



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: 111

Submitted By: Community Development

Prepared By: Adam Atamian, Community Development Director

Subject:

CONSIDERATION OF A RESOLUTION AWARDING A PROFESSIONAL SERVICES AGREEMENT WITH MIKE LINARES INC. FOR THE PREPARATION OF THE 2025-2029 CONSOLIDATED PLAN AND CONTINUED COMMUNITY DEVELOPMENT BLOCK GRANT ADMINISTRATION SERVICES AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT

Fiscal Impact:

There is no general fund impact for this agreement because these services, for an amount not to exceed \$97,500.00, will be funded through Community Development Block Grant (CDBG) grant funds allocated for administration costs.

Summary:

In accordance with U.S. Department of Housing and Urban and Development (“HUD”) guidelines, the City is required to prepare a Consolidated Plan (often referred to as the “Con Plan”) to maintain compliance and ensure ongoing eligibility for federal funding. The Consolidated Plan, which has a duration of five-years, describes the City’s community development priorities and multi-year goals based on an assessment of housing and community development needs, an analysis of housing and economic market conditions and available resources. In addition to the Consolidated Plan, the Annual Action Plan (often referred to as the “AAP”) will also be prepared and presented in conjunction for City Council review and approval.

Before the City Council is the award of a professional services agreement to Mike Linares, Inc., a local firm, to facilitate the drafting of the 2025-2029 Consolidated Plan, the Annual Action Plan, and other annual regulatory tasks associated with CDBG administration.

Background:

At the May 19, 2020 City Council meeting, the 2020-2024 Consolidated Plan was approved and adopted unanimously by the City Council. The City carried out the necessary tasks complying with all elements of the 2020-2024 plan. All necessary program reporting requirements were executed by the City Manager and or his designee in a timely fashion and were successfully certified by HUD. During Consolidated Plan years, both the Consolidated Plan and Annual Action Plan are submitted simultaneously for review and approval. As such, the 2025-2029 Consolidated Plan and 2025-2026 Annual Action Plan will be submitted consistent with previous years format.

The five-year Consolidated Plan necessitates the annual preparation and submission of specific documents. These include:

- Annual Action Plan (“AAP”): The Consolidated Plan is carried out through Annual Action Plans, which provide a concise summary of the actions, activities, and the specific federal and non-federal resources that will be used each year to address the priority needs and specific goals identified by the Consolidated Plan.
- Consolidated Annual Performance and Evaluation Report (often referred to as the “CAPER”). In the CAPER, grantees report on accomplishments and progress toward Consolidated Plan goals in the prior year.

On April 14, 2022, the City initiated a Request for Proposals (RFP) seeking services for Community Development Block Grant (CDBG) Program Administration and Housing Rehabilitation Program Administration. The RFP closed on May 5, 2022, after a 21-day period, during which only one bid was received from Mike Linares, Inc., a qualified local consultant currently engaged in similar services for the City.

Discussion:

The Consolidated Plan is designed to assist the City in assessing our affordable housing and community development needs and market conditions, and to make data-driven, place-based investment decisions.

Key steps required to initiate and prepare the Consolidated Plan are as follows:

- Citizen Participation: A significant portion of the Consolidated Plan is dedicated to delineating the actions that the City will take to obtain the input of residents and stakeholders during the preparation of the Consolidated Plan. Community meetings, community surveys, focus groups, and public hearings are examples of actions that communities may utilize for this purpose.
- Research and Analysis: The Consolidated Plan content and format are dictated by HUD's eConPlan template; however, additional data collection and analysis are required to complete the template. Existing data sources will be utilized to augment data provided by HUD to complete applicable Consolidated Plan narratives and tables.
- Strategic Annual Plan: The Strategic Plan portion of the Consolidated Plan establishes programs and multi-year goals to address identified housing and community needs. The Strategic Plan will establish the general categories of programs and activities that the City will carry out to address priority needs.
- Annual Action Plan: The Annual Action Plan is the yearly expenditure plan for using CDBG funds. To undertake this process, the consultant will work closely with City staff to determine which projects and programs will be funded with CDBG.
- Integrated Disbursement and Information System (“IDIS”) Set-up/Uploading: Upon completion and approval of the Consolidated Plan by the San Clemente City Council, the Consolidated Plan and FY 2025-2026 Annual Action Plan will be uploaded into IDIS, completing the initial stage of the process. HUD's Community Planning and Development

Representative assigned to the City will review the submitted Consolidated Plan and may request additional information or modifications or approve the document.

Other tasks associated with annual CDBG Administration are as follows:

- Preparation of the City's Comprehensive Annual Performance and Evaluation Report ("CAPER")
- CDBG subrecipient grant administration
- Update/maintain the City's CDBG program data in IDIS
- IDIS activities with the City's Budget/Finance personnel to ensure timely reimbursement to the City for CDBG-eligible outlays and to help reconcile records between the City's accounting system and IDIS
- Communication of updates/changes to HUD/CDBG requirements
- Maintain documentation (files) for CDBG monitoring and audit
- Reporting of federal Davis-Bacon (prevailing wages) and Section 3 compliance for CDBG-funded construction projects as needed
- Preparation of National Environmental Policy Act (NEPA) reviews for HUD/CDBG activities
- Preparation of other HUD/CDBG-related reports, analysis, and administrative tasks, interaction with HUD staff, and general program consultation

To facilitate the drafting of the 2025-2029 Consolidated Plan, the Annual Action Plan, and other annual regulatory tasks associated with CDBG administration, staff recommends that the City Council award a contract with Mike Linares, Inc., a local firm, for these services. This recommendation is based on the combination of various factors including the experience of the firm and the unique familiarity with the CDBG program as it relates to the City of San Clemente. Mike Linares, Inc. is the most knowledgeable and advantageous professional service provider in this area for the City and their fee is fair and reasonable. They are recommended to oversee the drafting of the plan and manage related tasks in accordance with federal guidelines and community needs because they possess attributes making them uniquely qualified to provide the services consistent with Section 7.1.2 of City Policy and Procedure No. 201-2-3 – Selection of Professional Services Contractors. Furthermore, given the specialized nature of these services and the continuity provided by Mike Linares, Inc., the anticipated costs and logistical challenges associated with transitioning to another consultant outweigh the potential savings from a competitive bidding process. Therefore, in accordance with Section 7.1.3 of City Policy and Procedure No. 201-2-3 – Selection of Professional Services Contractors, an exemption from competitive bidding is warranted.

Council Options:

- Consider adopting Resolution No. 24-118, which would award the Professional Services Agreement with Mike Linares, Inc. for the preparation of the 2025-2029 Consolidated Plan, 2025-2026 Annual Action Plan, and Community Development Block Grant Administration Services (CDBG), authorize the City Manager to execute the Agreement and find the Agreement exempt from City Policy and Procedure No. 201-2-3 under Section 7.1.2. and 7.1.3
- Modify and adopt Resolution No. 24-118.

- Find the Professional Services Agreement for the preparation of the 2025-2029 Consolidated Plan, 2025-2026 Annual Action Plan, and CDBG Administration Services not exempt from City Policy and Procedure No. 201-2-3 and direct staff to issue a request for proposals for the services.
- Continue the Item and provide staff with alternative direction.

Environmental Review/Analysis:

Not a “project” under the California Environmental Quality Act Guidelines Section 15378 (14 CCR 15378). Preparation of the 2025-2029 Consolidated Plan, 2025-2026 Annual Action Plan, and CDBG Administration Services, and has no potential result in either a direct or physical change in the environment or a reasonably foreseeable indirect physical change in the environment

Recommended Actions:

Staff Recommendation

Staff recommends that the City Council Adopt Resolution No. 24-118, which will:

1. Find Mike Linares, Inc. has unique familiarity with the project, subject area or possesses other attributes making them uniquely qualified to provide the 2025-2029 Consolidated Plan, 2025-2026 Annual Action Plan, and Community Development Block Grant Administration Services (CDBG) that the City needs;
2. Award the Professional Services Agreement, as provided as Attachment 2, for the preparation of the 2025-2029 Consolidated Plan, 2025-2026 Annual Action Plan, and Community Development Block Grant Administration Services (CDBG) to Mike Linares, Inc.; and
3. Authorize the City Manager to execute the Professional Services Agreement with Mike Linares, Inc. for an amount not to exceed \$97,500.

Attachment:

1. Resolution No. 24-118
2. Professional Services Agreement with Mike Linares, Inc.
3. Policy and Procedure No. 201-2-3 – Selection of Professional Services Contractors

Notification:

Mike Linares, Inc.

RESOLUTION NO. 24-118

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, CONSIDERATION OF A RESOLUTION AWARDING A PROFESSIONAL SERVICES AGREEMENT TO MIKE LINARES INC. FOR THE 2025-2029 CONSOLIDATED PLAN AND COMMUNITY DEVELOPMENT BLOCK GRANT ADMINISTRATION SERVICES (CDBG) AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT

WHEREAS, pursuant to Title 24, Pt.91, Subpart C, Section § 91.200 of the U.S. Department of Housing and Urban Development Code of Regulations, the City is required to prepare a five-year Consolidated Plan for Fiscal Years 2025-2029; and

WHEREAS, upon the adoption of the Consolidated Plan, the City of San Clemente is eligible to participate in the Community Development Block Grant ("CDBG") Program; and

WHEREAS, as a component of the Consolidated Plan, the Annual Action Plan and the Comprehensive Annual Performance and Evaluation Report ("CAPER") are updated each fiscal year and includes the application to the U.S. Department of Housing and Urban Development ("HUD") for CDBG funds, required certifications, and reporting related to the receipt and use of CDBG funds; and

WHEREAS, to facilitate the drafting of the 2025-2029 Consolidated Plan and fulfill other annual regulatory obligations associated with the administration of Community Development Block Grant ("CDBG") funds from the U.S. Department of Housing and Urban Development ("HUD"), Office of Community Planning and Development ("CPD"), the City requires the services of a professional; and

WHEREAS, on April 14, 2022, the City initiated a Request for Proposals (RFP) seeking services for Community Development Block Grant (CDBG) Program Administration and Housing Rehabilitation Program Administration. The RFP closed on May 5, 2022, after a 21-day period, during which only one bid was received from Mike Linares, Inc., a qualified local consultant currently engaged in similar services for the City.

WHEREAS, Section 7.1.2 and 7.1.3 of City Policy and Procedure No. 201-2-3 - Selection of Professional Services Contractors, provides that the City Council has the authority to determine that the selection of a professional services contractor for a project need not follow the procedure established in such policy; and

WHEREAS, Mike Linares, Inc., a local firm, is unique familiarity with the CDBG program as it relates to the City of San Clemente, is the most knowledgeable and

advantageous professional service provider in this area for the City and their 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. The above recitals are true and correct and incorporated herein by reference.

SECTION 2. Mike Linares, Inc. has unique familiarity with the project, subject area or possesses other attributes making them uniquely qualified to provide the 2025-2029 Consolidated Plan, 2025-2026 Annual Action Plan, and Community Development Block Grant Administration Services (CDBG) that the City needs. Pursuant to Section 7.1.2 and 7.1.3 of City Policy and Procedure No. 201-2-3 - Selection of Professional Services Contractors, the City Council determine that the selection of a professional services contractor for this project need not following the procedure established in such policy.

SECTION 3. A Professional Services Agreement for the preparation of the 2025-2029 Consolidated Plan, 2025-2026 Annual Action Plan, and Community Development Block Grant Administration Services (CDBG) is hereby awarded to Mike Linares, Inc.

SECTION 4. The City Manager, or the City Manager's designee, is hereby authorized and directed to execute a Professional Services Agreement with Mike Linares, Inc. in an amount not to exceed \$97,500.00 in a form substantially similar to that presented to the City Council on July 17, 2024.

SECTION 5. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED AND ADOPTED this ____ day of _____, ____.

ATTEST:

City Clerk of the City of
San Clemente, California

Mayor of the City of
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. 24-118 was adopted at a regular meeting of the City Council of the City of San Clemente held on the _____ day of _____, _____, by the following vote:

AYES:

NOES:

ABSENT:

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

CITY CLERK of the City of
San Clemente, California

Approved as to form:

Elizabeth A. Mitchell, City Attorney

CITY OF SAN CLEMENTE

PROFESSIONAL CONSULTANT SERVICES AGREEMENT

1. PARTIES AND DATE.

This Agreement is made and entered into this **17th day of July, 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 **Mike Linares, Inc, a California corporation with its principal place of business at 520 E. Avenida Pico # 3913, San Clemente, CA, 92674** ("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 **Community Development Block Grant (CDBG) Program Administration** 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 **Community Development Block Grant (CDBG) Program Administration** 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 consulting services for the **2025-2029 Consolidated Plan ("ConPlan")** project ("Project") and **annual Community Development Block Grant (CDBG) Program Administration** 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 **Community Development Block Grant (CDBG) Program Administration** 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 July 17, 2024 to June 30, 2026, unless earlier terminated as provided herein. The City shall have the unilateral option, at its sole discretion, to renew this Agreement automatically for no more than **One** additional two-year term. 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 Force Majeure. Neither party shall be liable for any failure to perform or any impairment to its performance to the extent such failure or impairment is caused by (i) any

act of God, fire, flood, natural catastrophe, labor dispute or strike or shortage, national or state emergency, epidemic or pandemic, insurrection, riot, act of terrorism, war, or act of government, and/or (iii) any other event, occurrence or circumstance beyond the reasonable control of either party (each, a "Force Majeure Event") and such party gives notice of the Force Majeure Event within ten (10) days together with a description of the anticipated impairment or failure and its duration and such party resumes performs immediately upon conclusion of the Force Majeure Event.

3.2.5 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.

3.2.6 Conformance to Applicable Requirements. All work prepared by Consultant shall be in accordance with the Standard of Care as stated in this Agreement, subject to the City's determination of conformance to such applicable requirements.

3.2.7 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: **Hender M. Linares, Chief Executive Officer**

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

3.2.9 Consultant's Representative. Consultant hereby designates **Hender M. Linares, Chief Executive Officer** 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.

3.2.10 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.

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

3.2.12 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.

3.2.13 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.

3.2.14 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 **NINETY-SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$97,500.00)** without written approval of the City Council or City Manager as applicable. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

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

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

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

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

3.3.6 Labor Code Requirements.

3.3.6.1 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and 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. City may not terminate this Agreement for cause without giving the Consultant notice and at least a ten (10) day opportunity to cure. 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: Mike Linares, Inc.
520 E Avenida Pico #3913
San Clemente, CA 92674
ATTN: Hender M. Linares, Chief Executive Officer

City: City of San Clemente
910 Calle Negocio
San Clemente, CA 92673
**ATTN: Adam Atamian, Community Development Director and
Laura Campagnolo, City Clerk**

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

3.5.3 Ownership of Materials and Confidentiality.

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

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

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

Proprietary Information after receipt of the Objection Notice unless either: (1) Consultant fails to fully indemnify, defend (with City's choice of legal counsel), and hold City harmless from any legal action brought to compel such release; and/or (2) a final and non-appealable order by a court of competent jurisdiction requires that City release such information.

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

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

3.5.6 Indemnification.

3.5.6.1 To the fullest extent permitted by law, Consultant shall defend (with counsel of City's approval), indemnify the City, its directors, officials, officers, employees, volunteers and agents from third-party claims, demands, causes of action, costs (including attorney fees), fees, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, to the extent caused by the active or passive negligence, act, error, or omission illegal 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. Consultant's obligation to indemnify shall not be restricted by any insurance provisions nor limited by availability of insurance proceeds.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.6 Subcontracting.

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

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

CITY OF SAN CLEMENTE

By: _____
Andy Hall, City Manager

Dated: _____, 2024

ATTEST:

CITY CLERK of the City of
San Clemente, California

APPROVED AS TO FORM:

Elizabeth A. Mitchell, City Attorney

**APPROVED AS TO AVAILABILITY
OF FUNDING:**

Finance Authorization

Mike Linares, Inc., a California Corporation
(CONSULTANT)

By: _____
Hender M. Linares, Chief Executive Officer, Chief
Financial Officer, Secretary

Dated: _____

EXHIBIT "A"
SCOPE OF SERVICES

**Preparation of the FY 2025-2029 Consolidated Plan
(Including the FY 2024-2025 Action Plan)
AND
Annual CDBG Program Administration**

CDBG PROGRAM ADMINISTRATION

Consultant, at the City's request, will provide CDBG Administration Services, including but not limited to the following (collectively, the "Services"):

- Preparation of the City's Comprehensive Annual Performance and Evaluation Report (CAPER), including:
 - Prepare CAPER according to HUD regulations
 - Update IDIS with relevant year-end data
 - Assist with the preparation of Council agenda reports and public hearing notices for citizen input
 - Other tasks related to the preparation and submission of the CAPER
- Preparation of the City's 2025-2029 Consolidated Plan, including the FY 2025-2026 Annual Action Plan (a component of the Consolidated Plan), including:
 - Prepare required narratives and tables for the submission of the Consolidate Plan 2025- 2029/FY 2025-2026 Action Plan
 - Input Consolidated Plan and Annual Action Plan programs/activities into IDIS
 - Assist with the preparation of City Council agenda reports and public hearing notices for citizen input
 - Other tasks related to the preparation and submission of the AAP
- CDBG Subrecipient grant administration including:
 - Assist the City in requesting and reviewing proposals for subrecipient CDBG funding
 - Prepare subrecipient application forms
 - Assist with the preparation of and administer sub-recipient agreements, including reviewing invoices for eligible costs and providing technical assistance to sub-recipients as needed
- Prepare or assist with the preparation of other HUD/CDBG-related reports, analysis, and administrative tasks, interaction with HUD staff, and general program consultation
- Update and coordinate IDIS activities, including:

- Update/maintain the City's CDBG program data in IDIS
 - Assist and coordinate IDIS activities with the City's Budget/Finance personnel to ensure timely reimbursement to the City for CDBG-eligible outlays and to help reconcile records between the City's accounting system and IDIS
- Keep City staff informed of any updates/changes to HUD/CDBG requirements
 - Develop and maintain documentation (files) for CDBG monitoring and audit
 - Assist with reporting federal Davis-Bacon (prevailing wages) and Section 3 compliance for CDBG-funded construction projects as needed
 - Prepare or assist with the preparation of NEPA environmental reviews for HUD/CDBG activities
 - Other CDBG-related administrative tasks as necessary

FY 2025-2029 CONSOLIDATED PLAN

Several steps will be necessary to initiate and complete the preparation of the FY 2025-2029 Consolidated Plan (ConPlan):

- Citizen Participation: A significant portion of the ConPlan is dedicated to delineating the actions the City will take to obtain the input of residents and stakeholders during the preparation of the ConPlan. Community meetings, community surveys, focus groups, and public hearings are examples of actions that communities may utilize for this purpose. In consultation with City staff, Consultant will identify existing data sources that can be used to prepare this section of the ConPlan.
- Research and Analysis: The ConPlan content and format are dictated by HUD's eConPlan template; however, additional data collection and analysis are required to complete the template. Consultant will utilize existing data sources to augment data provided by HUD to complete applicable ConPlan narratives and tables.
- Strategic Annual Plan: The Strategic Plan portion of the ConPlan establishes programs and multi-year goals to address identified housing and community needs. The Strategic Plan will establish the general categories of programs and activities the City will carry out to address priority needs. Consultant will prepare applicable sections of the ConPlan in consultation with City staff to complete strategic five-year and annual activity goals.
- Annual Action Plan: The Annual Action Plan is the yearly expenditure plan for using CDBG funds. To undertake this process, the Consultant will work closely with City staff to determine which projects and programs will be funded with CDBG.

- IDIS Set-up/Uploading: Upon completion and approval of the ConPlan by the San Clemente City Council, Consultant will set up and upload the ConPlan and FY 25-26 Annual Action Plan in IDIS, completing the initial stage of the process. HUD's CPD Representative assigned to the City will review the submitted ConPlan and may request additional information or modifications or approve the document.

EXHIBIT "B"
SCHEDULE OF SERVICES

Consultant shall timely and diligently perform the Services according to the following time tables.

Tentative FY 2025-2029 Consolidated Plan Preparation Schedule

TASKS	TARGET DATE
South County service provider meeting	October 2024
Data research and public input	October 2024 – November 2024
Draft the Consolidated Plan	December 2024 – January 2025
Meet with staff regarding 5-year Priorities	January 2025
CDBG BUDGET COMMITTEE (CDBG Public Service Grant Recommendations)	February 2025
Final the Draft Consolidated Plan	March 2025
Update Final Draft with Staff Comments	March 2025
Assist with the preparation of City Council Agenda Report	April 2025
CITY COUNCIL MEETING	APRIL 2025
Revise and final Con Plan	April 2025 – May 2025
SUBMIT CONSOLIDATED PLAN TO HUD **	May 15, 2025

Tentative CDBG Program Annual Administration Cycle

MONTH	CDBG - PROGRAM-RELATED TASK
July	<ul style="list-style-type: none"> ▪ Start of Program Year – Setup CDBG activities in IDIS ▪ Begin to collect & report data for the year-end report ▪ Prepare public service grant agreements and related materials ▪ Prepare NEPA reviews
August	<ul style="list-style-type: none"> ▪ Collect and report program data for the year-end report ▪ Coordinate year-end financial data with the City Finance Department ▪ Prepare draft CAPER
September	<ul style="list-style-type: none"> ▪ Coordinate the public review of CAPER ▪ Final CAPER ▪ Submit CAPER to HUD
October	<ul style="list-style-type: none"> ▪ Prepare new grant year CDBG Public Service Grant application
November	<ul style="list-style-type: none"> ▪ Solicit housing and non-housing programs/projects for CDBG funds ▪ Distribute CDBG funding applications to sub-recipients & City departments
December	<ul style="list-style-type: none"> ▪ Receive & review funding requests
January	<ul style="list-style-type: none"> ▪ Prepare a draft CDBG expenditure plan ▪ Mid-year budget reviews and adjustments
February	<ul style="list-style-type: none"> ▪ Hold required public review/meetings for the proposed use of HUD funds ▪ Draft annual Action Plan
March	<ul style="list-style-type: none"> ▪ Draft annual Action Plan ▪ Committee/Commission meetings
April	<ul style="list-style-type: none"> ▪ Committee/Commission meetings ▪ Assist with the preparation of agenda report for City Council Action Plan approval
May	<ul style="list-style-type: none"> ▪ Submit Action Plan to HUD ▪ Prepare grant agreements for the new program year ▪ Monitor sub-recipients
June	<ul style="list-style-type: none"> ▪ Closeout program year ▪ Prepare grant agreements for the new program year ▪ Monitor sub-recipients ▪ Prepare for year-end reporting
Ongoing	<ul style="list-style-type: none"> ▪ Prepare various HUD-related quarterly, semi-annual, and annual reports

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.

(E) Cyber Liability Insurance with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery,

business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines and penalties as well as credit monitoring expenses.

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

(A) Commercial General Liability:

(1) Additional Insured: The City, its officials, officers, employees, 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. If the Consultant carries insurance with coverages or limits beyond the minimum requirements set forth herein, those coverages and limits shall be available.

3.2.12.14 Insurance for Subconsultants. Consultant shall include all subconsultants engaged in any work for Consultant relating to this Agreement as additional insureds under the Consultant's policies, or the Consultant shall be responsible for causing subconsultants to purchase the appropriate insurance in compliance with the terms of these Insurance Requirements, including adding the City, its officials, officers, employees, agents, and volunteers as additional insureds to the subconsultant's policies. All policies of Commercial General Liability insurance provided by Consultant's subconsultants performing work relating to this Agreement shall be endorsed to name the City, its officials, officers, employees, agents and volunteers as additional insureds using endorsement form ISO CG 20 38 04 13 or an endorsement providing equivalent coverage. Consultant shall not allow any subconsultant to commence work on any subcontract relating to this Agreement until it has received satisfactory evidence of subconsultant's compliance with all insurance requirements under this Agreement, to the extent applicable. The Consultant shall provide satisfactory evidence of compliance with this section upon request of the City.

**EXHIBIT “D”
COMPENSATION**

In full compensation for the Services provided under the Agreement, the City shall pay the Consultant for actual work performed as follows: Consultant shall be paid a flat rate to prepare the Annual Action Plan of \$6,750, a flat rate to prepare the CAPER (\$7,750, and an hourly rate of \$115 per hour for all other Services, except as identified below, with not to exceed amounts as set forth below. The total compensation under the Agreement shall not exceed \$97,500.00.

2025-2029 CONSOLIDATED PLAN PREPARATION TASKS	COSTS
DOCUMENT PREPARATION TASKS	
• Review/Revise the Citizen Participation Plan & Prepare the Applicable Section of the Consolidated Plan	\$2,500
• Prepare Housing Market Analysis	\$6,000
• Prepare Housing & Community Needs Assessments	\$6,000
• Prepare Strategic Plan	\$7,500
• Meeting(s) & Public Hearing(s)	\$2,000
• Prepare Annual Action Plan *	\$6,750
SUB-TOTAL	\$30,750
CON PLAN RELATED TASKS	
• HUD Required Revisions	NA
• Obtain/Prepare/Analyze Community Needs (i.e., community survey, existing data sources, etc.) **	\$3,000
• Reprographics & Miscellaneous Expenses (cost +10%) **	\$500
SUB-TOTAL	\$3,500
NOT TO EXCEED FIXED PRICE	\$34,250

* Preparation of the FY 25-26 Annual Action Plan is included in the cost of preparing the FY 2025-2029 ConPlan and will not be billed as an annual program administration cost for FY 24-25. General FY 24- 25 CDBG program administration will be billed at the agreed-to hourly rate for hours dedicated to regular program administration, minus the cost of preparing the FY 25-26 Action Plan (i.e., an annual Not to Exceed of \$28,250); therefore, the total Not to Exceed for FY 24-25 for preparation of the FY 2025-2029 Consolidated Plan plus FY 24-25 CDBG Program Administration is **\$62,500**.

* FY 25-26 CDBG program administration is estimated to be a Not to Exceed amount of **\$35,000**.

All rates are subject to an annual revision (at a time fitting for the City's budget preparation process) as agreed by the parties and such adjustment shall not exceed the Consumer Price Index (CPI) published by the U.S. Department of Labor Statistics for the area.

There are no reimbursable expenses under this Agreement except as expressly set forth above.

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: _____

Mike Linares, Inc., a California corporation (CONSULTANT)

By: _____
Hender M. Linares

Chief Executive Officer

520 E. Avenida Pico # 3913
San Clemente, CA 92674



POLICY AND PROCEDURE

Subject: Selection of Professional Services Contractors	Index: Financial Services
	Number: 201-2-3
Effective Date: 12/07/2021	Prepared By: Finance & Administration Services
Supersedes: 12/01/2005	Approved By: 

1.0 PURPOSE:

Professional Services policies and procedures are established to provide a common understanding of the methods for selection of professional contractors for the design, review, advisory, field engineering, environmental, personnel and related services in connection with public improvement projects, development processing and governmental operations of the City; and to ensure that the City will obtain the most qualified and competent professional contractor at a reasonable cost consistent with quality facilities and/or services.

2.0 ORGANIZATION AFFECTED:

All Departments/Divisions

3.0 REFERENCES:

San Clemente Municipal Code, Title 3 Revenue & Finance, Chapter 3.40 Purchasing.

Public Contract Code Sections 22034 and 22037

4.0 POLICY:

4.1 **Selection of Professional Services Contractor** – Professional contractors must be individually selected for a specific project with due regard for the experience of the contractor, special knowledge of the subject matter, ability to perform the services in the time allowed, record of success on similar work, and ability to participate in discussions and presentations related to the project.

4.2 **Approval and Award of Contract** – Approval and award of professional services contracts will be:

Department Director	Under \$10,000
City Manager	\$10,000.01 - \$50,000
City Council	\$50,000.01 and above

- 4.3 **Contracts Awarded by the City Manager** – Contracts awarded by the City Manager shall be posted on the City's website and reported by the City Manager during the next Regular Council Meeting.

5.0 DEFINITIONS:

- 5.1 **Professional Services Contractor** – The following fields are designated professional services:
 Engineering – Civil, mechanical, electrical, structural, traffic, etc.
 Architecture
 Landscape Architecture
 Community Planning and Zoning
 Financial and Economic Feasibility
 Human Resources

6.0 PROCEDURE:

- 6.1 **List of Qualified Contractors** – The Department Directors are authorized to maintain a file of names and brochures of the various technical consultants who have expressed a general interest in doing work for the City of San Clemente, and to use such file for the purpose of soliciting proposals from these contractors. The Department Director has the discretion to select and limit the number of firms who shall be maintained in the file and who shall receive RFPs from the City.
- 6.2 **Selection Process for Projects Less than \$25,000** – Staff will solicit proposals from qualified firms, but need not interview more than two contractors.
- 6.3 **Selection Process for Projects Over \$25,000** – Requests for Proposals will be sent to at least five contractors. Staff will interview at least three contractors.
- 6.4 **Criteria for Selection** – The following factors shall be considered and evaluated in selecting a professional services contractor for a particular study or project:
- 6.4.1 Educational background.
 - 6.4.2 Previous experience.
 - 6.4.3 Demonstrated record of success on work previously performed for the City or similar work performed for others.
 - 6.4.4 Project lead.

- 6.4.5 Staff to perform work within the specified time.
 - 6.4.6 Methodology proposed to accomplish the work.
 - 6.4.7 Ability to make effective public presentations of the report and/or design required.
 - 6.4.8 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.
 - 6.4.9 Pertinent new ideas which may be presented during the course of the selection process.
 - 6.4.10 Adequate knowledge of local conditions.
 - 6.4.11 Availability, experience and knowledge of any subcontractors hired to complete the job or study.
 - 6.4.12 Additional work performed by the contractor which may have a direct and substantial physical relationship or conflict to the proposed project.
 - 6.4.13 Retention of original contractor on projects modified due to the original contractor's detailed knowledge of the work or on the grounds of cost.
 - 6.4.14 Previous history of completing projects within budget and design estimates.
 - 6.4.15 Ability to furnish adequate and effective construction supervision.
 - 6.4.16 Consideration for contractors currently working with a major developer in the City for work within or adjacent to the major development project.
- 6.5 **Interview Process for Construction Projects** – The interview and selection process shall be conducted by the Department Director and/or the City Engineer or designees. Directors of other departments which may be involved in the proposed construction will have the option to participate in the interview process.
- 6.6 **Interview Process for All Other Projects** – The interview and selection process shall be conducted by the Department Director or designee responsible for the project. If the contract exceeds \$25,000, the interview and selection process shall be conducted by at least two individuals.
- 6.7 **Contractor Fees** – After a contractor is selected, but before a recommendation is made, the fee for the professional services shall be negotiated. If a mutually satisfactory fee cannot be agreed upon, negotiations shall be terminated and another contractor shall be selected.
- 6.8 **Contract** – The award of a contract shall be made only when sufficient funds have been appropriated in the departmental and/or project account.

Exceptions are granted for those professional services which relate to the processing of development plans that will be paid for by the developer.

- 6.9 **Supplemental or Contingency Award of Contracts** – The City Manager has the authority to approve annual supplemental amounts less than \$50,000. If the annual supplemental amounts are greater than \$50,000, City Council must approve the supplemental amounts. The agenda report must contain verbiage explaining what types of duties or situations might require supplemental funding and separate action must be taken on the contract award and the supplemental award.

7.0 EXEMPTIONS:

- 7.1 **City Council Authority** – The City Council has the authority to determine that the selection of a professional services contractor for a project or series of projects need not follow the procedure established in this policy. In its sole discretion, the City Council may authorize the City Manager or a department director to select a proposed consultant when the Council is satisfied that such direct selection is in the public interest. Direct selection is in the public interest in situations which include:

- 7.1.1 The project is of a critical nature and, due to time constraints, compliance with the policy requirements would jeopardize timely completion.
- 7.1.2 The proposed professional services provider has unique familiarity with the project, subject area, or possesses other attributes that make the professional services provider uniquely qualified to provide the services.
- 7.1.3 The costs involved in complying with the policy greatly exceed the potential savings the policy might create.