



AGENDA REPORT

CITY OF SAN CLEMENTE

CITY COUNCIL MEETING

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

Meeting Date: November 19, 2024

Agenda Item: 11K

Submitted By: Public Works

Prepared By: Belgin Cuhadaroglu, Senior Civil Engineer

Subject:

CONSIDERATION OF A RESOLUTION AWARDING A PROFESSIONAL CONSULTANT SERVICES AGREEMENT TO SWCA ENVIRONMENTAL CONSULTANTS FOR THE BIOLOGICAL MONITORING AND INSPECTION SERVICES FOR THE AVENIDA MONTALVO CANYON AND TRAIL IMPROVEMENTS HABITAT RESTORATION, CIP PROJECT NO. 16004, IN THE AMOUNT NOT TO EXCEED \$89,828, APPROVING A SUPPLEMENTAL APPROPRIATION IN THE AMOUNT OF \$30,000 FROM THE LOCAL DRAINAGE FACILITIES FUND INTO ACCOUNT NO. 033-832-45300-000-16004, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE PROFESSIONAL CONSULTANT SERVICES AGREEMENT

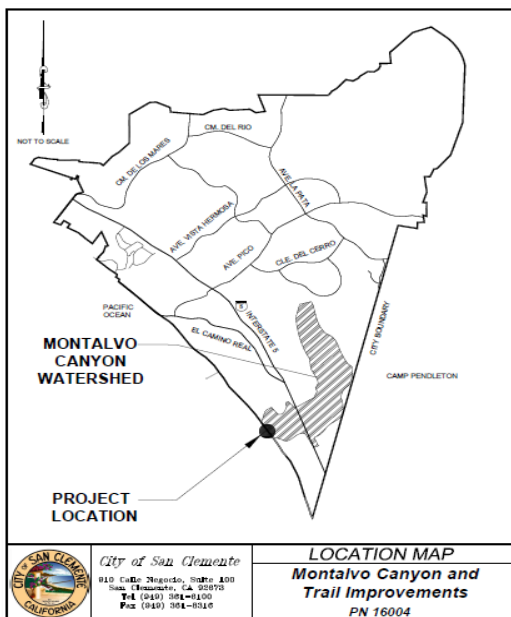
Fiscal Impact:

The proposed biological monitoring and inspection services cost of \$89,828 for the Avenida Montalvo Canyon and Trail Improvements Habitat Restoration project is funded from the Local Drainage Facilities Fund, Account No. 033-832-45300-000-16004, which has a current account balance of \$60,890. To provide funding for the Habitat Restoration monitoring and inspection services, staff is recommending a supplemental appropriation in the amount of \$30,000 from the Local Drainage Facilities Fund into Account No. 033-832-45300-000-16004.

Summary:

The Habitat Restoration project is required to comply with the regulatory agencies' (i.e., Regional Water Quality Control Board (RWQCB) and California Coastal Commission) mitigation requirements for the recently completed Avenida Montalvo Canyon and Trail Improvements. Biological monitoring and inspection by a qualified arborist/biologist/restoration ecologist is required for five years before the restoration is accepted by the regulatory agencies.

Before the City Council is the adoption of Resolution No. 24-183 (Attachment 1) approving a Professional Consultant Services Agreement with SWCA Environmental Consultants in an amount not to exceed \$89,828 (Attachment 2) for biological monitoring and inspection services during construction, planting and vegetation establishment for the Avenida Montalvo Canyon and Trail Improvements Habitat Restoration.



Upon reviewing the written proposals by Maintenance and Engineering staff, it was concluded that SWCA Environmental Consultants submitted the best proposal, project team, and demonstrated the most relevant experience. SWCA's fee proposal is \$89,828, which is fair and reasonable.

Council Options:

- Adopt Resolution No. 24-183 (Attachment 1), approve and authorize the City Manager to execute the Professional Services Agreement with SWCA Environmental Consultants, Inc., in an amount not to exceed \$89,828.
- Modify and adopt Resolution No. 24-183.
- Deny the adoption of Resolution No. 24-183 to authorize execution of the Professional Services Agreement with SWCA Environmental Consultants, and provide direction to staff.
- Continue the item with direction to staff to provide additional information

Environmental Review/Analysis:

This project was previously determined to be exempt from the California Environmental Quality Act (CEQA) as it pertains to a replacement of an existing storm drain line under Class 2 of the state CEQA Guidelines, Section 15302 - Replacement or Reconstruction.

Recommended Actions:

Staff recommends that the City Council adopt Resolution No. 24-183, which will:

1. Approve a supplemental appropriation in the amount of \$30,000 from the Local Drainage Facilities Fund into Account No. 033-832-45300-000-16004;
2. Award a Professional Services Agreement to SWCA Environmental Consultants for monitoring and inspection services for the Avenida Montalvo Canyon and Trail Improvements Habitat Restoration, CIP Project No. 16004; and
3. Authorize the City Manager to execute a Professional Services Agreement with SWCA Environmental Consultants in an amount not to exceed \$89,828.

Attachment:

1. Resolution 24-183
2. Professional Consultant Services Agreement with SWCA Environmental Consultants
3. Staff Report dated October 15, 2024 (without attachments)
4. Request for Proposals

Notification:

All proposers

RESOLUTION NO. 24-183

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AWARDING A PROFESSIONAL CONSULTANT SERVICES AGREEMENT TO SWCA ENVIRONMENTAL CONSULTANTS FOR THE BIOLOGICAL MONITORING AND INSPECTION SERVICES FOR THE AVENIDA MONTALVO CANYON AND TRAIL IMPROVEMENTS HABITAT RESTORATION, CIP PROJECT NO. 16004, IN THE AMOUNT OF NOT TO EXCEED \$89,828, APPROVING A SUPPLEMENTAL APPROPRIATION IN THE AMOUNT OF \$30,000 FROM THE LOCAL DRAINAGE FACILITIES FUND INTO ACCOUNT NO. 033-832-45300-000-16004, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT

WHEREAS, the outlet near the ocean and the trail near Avenida Montalvo Canyon had experienced some erosion issues and needed improvements to prevent further erosion of the bluff; and

WHEREAS, on November 9, 2023, the City installed gabion baskets that provide the least environmental impact for erosion control; and

WHEREAS, the Coastal Development Permit and Regional Water Quality Control Board permit for the project require that the City perform and maintain (for five years) 0.13 acres of habitat restorations in the vicinity of the project per a Habitat Management Plan; and

WHEREAS, on October 15, 2024, the City Council awarded the Avenida Montalvo Canyon and Trail Improvements Habitat Restoration, CIP 22001 & 16004, construction contract to Habitat Restoration Science, Inc. as the lowest responsible and responsive bidder; and

WHEREAS, the project requires biological monitoring and inspection by a qualified arborist/biologist/restoration ecologist for five years before the restoration is accepted by the California Coastal Commission and RWQCB; and

WHEREAS, staff prepared and advertised a Request for Proposals for the biological monitoring and inspection services needed for the project and proposals were received from four firms, SWCA Environmental Consultants, Dudek, UltraSystems and BlackHawk environmental; and

WHEREAS, the fee proposals ranged from \$50,280 to \$545,020; and

WHEREAS, upon reviewing the written proposals, it was concluded that SWCA Environmental Consultants submitted the best proposal, project team, and demonstrated the most relevant experience and its fee is fair and reasonable; and

WHEREAS, SWCA Environmental Consultants fee proposal is \$89,828.

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. That a supplemental appropriation in the amount of \$30,000 to account #033-832-45300-000-16004 from the Local Drainage Facilities Fund is hereby approved.

SECTION 3. That a Professional Consultant Services Agreement is hereby awarded to SWCA Environmental Consultants for the biological monitoring and inspection services for the Avenida Montalvo Canyon and Trail Improvements Habitat Restoration, Project No.16004.

SECTION 4. That the City Manager is authorized and directed to execute a Professional Services Agreement with SWCA Environmental Consultants for the Avenida Montalvo Canyon and Trail Improvements Habitat Restoration, Project No. 16004 in an amount not to exceed \$89,828 and in a form substantially similar to that presented to the City Council on November 19, 2024.

SECTION 5. 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 _____, 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. 24-183 was adopted at a regular meeting of the City Council of the City of San Clemente held on the _____ day of _____, _____, by the following vote:

AYES:

NOES:

ABSENT:

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

CITY CLERK of the City of
San Clemente, California

Approved as to form:

Elizabeth A. Mitchell, City Attorney

CITY OF SAN CLEMENTE

PROFESSIONAL CONSULTANT SERVICES AGREEMENT

1. PARTIES AND DATE.

This Agreement is made and entered into this ____ day of _____, 2024, by and between the City of San Clemente, a municipal corporation, organized under the laws of the State of California, with its principal place of business at 910 Calle Negocio , San Clemente, California, 92673 ("City") and SWCA Environmental Consultants, a California Corporation, with its principal place of business at 3838 Camino Del Rio North, Suite 220, San Diego, CA, 92108 ("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 environmental engineering / mitigation restoration services to provide biological monitoring and inspection required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing biological monitoring and inspection, and related professional 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 environmental engineering/ mitigation restoration consulting services to provide biological monitoring and inspection, for the Avenida Montalvo Canyon and Trail Improvements Habitat Restoration, Project No. 26001 ("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 environmental / mitigation engineering consulting services to provide biological monitoring and inspection 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 November 15, 2024 to February 15, 2030 or 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.

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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.

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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: Robert MacAller

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 Robert MacAller, Senior Natural Resources Director, 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

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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 Nine Thousand Eight Hundred Twenty Eight Dollars (\$89,828) 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

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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,

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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: SWCA Environmental Consultants
3838 Camino Del Rio North, Suite 220
San Diego, CA 92108
ATTN: Robert MacAller, Senior Natural Resources Director

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

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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

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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.

Attachment 2

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

Attachment 2

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

SWCA Environmental Consultants,
a California Corporation
("CONSULTANT")

By: _____
Robert MacAller, Senior Natural Resources
Director

Dated: _____, 2024

EXHIBIT "A" SCOPE OF SERVICES

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

Support the City during the construction phase of the Project, including but not limited to:

TASK 1: INSPECTION

SWCA restoration staff will perform site inspection to monitor restoration site progress and ensure tasks implemented by the Restoration Contractor are in accordance with the Habitat Management Plan (HMP)

- At the completion of grading to ensure relief contour is adequate for plant installation and that there are no erosion issues.
- During container plant and cutting installation to assist on the placement of native plant species.
- Prior to planting to verify that planting holes are augured adequately.
- During Planting of container plants and cuttings to verify adequate methodology and appropriate irrigation.
- Following container plant and cutting installation to assess plant establishment, plant survivorship, and site protection.
- During broadcast seeding to assist on seed installation and verify adequate methodology is performed.
- Monthly during the 120-day PEP to assess general site conditions that threaten the success of native plant establishment.

TASK 2: PERFORMANCE MONITORING

2.1 Qualitative Monitoring

SWCA restoration staff will perform qualitative site monitoring to assess the condition of the restoration site, identify any issues that may jeopardize the success of the project, and help determine the progress of the restoration site towards meeting performance standards.

2.2 Quantitative Monitoring

SWCA restoration staff will conduct qualitative site monitoring annually to assess the restoration site's progress towards meeting performance standards.

TASK 3: REPORTING

The Lead Ecologist will prepare an As-Built report documenting the installation phase of the restoration site and to what degree the project was consistent with the Habitat Management Report.

- A Summary of all site maintenance activities that occurred the previous year
- A Compilation of notes and findings from quarterly qualitative monitoring visits
- Results from the annual vegetation transect surveys
- PPS photographs
- A discussion of the site's progress toward meeting performance standards
- Site maintenance recommendations and corrective actions to achieve performance standards

TASK 4: MEETING AND COORDINATION

This task includes regular monthly meetings with the City and coordination with the Restoration Contractor throughout the 5-year maintenance and monitoring period.

- Monthly meetings with the City will be no more than 2 hours.
- Monthly meetings with the City will be primarily held remotely

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**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:

Attachment 2

(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.

Attachment 2

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

Attachment 2

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:

	HOURLY RATE
Project Manager/ Lead Ecologist	\$179.55
Restoration Ecologist	\$116.85
Field Biologist	\$116.85
GIS Specialist	\$116.85
Project Support Staff	\$104
Expenses	

Total compensation under this Agreement shall not exceed \$89,828, including any reimbursable expenses approved in writing in advance.

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Attachment 2

WORKERS' 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.

Attachment 2

Dated: _____, 20__

Consultant

By: _____

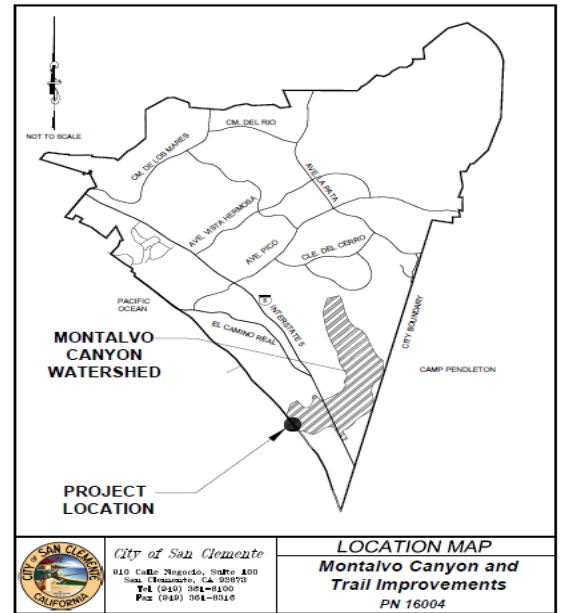
Title

Address

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Background:

The Montalvo Canyon outlet drains an area of approximately 360 acres of a watershed in the southwest portion of the City, as shown on the location map. The outlet near the ocean and the nearby trail had experienced some erosion issues and needed improvements to prevent further erosion of the bluff. Prior to installation of the gabion baskets as a mitigation measure for further erosion, environmental permits had to be secured from the Army Corps of Engineers, Regional Water Control Board (RWQCB) and the California Coastal Commission (CCC), demonstrating that the proposed project has the least environmental impact. As part of the Coastal Development Permit (CDP) and RWQCB approval conditions, the City is required to perform and maintain, for five years, 0.13 acres of habitat restorations in the vicinity of the project per a Habitat Management Plan, upon completion of the Avenida Montalvo Canyon and Trail Improvement. The habitat restoration generally consists of planting native plants and seeding, maintaining vegetation for five years, installation of temporary irrigation and removal of non-native plants.



Staff prepared a bid package, notified local contractors, and advertised the project for competitive bidding on the PlanetBids website and in the SC Times. On October 3, 2024, the City received two bids, with Base Bids ranging from \$223,299 to \$427,400, as shown on the table below.

Vendor Name	City	Bid
Habitat Restoration Sciences	Vista	\$223,299
Diamond Construction & Design	San Clemente	\$427,400

Based on the lowest bid, the total estimated project construction cost is summarized below:

Project Management and Administration	\$ 10,000
Construction Contract	223,299
<u>Contingency (15%)</u>	<u>33,495</u>
Total Estimated Construction Costs	\$266,794

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 3). Project plans and specifications are on file in the City Clerk's Office.

To monitor and inspect the habitat restoration performance, per the project Plans and Specifications requirements by Habitat Restoration Sciences, Inc., a qualified arborist/biologist must monitor and inspect the habitat restoration for five years, before the restoration is accepted by the California Coastal Commission and RWQCB. Staff is currently doing a public advertisement to receive proposals for this work. Upon receipt of proposals and evaluation, staff will return to the City Council for approval of a Professional Consultant Services Agreement for the project's monitoring and inspection of the habitat restoration.

Council Options:

- Adopt Resolution No. 24-161 (Attachment 1), awarding the Avenida Montalvo Canyon and Trail Improvement Habitat Restoration to Habitat Restoration Science, Inc.; authorizing the City Manager to execute a construction contract in an amount not to exceed \$223,299; approving a 15% project contingency of \$33,495; and finding the project categorically exempt from CEQA under Class 2 (Replacement or Reconstruction, 14 CCR section 15302) of the State CEQA Guidelines.
- Modify and adopt Resolution 24-161.
- Continue the item and direct staff to provide additional information.
- Do not adopt Resolution No. 24-161 and determine an alternative way to meet regulatory requirements.

Environmental Review/Analysis:

This project is categorically exempt from the California Environmental Quality Act (CEQA) as it pertains to a replacement of an existing storm drain line under Class 2 of the state CEQA Guidelines, Section 15302 - Replacement or Reconstruction. A notice of exemption will be filed for this project.

Recommended Actions:

Staff recommends that the City Council adopt Resolution No. 24-161, which will:

1. Award a contract to Habitat Restoration Science, Inc., as the lowest responsible and responsive bidder, for the Avenida Montalvo Canyon and Trail Improvement Habitat Restoration, CIP Project Nos. 22001 & 16004;

2. Authorize the City Manager to execute a contract with Habitat Restoration Science, Inc. in an amount not to exceed \$223,299 in a form substantially similar to Contract No. 24-60 (Attachment 2) for the Avenida Montalvo Canyon and Trail Improvement Habitat Restoration, CIP Project Nos. 22001 & 16004;
3. Approve a 15% construction contingency of \$33,495 for this Project; and
4. Find the Avenida Montalvo Canyon and Trail Improvement Habitat Restoration, CIP Project Nos. 22001 & 16004, categorically exempt from the CEQA under Class 2 (Replacement or Reconstruction, 14 CCR section 15302) of the State CEQA Guidelines.

Attachment:

1. Resolution 24-161
2. Draft Habitat Restoration Science, Inc. Contract (without attachments)

Notification:

All bidders.



CITY OF SAN CLEMENTE

REQUEST FOR QUALIFICATION

BIOLOGICAL MONITORING AND RELATED PROFESSIONAL SERVICES CONTRACT

FOR

AVENIDA MONTALVO CANYON AND TRAIL IMPROVEMENTS HABITAT RESTORATION,

PROJECT NOS. 22001 & 16004

OCTOBER 2024

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

CITY OF SAN CLEMENTE

REQUEST FOR QUALIFICATION

OCTOBER 14, 2024

Prospective Contractors:

The City of San Clemente (City) is soliciting proposals from Professional Services Contractors (Consultants) to provide “Biological Monitoring” and Related Professional Services per Habitat Mitigation Plan (Attachments) for the Avenida Montalvo Canyon and Trail Improvements Habitat Restoration, Project No. 26001, as described in detail in the attached Request for Qualifications (RFQ).

City Point of Contact:

The sole source of contact regarding this RFQ 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 RFQ prior to the announcement of the consultant selected.

Proposals and all written inquires related to this RFQ 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 October 30, 2024

Three (3) of each Contractor’s proposal must be received by the City no later than 2:00 p.m. on October 30, 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.
Senior Civil Engineer

CITY OF SAN CLEMENTE
REQUEST FOR QUALIFICATION
BIOLOGICAL MONITORING AND RELATED PROFESSIONAL SERVICES
CONTRACT
FOR
THE AVENIDA MONTALVO CANYON AND TRAIL IMPROVEMENTS
HABITAT RESTORATION,
PROJECT NOS.22001 & 16004

A. INTRODUCTION

The City of San Clemente (City) is seeking proposals from qualified Consultants to monitor the mitigation area according to the guidelines set forth in Habitat Mitigation Plan (HMP) and prepare annual reports documenting the progress of the restoration area.

B. BACKGROUND

The Montalvo Canyon outlet drains an area of approximately 360 acres of a watershed in the southwest portion of the City, as shown on the location map. The outlet near the ocean and the nearby trail had experienced some erosion issues and needed improvements to prevent further erosion of the bluff. Prior to installation of the gabion baskets as a mitigation measure for further erosion, environmental permits had to be secured from the Army Corps of Engineers, Regional Water Control Board (RWQCB) and the California Coastal Commission (CCC), demonstrating that the proposed project has the least environmental impact. As part of the Coastal Development Permit (CDP) and RWQCB approval conditions, the City is required to perform and maintain, for five years, 0.13 acres of habitat restorations in the vicinity of the project per a Habitat Management Plan, upon completion of the Avenida Montalvo Canyon and Trail Improvement. The habitat restoration generally consists of planting native plants and seeding, maintaining vegetation for five years, installation of temporary irrigation and removal of non-native plants.



The Restoration Contractor will be responsible for conducting all maintenance activities (i.e., weeding, supplemental seeding, supplemental watering, and herbivore control) at the direction of environmental consulting firm as Restoration Ecologist. **A qualified arborist/biologist/restoration ecologist must monitor and inspect the habitat restoration for five years, before the restoration is accepted by the California Coastal Commission and RWQCB.**

The project is anticipated to start by the end of November 2024. The restoration will take approximately 5 years following seeding and planting to achieve the performance standards.

C. PROJECT OBJECTIVES

Provide “Biological Monitoring” for the Avenida Montalvo Canyon and Trail Improvements Habitat Restoration, Project No. 26001 per Habitat Mitigation Plan.

D. SCOPE OF WORK

The Restoration Ecologist shall be responsible for monitoring the mitigation area according to the guidelines set forth in Habitat Mitigation Plan (HMP). The Restoration Ecologist shall be familiar with all aspects of habitat restoration and native revegetation. The duties of the Restoration Ecologist shall include overseeing all aspects of work performed by the Restoration Contractor. In addition, the Restoration Ecologist shall have the responsibility of documenting and reporting the progress of the developing native plant communities to the City, the California Department of Fish and Wildlife (CDFW), United States Army Corps of Engineers (Corps), and the California Coastal Commission (CCC) as well as making recommendations

RFQ - INSTRUCTIONS AND CONDITIONS

for achieving the performance standards. If necessary, the Restoration Ecologist may also prescribe remedial measures.

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

- **Inspection**

Inspection by the Restoration Ecologist shall be required for each phase of work listed below. In addition, the Restoration Ecologist shall inspect the site more frequently, if necessary, to ensure that the site is continuously in compliance with these specifications. Inspections shall be required for the following phases of work:

- Following the grading effort
- During marking of container plant/cutting locations
- Following the auguring of container plant/cutting holes (prior to planting)
- During watering-in and planting of container plants/cuttings
- Following container plant/cutting installation
- During broadcast seeding
- Monthly throughout the 120-day establishment period

- **Performance Monitoring**

The Habitat Restoration Plan requires that the site be monitored until the performance standards have been met. The Restoration Ecologist shall perform the 5 years of monitoring immediately following installation as follows:

- Initial inspections during the 120-day establishment period. The Restoration Ecologist will visit the site on a monthly basis to examine the restoration area and evaluate the established success of the seeding and container plants. Quarterly inspections during the 5-year of maintenance
- Quarterly inspections of the sites will be conducted to assess the condition of the restoration areas and to determine maintenance activities, as necessary. However, more frequent site visits may be necessary if any unforeseen problems occur.
- To evaluate the sites relative to the performance standards, the sites will be visited on an annual basis for 5 years following installation or until the performance standards are met, whichever occurs sooner.
- Data will be collected on an annual basis in the spring. The assessment consists of collecting data along 25-foot point-intercept

RFQ - INSTRUCTIONS AND CONDITIONS

transects (data collected at 1-foot intervals) within the restoration areas to determine percent cover.

- **Prepare Annual Reports**

In accordance with the HMP, the Restoration Ecologist will prepare annual reports documenting the progress of the restoration area. As-built report and 5 annual monitoring reports submitted to CCC and Corps. These reports will specifically document the restoration areas progress toward achieving the performance standards. Annual reports will be prepared at the end of the growing season. These reports will evaluate the performance of the container plants and seeding in accordance with the HMP and will contain periodic photographs of the sites, documenting the sites' progress from established photo points. The reports will also identify any corrective actions necessary to achieve the performance standards. These reports will be submitted in draft form to City for review and in final form incorporating City's comments, with copies submitted to City, the Restoration Contractor, and the associated resource agencies mentioned above as prescribed in the HMP.

- **Meeting and Coordination**

- Meeting with city staff once a month during 5-year period.

E. DELIVERABLES

The contractor is responsible for deliverables as defined by each specific project scope of work and agreement.

- Documenting and reporting the progress of the developing native plant communities to the City, the California Department of Fish and Wildlife (CDFW), United States Army Corps of Engineers (Corps), and the California Coastal Commission (CCC) as well as making recommendations for achieving the performance standards.
- As-built report and 5 annual monitoring reports submitted to CCC and Army Corps of Engineers.

F. ATTACHMENTS

1. Location Map
2. Habitat Mitigation Plan (HMP)
3. Typical "Professional Consultant Services Agreement"
4. Montalvo Record Drawings-For Information Only

CITY OF SAN CLEMENTE

REQUEST FOR QUALIFICATION

BIOLOGICAL MONITORING AND RELATED PROFESSIONAL SERVICES CONTRACT FOR THE AVENIDA MONTALVO CANYON AND TRAIL IMPROVEMENTS HABITAT RESTORATION, PROJECT NOS.22001 & 16004

INSTRUCTIONS AND CONDITIONS

The following instructions and conditions apply to this RFQ.

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 RFQ
- Submitting that proposal to the City of San Clemente
- Negotiating with the City of San Clemente on any matter related to this RFQ, 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 RFQ and/or Not Award Contract

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

RFQ - INSTRUCTIONS AND CONDITIONS

- f. Methodology proposed to accomplish the work
- 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:

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