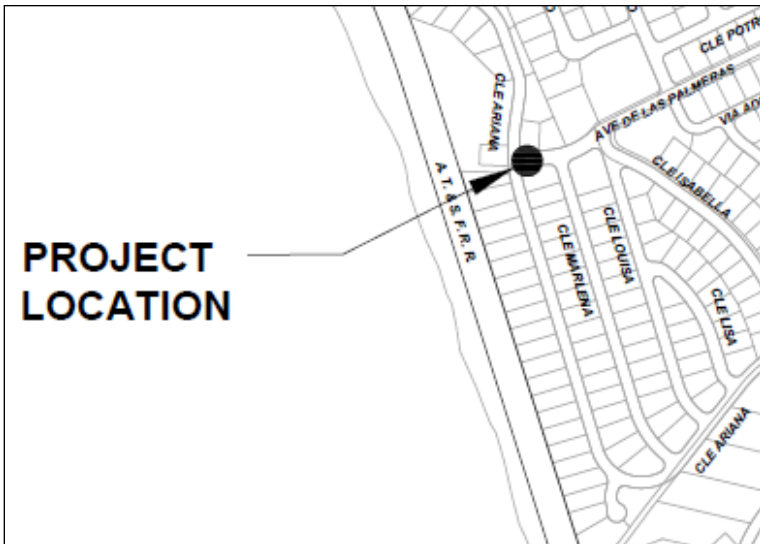
Agenda Item: 11G

Department: Public Works
Prepared By Belgin Cuhadaroglu, Associate Civil Engineer

Subject:
CONSIDERATION OF A RESOLUTION AWARDING A PROFESSIONAL CONSULTANT SERVICES AGREEMENT TO LGC GEOTECHNICAL, INC. FOR GEOTECHNICAL SUPPORT SERVICES FOR THE CYPRUS SHORE GRADING, STORM DRAIN AND SEWER LIFT STATION IMPROVEMENTS, CIP PROJECT NOS. 12004 & 12210, IN AN AMOUNT NOT TO EXCEED \$88,000, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT

Fiscal Impact:
The geotechnical support services cost of \$88,000 for the Cyprus Shore Grading, Storm Drain and Sewer Improvements project is funded from the Storm Drain Fund Depreciation Reserve, Account No. 059-553-45300-000-12004 in the amount of \$30,800; and the Sewer Fund Connection Fee Reserve, Account No. 054-477-45300-000-12210 in the amount of \$57,200.

Summary:
The existing Cyprus Shore sewer lift station and storm drain system were compromised due to coastal bluff movement at Cyprus Shore development beginning in fall 2021. Both systems are currently operating on a temporary basis with an above ground structure and utilizing surface water flow through the park for the storm drain system. Rehabilitation and replacements are needed to continue service to the area and minimize disruption to the community. On May 21, 2024, the City Council awarded a construction contract to GMZ Engineering, Inc. for this work.



Before the City Council is the adoption of Resolution No. 24-116 (Attachment 1) approving a Professional Consultant Services Agreement with LGC Geotechnical, Inc. in an amount not to exceed \$88,000 (Attachment 2) for geotechnical support services during construction for the Cyprus Shore Grading, Storm Drain and Sewer Lift

Station Improvements, CIP Project No. 12004 & 12210, located within the Cyprus Shore HOA area.

Background:

In the Fall of 2021, coastal bluff movement compromised the existing sewer lift station and storm drain system. On September 20, 2021, City staff installed a temporary emergency sewer bypass pump system adjacent to the Cyprus Shore Clubhouse near the intersection of Calle Ariana and Avenue de las Palmeras to prevent and mitigate impairment to property and public services.

Upon slope stabilization of the area by the Orange County Transportation Authority (OCTA) which consisted of a series of tiebacks and grade beams, the City designed and permitted a project to relocate the wet well away from the original landslide, grading for access to the existing electrical equipment building, and replacement of the storm drain and sewer forcemain. A bid package was prepared and advertised for public bids. On May 21, 2024, City Council awarded a construction contract to GMZ Engineering, Inc. for the Cyprus Shore Grading, Storm Drain and Sewer Improvements (Attachment 3).



The work to be performed generally includes constructing a new submersible sewer lift station on Avenida de Las Palmera, just west of Calle Ariana, replacement of the damaged storm drain pipeline and some new lateral storm drain pipelines and catch basins, and replacement of the existing force main pipe with within Calle Ariana with a new 6-inch PVC pipe, minor surfacing and repairs to the vehicular access road, as well as removal of asphalt from the portions of the road that have dropped below grade within the parking lot west of the Clubhouse.

The project requires geotechnical monitoring and testing services. Staff prepared a Request for Proposals (RFP, Attachment 4) for the geotechnical support services needed for the project and advertised it on the PlanetBids website and contacted local firms. Proposals were received from six (6) firms: Ninyo & Moore Geotechnical & Environmental Science Consultants, GMU, LGC Geotechnical, Inc., Geocon West. Inc., Twining and ENGEO. The fee proposals ranged from \$60,950 to \$159,940.

Upon reviewing the written proposals, it was concluded that LGC Geotechnical, Inc. submitted the best proposal, project team, and demonstrated the most relevant experience. LGC Geotechnical, Inc.'s fee proposal is \$88,000, which is fair and reasonable.

Some of the equipment and materials have long lead times for procurement, potentially up to 70 weeks, but staff is working with the contractor to expedite approvals to reduce the amount of time. Therefore, construction will be performed in two phases, completing portions of the project (i.e. storm drain, grading and sewer lift station) to allow the local residents use the access road and portions of the parking area. Phase II includes completion of the electrical and motor control systems as soon as equipment and materials become available. The anticipated construction completion for both phases is fall of 2025. Staff is currently working with the contractor to establish a more detailed construction schedule.

Council Options:

- Adopt Resolution No. 24-116 (Attachment 1), awarding a Professional Services Agreement to LGC Geotechnical, Inc., in an amount not to exceed \$88,000 and authorizing the City Manager to execute the Agreement.
- Modify and adopt Resolution No. 24-116.
- Deny the adoption of Resolution No. 24-116 to authorize execution of the Professional Services Agreement with LGC Geotechnical, Inc. and provide direction to staff.
- Continue the item with direction to staff to provide additional information.

Environmental Review/Analysis:

This action is not a “project” under California Environmental Quality Act. The Cyprus Shore Grading, Storm Drain and Sewer Lift Station Improvements was previously determined to be exempt from CEQA under Class 2 (Replacement or Reconstruction of Existing Structures and Facilities, 14 CCR section 15302) of the State CEQA Guidelines. A Notice of Exemption was filed with the County of Orange Recorder’s Office on October 19, 2023 for this Project.

Recommended Actions:

Staff recommends that the City Council adopt Resolution No. 24-116, which will:

1. Award a Professional Services Agreement to LGC Geotechnical, Inc. for geotechnical support services for the Cyprus Shore Grading, Storm Drain and Sewer Lift Station Improvements; and
2. Authorize the City Manager to execute a Professional Services Agreement with LGC Geotechnical, Inc. in an amount not to exceed \$88,000.

Attachment:

1. Resolution No. 24-116
2. Professional Consultant Services Agreement with LGC, Inc.
3. Staff Report dated May 21, 2024 (without attachments)
4. Request for Proposals

Notification:

All proposers

RESOLUTION NO. 24-116

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AWARDED A PROFESSIONAL CONSULTANT SERVICES AGREEMENT TO LGC GEOTECHNICAL, INC. FOR GEOTECHNICAL SUPPORT SERVICES FOR THE CYPRUS SHORE GRADING, STORM DRAIN AND SEWER LIFT STATION IMPROVEMENTS, CIP PROJECT NOS. 12004 & 12210, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT

WHEREAS, the existing sewer lift station and storm drain system have been compromised due to the coastal bluff movement at Cyprus Shore beginning in fall 2021; and

WHEREAS, the existing sewer lift station and storm drain system are currently operating on a temporary basis with an above ground structure and utilizing surface water flow through the park for the storm drain system; and

WHEREAS, rehabilitation and replacements are needed to continue service to the area and minimize disruption to the community; and

WHEREAS, the City received approval from the California Coastal Commission for a Coastal Development Permit on February 9, 2024 to relocate the wet well away from the original landslide, grading for access to the existing electrical equipment building, and replacement of the storm drain and sewer forcemain (the "Project"); and

WHEREAS, the Project was previously determined to be exempt from the California Environmental Quality Act (CEQA) under Class 2 (Replacement or Reconstruction of Existing Structures and Facilities, 14 CCR section 15302) of the State CEQA Guidelines and a Notice of Exemption was filed with the County of Orange Recorder's Office on October 19, 2023 for this Project; and

WHEREAS, AKM Consulting Engineers and Kreuzer Consulting Group designed and prepared a bid package to replace the sewer lift station, restore the storm drainage while enhancing the drainage system by installing new catch basins; and

WHEREAS, on May 21, 2024, the City Council awarded the Cyprus Shore Grading, Storm Drain and Sewer Lift Station Improvements, CIP Project No. 12004 & 12210, construction contract to GMZ Engineering, Inc. as the lowest responsible

and responsive bidder; and

WHEREAS, the Project requires geotechnical monitoring and testing services during construction; and

WHEREAS, staff prepared a Request for Proposals for the geotechnical support services needed for the Project and advertised on the PlanetBids website. Proposals were received from Six (6) firms, Ninyo & Moore Geotechnical & Environmental Science Consultants, GMU, LGC Geotechnical, Inc., Geocon West. Inc., Twining and ENGEO; and

WHEREAS, the fee proposals ranged from \$60,950 to \$159,940; and

WHEREAS, upon reviewing the written proposals, it was concluded that LGC Geotechnical, Inc. submitted the best proposal, project team, and demonstrated the most relevant experience and it's fee is fair and reasonable.

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

SECTION 1. That the above recitations are true and correct and incorporated fully herein.

SECTION 2. A Professional Consultant Services Agreement is hereby awarded to LGC Geotechnical, Inc. for the geotechnical support services for the Cyprus Shore Grading, Storm Drain and Sewer Lift Station Improvements, Project No. 12004 & 12210.

SECTION 3. That the City Manager is authorized and directed to execute a Professional Services Agreement with LGC Geotechnical, Inc. for the Cyprus Shore Grading, Storm Drain and Sewer Lift Station Improvements, CIP Project No. 12004 & 12210 in an amount not to exceed \$88,000 and in a form substantially similar to that presented to the City Council on July 17, 2024.

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

PASSED AND ADOPTED this _____ day of July, 2024.

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. 24-116 was adopted at a regular meeting of the City Council of the City of San Clemente held on the _____ day of July, 2024, 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 July, 2024.

CITY CLERK of the City of
San Clemente, California

Approved as to form:

Elizabeth A. Mitchell, City Attorney

CITY OF SAN CLEMENTE

PROFESSIONAL CONSULTANT SERVICES AGREEMENT

1. PARTIES AND DATE.

This Agreement is made and entered into this ____ day of _____, 2024, by and between the City of San Clemente, a municipal corporation, organized under the laws of the State of California, with its principal place of business at 910 Calle Negocio, San Clemente, California, 92673 ("City") and LGC Geotechnical, Inc., a California corporation, with its principal place of business at 131 Calle Iglesia, Suite 200, San Clemente, CA, 92672 ("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 geotechnical and soils engineering consulting services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing professional geotechnical and soils engineering 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 geotechnical and soils engineering consulting services for the Cyprus Shore Grading, Storm Drain and Sewer Lift Station Improvement project, Project No. 12004 & 12210 ("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 geotechnical and soils engineering 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 8, 2024 until the work is completed to the City's satisfaction. 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: Kevin B. Colson, Dennis Boratyne

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

3.2.8 Consultant's Representative. Consultant hereby designates Kevin B. Colson, Vice President, or his/her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his/her best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

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

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

3.2.11 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting

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

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

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

3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "D" attached hereto and incorporated herein by reference. The total compensation shall not exceed Eighty Eight Thousand Dollars (\$88,000) without 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: LGC Geotechnical, Inc.
131 Calle Iglesia, Suite 200
San Clemente, CA 92672
ATTN: Kevin B. Colson, Vice President

City: City of San Clemente
910 Calle Negocio
San Clemente, CA 92673
ATTN: Laura Campagnolo, City Clerk and Director of
Public Works / City Engineer

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

3.5.3 Ownership of Materials and Confidentiality.

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

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

3.5.3.3 Confidential Information. The City shall refrain from releasing Consultant's proprietary information ("Proprietary Information") unless the City's legal counsel determines that the release of the Proprietary Information is required by the California Public Records Act or other applicable state or federal law, or order of a court of competent jurisdiction, in which case the City shall notify Consultant of its intention to release Proprietary Information. Consultant shall have five (5) working days after receipt of the Release Notice to give City written notice of Consultant's objection to the City's release of Proprietary Information. Consultant shall indemnify, defend and hold harmless the City, and its officers, directors, employees, and agents from and against all liability, loss, cost or expense (including attorney's fees) arising out of a legal action brought to compel the release of Proprietary Information. City shall not release the Proprietary Information after receipt of the Objection Notice unless either: (1) Consultant fails to fully indemnify, defend (with City's choice of legal counsel), and hold City harmless from any legal action brought to compel such release; and/or (2) a final and non-appealable order by a court of competent jurisdiction requires that City release such information.

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

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

3.5.6 Indemnification.

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

3.5.6.2 If Consultant's obligation to defend, indemnify, and/or hold

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.6 Subcontracting.

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

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

CITY OF SAN CLEMENTE

By: _____
Andy Hall, City Manager

ATTEST:

CITY CLERK of the City of
San Clemente, California

Dated: _____, 2024

APPROVED AS TO FORM:

Elizabeth A. Mitchell, City Attorney

**APPROVED AS TO AVAILABILITY
OF FUNDING:**

Finance Authorization

LGC Geotechnical, Inc.,
a California Corporation
("CONSULTANT")

By: _____
Kevin B. Colson, Vice President

Dated: _____, 2024

EXHIBIT "A"
SCOPE OF SERVICES

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

- A. Support the City during the construction phase of the Project, including but not limited to:
1. Install, monitor and analyze an inclinometer for the planned new sewer lift station located at the end of Avenida De Las Palmeras within the Cyprus Shores private community in City of San Clemente, California; and
 2. Provide construction services for the project as requested by the City.
- B. Provide inclinometer services for the Project, including but not limited to:
1. Geotechnical Background Review / Site Markout / Private Utility Locator
 2. Drill and Install Inclinometer
 - Hollow-Stem Drilling and Inclinometer Install
 - Field Engineer / Geologist
 3. Inclinometer Readings
 4. Geotechnical Analysis and Summary Report
- C. Provide geotechnical construction services for the Project, including but not limited to:
- Services Prior to Construction
 - Soil Technician
 - Lab Testing
 - Project Management/Meetings/Coordination
 - Final Report

EXHIBIT "B"
SCHEDULE OF SERVICES

Consultant shall perform the services diligently and according to the timetable requested by the City.

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EXHIBIT "C"
INSURANCE REQUIREMENTS

3.2.12 Insurance.

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

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

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

(B) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1), or the exact equivalent, covering bodily injury and property damage for all activities with limits of not less than \$1,000,000 combined limit for each occurrence.

(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.

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

(A) Commercial General Liability:

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

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

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

(B) Automobile Liability:

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

3.2.12.4 Professional Liability (Errors & Omissions):

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

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

3.2.12.5 Workers' Compensation:

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

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

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

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

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

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

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

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

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

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

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

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EXHIBIT "D"
COMPENSATION

In full compensation for the Services performed by Consultant under this Agreement, the City shall pay the Consultant on a time and materials basis for actual worked performed at the hourly rates listed below and shall not exceed the following budget for the tasks identified:

Professional Billing Rate (per hour)

Word Processing.....	\$ 75.00
CAD Operator.....	100.00
Junior Field Technician.....	100.00
Senior Field Technician.....	115.00
Field Technician/Prevailing Wage.....	160.00
Staff Engineer/Geologist.....	145.00
Senior Staff Engineer/Geologist.....	155.00
Field Supervisor/Operations Manager.....	115.00
Project Engineer/Geologist.....	180.00
Senior Project Engineer/Geologist.....	195.00
Associate Engineer/Geologist.....	210.00
Principal Engineer/Geologist.....	275.00

Engineering Equipment

Field Vehicle Usage.....	\$ 10.00/per hour
Vehicle Mileage.....	included in vehicle usage
Nuclear Soil Gauge and Inclinator.....	included in hourly rate
Other Monitoring Equipment.....	<i>Upon Request</i>

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Laboratory Tests

Moisture Content	\$ 30.00
Moisture and Density (ring samples).....	45.00
Maximum Dry Density (optimum moisture content)	285.00
Maximum Density Checkpoint	85.00
Sieve Analysis	185.00
Hydrometer Analysis.....	145.00
Sieve and Hydrometer Analysis.....	240.00
Percent Passing No. 200 Sieve.....	90.00
Liquid Limit and Plastic Limit	235.00
Liquid Limit - Non-Plastic (1pt).....	110.00
Sand Equivalent.....	140.00
Expansion Index	170.00
Direct Shear (shear rate of 0.05 in./min.)	385.00
Direct Shear (shear rate of lower than 0.05 in./min.).....	465.00
Single Point Shear	140.00
Unconsolidated Undrained Triaxial Shear.....	225.00
Consolidation (w/o time rate)	255.00
w/time rate, add (per increment)	60.00
w/extra load, add (per load).....	55.00
Collapse Test (ASTM D4546-B)	140.00
R-Value (untreated)	400.00
R-Value (treated)	440.00
Sulfate Content.....	100.00
Chloride Content	100.00
Corrosive Suite (minimum resistivity, pH, sulfate and chloride).....	345.00
Organic Matter Content	85.00
Caltrans 216 Compaction	325.00

❖ **Install / Monitor / Analyze Inclinometer:**

• Geotechnical Background Review / Site Markout / Private Utility Locator	\$ 2,000
• Drill and Install Inclinometer	\$ 12,000
• Inclinometer Readings	\$ 9,000
• Geotechnical Analysis and Summary Report	<u>\$ 3,500</u>
Subtotal:	\$ 26,500

❖ **Geotechnical Construction Services**

• Services Prior to Construction	\$ 2,000
• Soil Technician Services (Estimate 300 hours @ \$170/hr.)	\$ 51,000
• Lab Testing	\$ 2,000
• Project Management/Meetings/Coordination	\$ 2,500
• Final Report	<u>\$ 4,000</u>
Subtotal:	\$ 61,500

❖ Install / Monitor / Analyze Inclinometer	\$ 26,500
❖ Geotechnical Construction Services	<u>\$ 61,500</u>

TOTAL: \$88,000

Total compensation under this Agreement shall not exceed \$88,000, including any reimbursable expenses approved in writing in advance.

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

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AGENDA REPORT

CITY OF SAN CLEMENTE

CITY COUNCIL MEETING

Meeting Date: May 21, 2024

Agenda Item: 8C

Department: Public Works

Prepared By Belgin Cuhadaroglu, Associate Civil Engineer

Subject:

BID PROTEST HEARING FOR THE CYPRUS SHORE GRADING, STORM DRAIN, AND SEWER LIFT STATION AND FORCE MAIN IMPROVEMENTS, CIP PROJECT NOS. 12004 & 12210, AND CONSIDERATION OF A RESOLUTION AWARDING A CONSTRUCTION CONTRACT FOR THE PROJECT TO THE LOWEST RESPONSIVE AND RESPONSIBLE BIDDER, APPROVING SUPPLEMENTAL APPROPRIATIONS FROM THE STORM DRAIN FUND DEPRECIATION RESERVE, THE SEWER FUND CONNECTION FEE RESERVE AND THE SEWER FUND DEPRECIATION RESERVE, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONSTRUCTION CONTRACT

Fiscal Impact:

The consideration of the bid protest will affect the fiscal impact on the project. The current low bidder is not the protestor and if the protest is ratified by the City Council, the next lowest qualified bidder, who is also the protestor, would be awarded the contract at a higher estimated cost.

If the bid protest is **granted**, the total estimated construction cost for the Cyprus Shore Grading, Storm Drain and Sewer Improvements project would be \$6,512,472, funded from the Storm Drain (\$1,873,399) and Sewer (\$4,639,073) Funds. If the bid protest is **denied**, the lower bid estimate of \$5,428,125, would be funded from the Storm Drain (\$1,513,679) and Sewer (\$3,914,446) Funds.

Regardless of the outcome of the bid protest hearing, supplemental appropriations will be needed. If the bid protest is **granted**, the following supplemental appropriations would be needed:

1. \$1,095,199 from the Storm Drain Fund Depreciation Reserve into Account No. 059-553-45300-000-12004;
2. \$300,000 from the Sewer Fund Connection Fee Reserve;
3. \$3,044,284 from the Sewer Fund Depreciation Reserve into Account No. 054-477-45300-000-12210.

If the bid protest is **denied**, the following supplemental appropriations would be needed:

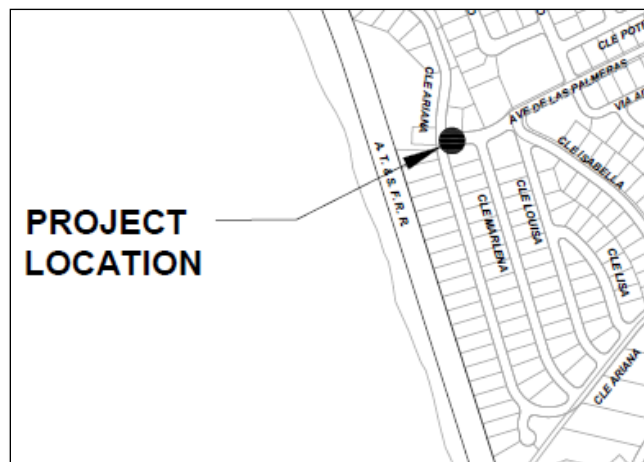
1. \$735,479 from the Storm Drain Fund Depreciation Reserve into Account No. 059-553-45300-000-12004;
2. \$300,000 from the Sewer Fund Connection Fee Reserve; and
3. \$2,319,657 from the Sewer Fund Depreciation Reserve into Account No. 054-477-45300-000-12210.

Summary:

The existing Cyprus Shore sewer lift station and storm drain system were compromised due to coastal bluff movement at Cyprus Shore development beginning in fall 2021. Both systems are currently operating on a temporary basis with an above ground structure and utilizing surface water flow through the park for the storm drain system. Rehabilitation and replacements are needed to continue service to the area and minimize disruption to the community.

The landslide area impacting City facilities was stabilized by the Orange County Transportation Authority (OCTA) and the City received a Coastal Development Permit to construct the following: replacement of a portion of the storm drain system, replacement of the sewer force main, modifications to the gravity sewer pipeline, construction of a new submersible sewer lift station, removal and replacement of existing asphalt pavement (A.C.), curb and gutters, sidewalks, and construction of new concrete junction structures and six catch basins. The City formally bid the project to obtain the lowest competitive price.

The City has received a protest in relation to the project bids. The protest is presented to the City Council who will determine whether to grant or deny the protest. If the protest is granted, the protestor will become the lowest responsive bidder, but if the protest is denied, the lowest responsive bidder is the bid under protest. The project is located within the Cyprus Shore HOA, as shown below:



Background:

The Project:

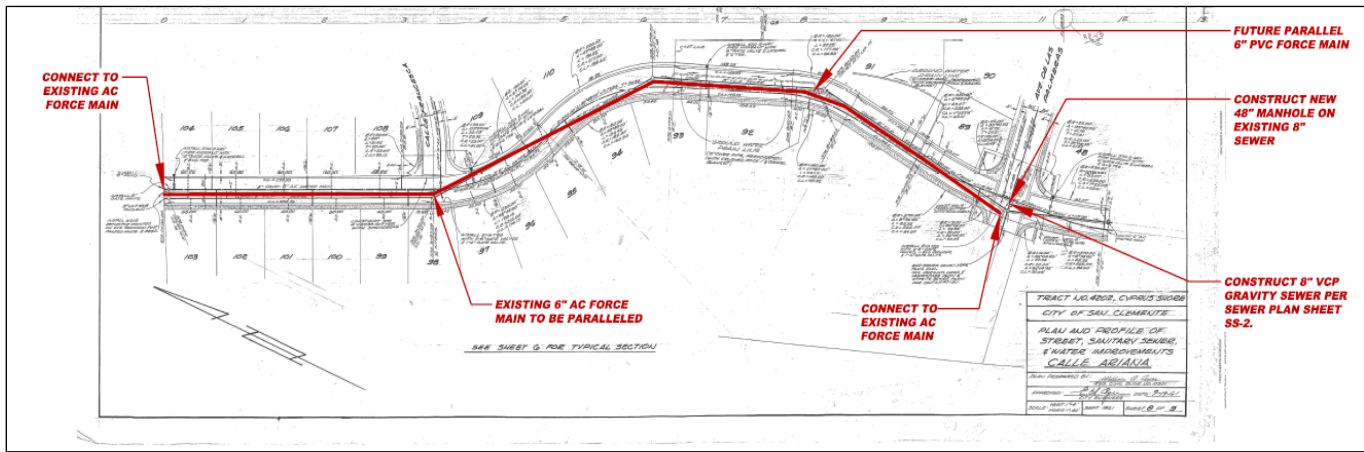
In the fall of 2021, coastal bluff movement compromised the existing sewer lift station and storm drain system. On September 20, 2021, City staff installed a temporary emergency sewer bypass pump system adjacent to the Cyprus Shore Clubhouse near the intersection of Calle Ariana and Avenue de las Palmeras to prevent and mitigate impairment to property and public services.

In the fall of 2023, City staff connected a temporary motor control center to operate the pump station in its existing location and eliminate the need for expensive pump watch. Additionally, a temporary above ground storm drain system was installed to direct storm flows through the homeowner association park. Both systems have functioned for the past few years, but are temporary and in need of replacement to minimize disruption to the community.

The City considered several design alternatives, but decided to replace facilities relatively close to the existing infrastructure due to a slope stabilization project by the Orange County Transportation Authority (OCTA), which consisted of a series of tiebacks and grade beams. With the stabilization of the area, the City was able to change the project to be more comprehensive and the California Coastal Commission approved a Coastal Development Permit on February 9, 2024 to relocate the wet well away from the original landslide, grading for access to the existing electrical equipment building, and replacement of the storm drain and sewer forcemain.



AKM Consulting Engineers and Kreuzer Consulting Group designed and prepared a bid package to replace the sewer lift station and restore the storm drainage while enhancing the drainage system by installing new catch basins. The work to be performed includes constructing a new submersible sewer lift station in a 7-foot diameter, 28-foot deep circular wet well on Avenida de Las Palmera, just west of Calle Ariana, replacement of approximately 217 linear feet of storm drain pipeline within the existing alignment and easement, construction of approximately 168 feet of lateral storm drain pipelines with 6 catch basins, repair of the motor control center and access to the existing sewer lift station electrical room, replacement of approximately 1,100 feet of the existing 6-inch sewer force main pipe with a new 6-inch PVC pipe, minor surfacing and repairs to the vehicular access road, as well as removal of asphalt from the portions of the road that have dropped below grade and the planting of 2,071 square feet of native vegetation in its place.



The Bids:

Staff notified local contractors and advertised the project for competitive bidding on PlanetBids website and in the San Clemente Times. Three bids were received on April 23, 2024, ranging from \$4,145,075 to \$5,227,738. The results are presented below.

Vendor Name	City	Base Bid Amount	Total Base Bid & Alternate Amount
GMZ Engineering Inc.	Westlake Village, CA	\$4,095,075.00	\$4,145,075.00
Kay Construction Company, Inc.	Santee, CA	\$4,899,837.00	\$5,056,237.00
GCI Construction, Inc.	San Clemente, CA	\$5,080,738.00	\$5,227,738.00

The apparent lowest bid for the base bid amount is GMZ Engineering, Inc. of Westlake Village, California at \$4,095,075. The City received one bid from a local contractor, GCI Construction, Inc., with a base bid in the amount of \$5,080,738. According to the San Clemente Municipal Code section 3.40.030 (E) regarding the Local Vendor Preference for a sealed bid, the maximum preference amount is \$150,000. Applying the maximum preference amount, GCI’s base bid is reduced by \$150,000 to \$4,930,738. Even with the local preference applied, the bidding position would not change.

The Bid Protest:

Following the bid opening, the second lowest bidder, Kay Construction Company, Inc. submitted a bid protest letter (Attachment 3) regarding what staff would recommend is a minor irregularity in GMZ Engineering's bid documents. Specifically, in the subcontractor listing submitted by GMZ Engineering, it identified that the following subcontractors would be doing the following percentages of the work:

Work to be done by Subcontractor	Subcontractor	Location of Business	CSLB Contractor License No.	DIR Registration Number	% of the Work
A/C Paving	Hardy & Harper, Inc.	32 Rancho Circle Lake Forest, CA 92630	215952	1000000076	100%
Coating	National Coating & Lining	26713 Madison Ave. Murrieta, CA 92562	886430	1000013795	100%
Electrical and Controls	TESCO CONTROLS LLC	8440 Florin Road Sacramento, CA 95828	1092377	1000942924	90%

Kay Construction Company protested on the grounds that GMZ Engineering's bid was non-responsive because it entered "100%" and "90%" on the above table in the bid forms for using subcontractors (i.e., Hardy & Harper, National Coating & Lining and Tesco Controls) for the project, which totaled 290%, if added together.

To clarify this issue, GMZ Engineering submitted documentation (Attachment 4) demonstrating that the above subcontractors, while performing 100% or 90% of the specified subcontractor work (i.e., paving, coating and electrical and controls), will only perform a total of 20.07% of total work on the Base Bid, which is under the allowed 49%.

A city generally has the discretion to determine bid responsiveness and may either demand strict compliance with the bid specifications or can choose to waive a defect that is inconsequential or is an immaterial deviation. See *Taylor Bus Serv., Inc. v. San Diego Bd. of Educ.* (1987) 195 Cal.App.3d 1331, 1343. A bid defect cannot be considered inconsequential or immaterial if it gives the bidder an unfair competitive advantage or benefit over other bidders.

In this instance, staff believes the irregularity is an inconsequential and immaterial bid defect. The irregularity does not affect the amount of the bid, make the bid materially different than intended, or give GMZ Engineering an unfair competitive advantage or benefit over the other bidders. Based on the bid specifications, staff estimated that the paving, coating and electrical and control subcontracting work was less than 49% and GMZ Engineering's documentation confirms that, which makes GMZ Engineering's bid responsive and binding. While the City Council has the discretion to demand strict compliance with the bid specifications and find GMZ Engineering's bid non-responsive, that would not appear to be in the best interest of the City or the public in this case. Accordingly, staff recommends that the City Council waive strict compliance with the bid documents for this deviation, deny the bid protest and award the contract to GMZ Engineering.

Contract Award:

As a public works project, the contract must be awarded to the lowest responsive and responsible bidder. If the City Council denies the bid protest, GMZ Engineering would be the lowest responsive and responsible bidder. If the City Council grants the bid protest, Kay Construction Company would be the lowest responsive and responsible bidder.

Staff recommends awarding the contract to GMZ Engineering, Inc. for the base bid and alternative amount to replace the storm drain outlet in OCTA's right-of-way. The total estimated project construction cost, assuming GMZ Engineering is awarded the contract, is summarized below:

Construction Management and Inspection, and Engineering support services	\$ 405,000
Soils Testing, Inspection and Monitoring	90,550
Construction Contract	4,145,075
<u>Contingency (19%)</u>	<u>787,500</u>
Total Estimated Construction Cost	\$5,428,125

The attached draft contract and Resolution are drafted assuming that the City Council determines that GMZ Engineering is the lowest responsive and responsible bidder. If the City Council decides not to waive the inconsequential, immaterial irregularity in GMZ Engineering's bid, then the estimated project costs would increase by over \$1 million and appropriate changes should be made to the draft contract and Resolution.

As required by City policy and state law, the Contractor will be required to provide performance and payment bonds simultaneously with execution of the construction contract (Attachment 2). Project plans and specifications are on file in the City Clerk's office.

The City Council will note that the draft construction contract (Attachment 2) proposes to award the entire scope of work to the lowest responsive and responsible bidder after the formal protest is decided. While a formal protest was not submitted regarding the above ground electrical work, questions were raised about whether it would be appropriate to subtract all of the above ground electrical work (some of which was partially modified via an addendum to the bid documents) and re-bid that portion of work.

Staff conducted an analysis of all the electrical work related to the motor control center and generator (i.e., all of the above ground electrical work, some of which was partially modified via an addendum) and the bids were competitive with the three contractor estimates finishing in the same bidding positions regardless of whether the electrical work is inclusive or bifurcated. Staff believes that it is in the City's best interest to award the entire contract to one contractor to ensure that the contractor will be responsible for the entire scope of work and that complications that could arise out of tying the underground electrical work together with the above ground electrical work are avoided.

However, should the City Council decide that the partial modifications to some of the above ground electrical work via addendum, even with the time extension, was a bidding irregularity justifying re-bidding because it improperly gave a contractor a competitive advantage or benefit,

staff should be directed to rebid that portion of the work accordingly. Since subtracting of the above ground electrical work does not impact any of the bidding positions of any of the bidders, the bulk of the construction contract can be awarded now either with or without the electrical panel work.

Regardless of the outcome, staff will return to the City Council to award a professional services contract for geotechnical consultant services needed for this project. The professional services agreement is going through a formal request for proposal process now, per City policy.

Council Options:

- Adopt Resolution No. 24-72 (Attachment 1), denying the bid protest, waiving strict compliance with the bid documents, awarding the contract for the Cyprus Shore Grading, Storm Drain and Sewer Lift Station Improvements to GMZ Engineering, Inc., and authorizing the City Manager to execute a construction contract in an amount of \$4,145,075, plus a 19% project contingency of \$787,500.
- Modify and adopt Resolution No. 24-72, granting the bid protest and awarding the contract to Kay Construction Company, Inc. in the amount of \$5,056,237, plus a 19% project contingency.
- Make other modifications to and adopt Resolution No. 24-72.
- Continue the item and direct staff to provide additional information.
- Do not adopt Resolution No. 24-72 and put the project on hold.

Environmental Review/Analysis

This Project was previously determined to be exempt from the California Environmental Quality Act (CEQA) under Class 2 (Replacement or Reconstruction of Existing Structures and Facilities, 14 CCR section 15302) of the State CEQA Guidelines. A Notice of Exemption was filed with the County of Orange Recorder's Office on October 19, 2023 for this Project. (See Attachment 5)

Recommended Actions:

Staff recommends that the City Council:

1. Conduct a bid protest hearing, open the hearing, hear public testimony and comments, including any evidence and argument presented by the bidders, and close the hearing.

AND adopt Resolution No. 24-72, which will:

2. Deny the bid protest submitted by Kay Construction Company, Inc. and waive strict compliance with the bid documents with respect to the inconsequential and immaterial deviation in the bid submitted by GMZ Engineering, Inc.;
3. Award the Cyprus Shore Grading, Storm Drain and Sewer Lift Station Improvements, CIP Project No. 12004 & 12210, construction contract to GMZ Engineering, Inc. as the lowest responsible and responsive bidder;

4. Authorize the City Manager to execute a construction contract with GMZ Engineering, Inc. in an amount of \$4,145,075, in a form substantially similar to Contract No. C24-23 (Attachment 2);
5. Approve a 19% project contingency of \$787,500; and
6. Approve a supplemental appropriation in the amount of \$735,479 to account #059-553-45300-000-12004 from the Storm Drain Fund Depreciation Reserve and a supplementation appropriation of \$2,619,657 to account #054-477-45300-000-12210 with \$300,000 from the Sewer Fund Connection Fee Reserve and \$2,319,657 from the Sewer Fund Depreciation Reserve.

Attachment:

1. Resolution No. 24-72
2. Construction Contract with GMZ Engineering, Inc.
3. Protest Letter from Kay Construction
4. Letter from GMZ Engineering, Inc.
5. Notice of Exemption

Notification:

All bidders



CITY OF SAN CLEMENTE

REQUEST FOR PROPOSAL

GEOTECHNICAL AND RELATED PROFESSIONAL SERVICES CONTRACT

FOR

**CYPRUS SHORE GRADING, STORM DRAIN AND SEWER
LIFT STATION IMPROVEMENT,**

PROJECT NOS. 12004 & 12210

MAY 2024

**City of San Clemente
Public Works Department
910 Calle Negocio, Suite 100
San Clemente, CA 92673**

CITY OF SAN CLEMENTE

REQUEST FOR PROPOSAL

MAY 22, 2024

Prospective Contractors:

The City of San Clemente (City) is soliciting proposals from Professional Services Contractors (Consultants) to provide Geotechnical and Related Professional Services for the Cyprus Shore Grading, Storm Drain and Sewer Lift Station Improvements Project, as described in detail in the attached Request for Qualifications (RFP).

City Point of Contact:

The sole source of contact regarding this RFP is Belgin Cuhadaroglu at (949) 361-6128. Individuals or firms interested in submitting a proposal are asked not to contact other members of the City of San Clemente staff or Councilmembers in connection with the RFP prior to the announcement of the consultant selected.

Proposals and all written inquires related to this RFP are to be submitted confidentially to Belgin Cuhadaroglu at the following address:

Public Works Department
City of San Clemente
910 Calle Negocio, Suite 100
San Clemente, CA 92673

Confidential

Proposal Closing Date: 2:00 p.m. on June 10, 2024

Three (3) of each Contractor's proposal must be received by the City no later than 2:00 p.m. on June 10, 2024. All proposals must be delivered to the above address. Proposals will not be accepted if received after the closing date.

Sincerely,

Belgin Cuhadaroglu

Belgin Cuhadaroglu, P.E.
Associate Civil Engineer

CITY OF SAN CLEMENTE
REQUEST FOR PROPOSAL
GEOTECHNICAL AND RELATED PROFESSIONAL SERVICES CONTRACT
FOR
THE CYPRUS SHORE GRADING, STORM DRAIN AND SEWER LIFT
STATION IMPROVEMENT,
PROJECT NOS.12004 & 12210

A. INTRODUCTION

The City of San Clemente (City) is seeking proposals from qualified Consultants to install, monitor and analyze an inclinometer and provide construction services for the planned new sewer lift station located at the end of Avenida De Las Palmeras within the Cyprus Shores private community, City of San Clemente, California.

B. BACKGROUND

The existing sewer lift station and storm drain system have been compromised due to the coastal bluff movement at Cyprus Shore beginning in fall 2021 and are in need of repairs to continue providing services. The landslide area impacting City facilities was stabilized by the Orange County Transportation Authority (OCTA) and the City received a Coastal Development Permit to reconstruct the damaged sewer and storm Drain Systems.

The scope of the project includes; replacement of a portion of the storm drain system, replacement of the sewer force main, modifications to the gravity sewer pipeline, construction of a new submersible sewer lift station, removal and replacement of existing asphalt pavement (A.C.), curb and gutters, sidewalks, and construction of new concrete junction structures and six catch basins. The proposed sewer lift station wet well is approximately 35 feet deep. For more details, please see attached Project Specification (Attachment 2) and Project Plans (Attachment 3) for more details.

The City plans to engage Consultant Services for Engineering Support Services, and also for Construction Management and Inspection services.

The project is anticipated to start by the end of June 2024 and continue for a period of approximately 200 working days. Geotechnical Services will be needed approximately 15% of the total duration of the operations.

C. PROJECT OBJECTIVES

Provide Geotechnical and Related Professional Services for the Cyprus Shore Grading, Storm Drain and Sewer Lift Station Improvements Project.

D. SCOPE OF WORK

The scope of work items required for the Geotechnical and Related Professional Services:

- **Drill and Install Inclinometer:**

The purpose of the inclinometer will be to monitor the movement of the inclinometer due to the construction of the proposed sewer lift station.

- One (approximately 45-foot) boring needs to be performed to install an inclinometer between the clubhouse and the proposed sewer lift station. The inclinometer would also have a traffic rated well box cover to protect it from vehicular traffic.
- Approximately 15 readings to monitor potential movement towards the excavation needs to be performed after the completion of the excavation of the inclinometer.
- A report of the findings and analysis shall be provided after construction is completed.

- **Geotechnical Construction Services:**

Construction support services including field on-site materials testing, geotechnical observation and evaluation.

- Provide plan reviews and attend conference calls prior to construction
- Construction activities that will necessitate geotechnical observation and testing include the excavation, shoring, and backfill of the wet well, dry, and wet utility installation, as well as concrete and street improvements.
- Provide on-call technician to observe and test during the construction. (Approximately 300 hrs)
- Laboratory testing shall include 4 maximum compaction tests as well as 4 sand equivalent tests.
- Provide project management/ field meetings/ coordination.

RFP - INSTRUCTIONS AND CONDITIONS

- Provided a final report at the end of construction services

E. DELIVERABLES

The contractor is responsible for deliverables as defined by each specific project scope of work and agreement. The following provides an example of deliverables which may be requested as part of a design project:

- One geotechnical report for the site is required for the inclinometer readings
- One comprehensive summary report is required for observation and testing services. Concrete testing reports and results shall be included.

F. ATTACHMENTS

- A. Professional Services Agreement.
- B. Project Specification
- C. Project Plans

CITY OF SAN CLEMENTE

REQUEST FOR PROPOSAL

GEOTECHNICAL AND RELATED PROFESSIONAL SERVICES CONTRACT FOR THE CYPRUS SHORE GRADING, STORM DRAIN AND SEWER LIFT STATION IMPROVEMENT, PROJECT NOS.12004 & 12210

INSTRUCTIONS AND CONDITIONS

The following instructions and conditions apply to this RFP.

A. GENERAL CONDITIONS

1. Pre-Contractual Expenses

Pre-contractual expenses are defined as expenses incurred by the Professional Services Consultants (contractor) in:

- Preparing a proposal in response to this RFP
- Submitting that proposal to the City of San Clemente
- Negotiating with the City of San Clemente on any matter related to this RFP, proposal and/or contractual agreement
- Any other expenses incurred by the contractor prior to the date of an executed contract

The City of San Clemente shall not, in any event, be liable for any pre-contractual expenses incurred by any contractor. In addition, no contractor shall include any such expenses as part of the price proposed to conduct the scope of work for this project.

2. Authority to Withdraw RFP and/or Not Award Contract

The City of San Clemente reserves the right to withdraw this RFP at any time without prior notice. Further, the City makes no representations that any agreement will be awarded to any contractor responding to this RFP. The City expressly reserves the right to

postpone the opening of proposals for its own convenience and to reject any and all proposals in response to this RFP without indicating any reasons for such rejection(s).

3. Pricing Approach

The City of San Clemente intends to award a fixed price contract for the conduct of this project. In no event shall the City pay an amount in excess of the dollar value negotiated in the contractual agreement with the successful contractor. **Please note, the City will not pay for any travel time for the contractor's staff arriving to the project site.**

4. Right to Reject Statement of Qualifications

The City of San Clemente reserves the right to reject any or all proposals submitted. Any award made for this engagement will be made to the contractor which, in the opinion of the City, is best qualified to conduct the project.

5. Statement of Qualification Evaluation Criteria

Proposals will be evaluated on the basis of their response to all provisions of this RFP. The City of San Clemente may use some or all of the following criteria in its evaluation and comparison of proposals submitted. The criteria listed are not necessarily an all-inclusive list. The order in which they appear is not intended to indicate their relative importance:

- a. Previous experience
- b. Demonstrated record of success on work previously performed for the City or similar work performed for others
- c. Project Lead
- d. Educational background of project lead and staff
- e. Staff to perform work within the specified time
- f. Methodology proposed to accomplish the work

RFP - INSTRUCTIONS AND CONDITIONS

- g. Ability to make effective public presentations of the report and/or design required
- h. Ability to work effectively with City staff, other public agencies and related parties as directed during the course of the design, study or other services
- i. Pertinent new ideas which may be presented during the course of the selection process
- j. Adequate knowledge of local conditions
- k. Availability, experience and knowledge of all subcontractors hired to complete the job or study
- l. Additional work performed by the contractor which may have a direct and substantial physical relationship or conflict to the proposed project
- m. Retention of original contractor on projects modified due to the original contractor's detailed knowledge of the work or on the grounds of cost
- n. Previous history of completing projects within budget and design estimates
- o. Ability to furnish adequate and effective construction supervision
- p. Consideration for contractors currently working with a major developer in the City for work within or adjacent to the major development project

B. PROPOSAL FORMAT AND CONTENT

Proposals should be typed as brief as possible. They should not include any elaborate or unnecessary promotional material. The following order and content of proposal sections should be adhered to by each contractor.

I. Cover Letter

A cover letter not to exceed three pages in length should summarize key elements of the contractor's proposal. The

letter must be signed by an individual authorized to bind the contractor. The letter must stipulate that the proposed price will be valid for a period of at least 90 days. Indicate the address and telephone number of the contractor's office located nearest to San Clemente, California, and the office from which the project will be managed.

II. Background and Approach

The Background and Approach Section should describe your understanding of the City, services offered, and the objectives to be accomplished.

III. Methodology

This section should clearly describe the methodology or methodologies you plan to use to carry out the specific work tasks described in the Work Plan.

IV. Work Plan

Include any other geotechnical and materials testing tasks or services that you feel are necessary or beneficial to accomplish the work described but are not included in this request for qualifications.

V. Project Organization and Staffing

Describe your approach and methods for managing the project. Provide an organization chart showing all proposed project team members. Describe the responsibilities of each person on the project team. Identify the Project Director and/or Manager and the person who will be the key contact with the City of San Clemente. Indicate how many hours each team member will devote to the project by task, along with a statement indicating the availability of the members of the project team for the duration of the project. Include resumes for each member of the project team. Include information and staff support required from City personnel. If utilizing a City-paid intern is possible to address data collection or routine work assignments, identify that opportunity and related cost savings.

VI. Related Experience

Describe recent, directly related experience. Include on each listing: the name of the client; description of the work done; primary client contact; address and telephone number; dates for the project; name of the Project Director and/or Manager and members of the proposed project team who worked on the project, as well as their respective responsibilities.

At least three references should be included. For each reference, indicate the reference's name, organization affiliation, title, complete mailing address and telephone number. The City of San Clemente reserves the right to contact any of the organizations or individuals listed.

VII. Project Schedule

Provide a schedule for completing each task in the work program, including deadlines for preparing all project deliverables.

VIII. Cost Data

Indicate the total cost for which you will conduct the project by phase. Identify by project team member: name, classification, and the number of hours each member will spend on each work task. Indicate separately, total cost for fees and expenses, including any proposed fee discount.

IX. Statement of Compliance

Contractors must submit a Statement of Compliance with all parts of the Request for Proposal and Draft Agreement terms and conditions, or a listing of exceptions and suggested changes, along with a description of any cost implications or schedule changes the exceptions and/or changes cause. The Statement of Compliance must declare either:

- A. This proposal is in strict compliance with the Request for Proposal and Draft Agreement and no exceptions to either are proposed; or

RFP - INSTRUCTIONS AND CONDITIONS

- B. This proposal is in strict compliance with the Request for Proposal and Draft Agreement except for the items listed.

For each exception and/or suggested change, the contractor must include:

1. The suggested change in the RFP or rewording of the contractual obligations.
2. Reasons for submitting the proposed exception or change.
3. Any impact the change or exception may have on project costs, scheduling or other considerations.

X. Other Information

Include any other information you consider to be relevant to the statement of qualifications.

- XI.** Consultant agrees that in carrying out its responsibilities under this agreement, and in particular with regard to the employment of persons and sub-contractors working on the project, it will not discriminate on the basis of race, color, creed, national origin, religion, sex, age, or handicap. In the event any of the work performed by consultant hereunder is sub-contracted to another person or firm (with approval of the City as required herein), sub-contract shall contain a similar provision.