



CITY OF SAN CLEMENTE

REQUEST FOR PROPOSAL

WEBSITE DESIGN SERVICES AND CONTENT MANAGEMENT SYSTEM

KEY RFP DATES

Issue Date: September 25, 2024

Closing Date: October 24, 2024

910 CALLE NEGOCIO, SAN CLEMENTE, CA 92673 PHONE: (949) 361-8200

CITY OF SAN CLEMENTE

REQUEST FOR PROPOSAL

WEBSITE DESIGN SERVICES AND CONTENT MANAGEMENT SYSTEM

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CITY OF SAN CLEMENTE

REQUEST FOR PROPOSAL (RFP)

SEPTEMBER 24, 2024

Prospective Contractors:

The City of San Clemente (City) is interested in receiving proposals from Professional Services Contractors (Contractors) for the conduct of Website Design Services and Content Management System as described in detail in the attached Request for Proposal (RFP).

Copies of this RFP may be downloaded from the SAN CLEMENTE website:

<https://pbsystem.planetbids.com/portal/28939/portal-home>

Schedule of Events from Issuance of the RFP to Award of Contract:

September 25, 2024	RFP Release Date.
October 8, 2024	Final Date for Clarification of Questions
October 15, 2024	Response to Questions
October 24, 2024	Proposal Due Date
November 4, 2024	(Week of) Tentative Interview/Presentation Date
November 15, 2024	Selection of Proposal by City Committee

City Point of Contact:

The sole source of contact regarding this RFP is Kade Boisseranc, Senior IT Analyst at BoisserancK@san-clemente.org. Individuals or firms interested in submitting a proposal are asked not to contact other members of the City of San Clemente staff or Councilmembers in connection with the RFP prior to the announcement of the consultant selected.

Proposals and all written inquires related to this RFP are to be uploaded to the **Planet Bids Portal** and submitted **confidentially** to:

910 Calle Negocio
San Clemente, CA 92673
Attn: Kade Boisseranc, Senior IT Analyst
Phone: 949-361-8367 | Email: BoisserancK@san-clemente.org

Confidential

Proposals for: Website Design Services and Content Management System

Confidential

Proposal Closing Date:

Please provide one (1) original and Three (3) electronic copies of all documents. Also, please upload an electronic copy of the proposal to the Planet Bids portal no later than October 24, 2024 at 5:00pm. All proposals must be delivered to the above address. Proposals received after October 24, 2024 at 5:00pm will not be accepted.

Proposals will become part of the official files of the City of San Clemente and cannot be returned.

Sincerely,

Brian Brower
Administrative Services Director

Attachments:
Sample Professional Services Agreement

CITY OF SAN CLEMENTE

REQUEST FOR PROPOSAL

WEBSITE DESIGN SERVICES AND CONTENT MANAGEMENT SYSTEM

Background about the City and the project, as well as information about the Scope of Work to be undertaken are discussed in this section of the RFP.

A. INTRODUCTION

The City of San Clemente, commonly known as the “Spanish Village by the Sea”, spans just over eighteen square miles of coastline and scenic foothills. Centrally located between Los Angeles and San Diego, the City of San Clemente is a General Law city that operates under the Council/Manager form of city government with a total annual budget of \$119.4 million. The City’s current population of 64,542 enjoys 20 community and neighborhood parks, 6.8 miles of ridgeline trails, 2.3 miles of coastal trail, a championship municipal golf course and 20 acres of beautiful beaches.

- The City of San Clemente, in partnership with the community we serve, will foster a tradition dedicated to
- Maintaining a safe, healthy atmosphere in which to live, work and play;
- Guiding development to ensure responsible growth while preserving and enhancing our village character, unique environment and natural amenities;
- Providing for the City’s long-term stability through the promotion of economic vitality and diversity;
- Resulting in a balanced community committed to protection of what is valued today while meeting tomorrow’s needs.

B. BACKGROUND

The City of San Clemente’s website in its current form(www.san-clemente.org) launched in 2014. While it continues to be a functional site, the website consists of outdated web features, user interface design, and platform. Current trends in website design have necessitated a reevaluating of the City's current format and platform. Further, the Content Management System (CMS) software that manages public information, analytics, customer relations, and other important engagement tools is cumbersome and outdated by today's standards.

C. PROJECT OBJECTIVES

The City of San Clemente is seeking to overhaul its current website with a new user interface to enhance the user experience, simplify content management, and provide improved citizen-centric information and customer service to its community, while meeting high standards for design quality and visual appeal. The new website must consist of modern design concepts, offer an intuitive user interface, seamlessly integrate language translations, and meet ADA and all other applicable legal requirements for government websites. The platform should offer a central content management platform with custom, permission-based access control for publishing and editing capabilities, allowing multiple City staff members to easily create and manage website content.

The City seeks the assistance of an experienced vendor that can accomplish the goals of the City with all the functionality identified in this RFP. Qualified vendors will provide solutions for current needs and assist with evolving needs in the future.

The planned website redesign project will start in Fiscal Year 2024 and has an estimated completion date of June 30, 2025. The specific project objectives are as follows:

- Design the City's website utilizing current trends to provide a website that is accessible, easy to use, and engaging to the visitor.
- Provide a content management system software that is up to date.
- Ensure the website has multilingual translation capabilities pursuant to City policies, industry standards, and best practices.
- Provide a robust search engine for information accessibility, searchability, and optimization.
- Provide support customer service, online services (including third party integrations), and citizen engagement tools.
- Provide exceptional support and maintenance for the website that includes but not limited to minor design changes.
- The experienced Consultant should have a team of experts who understand the requirements for a local government website. The end product shall be in compliance with the California Government Code, sections 7405 and 11135, and the Web Content Accessibility Guidelines 2.2, or a subsequent version, as published by the Web Accessibility Initiative of the WWW Consortium at a minimum Level AA success criterion.
- Incorporate multimedia imagery in the website design including high-definition photographs and video.

D. PROJECT ORGANIZATION AND SCOPE OF WORK

Vendors replying to this RFP are asked to organize and itemize their submissions into seven (7) main areas for the City's consideration of their services: vendor experience and development criteria, proposed content management system (CMS) software, system functionality, third party integrations, design guidelines and qualifications, training and documentation, hosting, maintenance and support, and security/authorization.

1. VENDOR EXPERIENCE AND DEVELOPMENT CRITERIA

The Vendors will have extensive local government/municipal website design and implementation experience. Preference will be given to vendors who demonstrate the most innovative approach to website design standards, with special attention given to vendors' breadth of experience, references, number of years of experience, and expertise of staff. The chosen vendor must have expertise with best practices regarding:

- Innovative website design
- User experience and usability testing
- Website development and deployment
- Website hosting
- Information content strategy
- Social media integration
- Search engine optimization
- Responsive web design, include mobile platforms
- Exceptional customer service

In addition, the vendor should have a proven development process, flexible timeline structure, and in-house resources that favor the availability and time commitment of the City of San Clemente.

2. PROPOSED CONTENT MANAGEMENT SYSTEM (CMS) SOFTWARE

A successful Content Management System (CMS) will provide maximum functionality for the best possible cost. At a minimum, the CMS should include the following functionality and services:

- **Alerts & Notifications** - Display alerts prominently on website as a banner.
- **Browser-Based Administration** - Update, delete and create content from any device with internet access.
- **Calendar** - Update/publish calendars for departments/categories with one single

calendar to display all events and meetings. In addition, the ability to have events link out to a stand-alone page or can redirect to either a web page or a document (such as a PDF) is required.

- **Citizen Reporting** – Provide 311 Services that integrate with existing City tools. (e.g., Central Square, Lucity, and CivicRec).
- **Community Engagement** – Deliver information to the public, as well as receive feedback, ideas and sentiment around programs and projects.
- **Content Scheduling** - Set dates for content and assets to automatically publish and expire.
- **Content Migration** - Migrate all current website pages and documents onto the new site.
- **Cross-Browser Compatibility** - The website should look and function the same across various browsers, including: Chrome, Microsoft Edge, Firefox, Safari, etc.
- **Digital Experience** – Improve overall usability and accessibility of the City’s digital presence by providing a mobile forward platform (or App) and user-friendly search and navigation to ensure that residents are able to easily access information and services.
- **Departmental Home Pages** - Provide the ability for departments to have dedicated pages within the site that follow the same branding guidelines but have a different look than interior pages.
- **Document and Image Centers** - Provide storage of website images, documents, and other self-hosted media within a Content Delivery Network (CDN) or database to ensure replaced versions are no longer accessible. Upload/download capability for files up to 1GB, back-end ability to search and delete in bulk within published and unpublished documents and images.
- **Friendly URL** - Website editors should be able to easily create friendly URLs that redirect to specific pages, including news items, calendar items, and documents. Edits to the friendly URLs should be implemented in a reasonable timeframe.
- **Integration Capabilities** - System should be configured to integrate as seamlessly as possible with other City systems (e.g. Esri ArcGIS, Central Square, Lucity, CivicRec, Office365, EDMS, Neogov).
 - CMS should be capable of integrating generative AI for chat Q&As, translation, site- wide search functions, etc.
- **Levels of Rights/Permissions** - Allow system administrators to establish levels of rights for staff to view/update/manage/access content based upon roles. Ability to create approval workflow for department/category pages. Options for multi-factor authentication for internal users.
- **Live Edit** - Add, edit and move content without the need to utilize or be trained in writing HTML or CSS code.
- **Multilingual Support** - Provide translation support on all pages. Translation service

- button to be prominently displayed on website homepage.
- **News & Announcements** - Post news releases or updates dynamically to homepage and to relevant pages based on category.
 - **Online Forms** - Create unlimited customizable/fillable forms, track and export results.
 - **Navigation and Page Templates** - Editable navigation and sub-navigation; plus flexible page templates.
 - **Preview Before Publishing** - Allow for website editors to be able to preview changes to the webpage before it goes live on the front end.
 - **RFP/RFQ/Bid Posting** - Allow for easy posting of bids to the site, and the ability to view past bids.
 - **Responsive Web Design** - A design that all pages, including forms, calendars, images, etc., will adjust to the screen size of all devices, such as a phone or tablet that it's viewed on.
 - **Rotating Photos/Banners and Video Display** - Slideshow capabilities on desired pages and option for video homepage.
 - **RSS Feeds** - Registration by department or category.
 - **Save Before Publishing** - Allow for website editors to create new pages, save as a draft, then return to continue editing without the page going live to the public.
 - **Site Search** - Internal site search engine and dynamic keyword searches.
 - **Search Engine** - The website/CMS includes a search engine solution that will support automatic indexing of all content within the CMS without needing to label pages with keywords.
 - **Site Statistics** - Provide analytics and site audit reports.
 - **Sitemap & Breadcrumbs** - Automatically generated and updated sitemap and breadcrumbs.
 - **Social Media Interface** – Integrate with all of the City’s social media content and platforms.
 - **SSL encryption, user security, and audit trail.**
 - **Subsites** - Ability to create landing pages for various departments that follow a similar aesthetic to the main homepage (such as a hero banner, call to action buttons, news item widget, calendar, etc.) but can be customized to differentiate between the departments.
 - **Unlimited Editors** - The CMS must support multi-user entry and specify licensing/cost implications for additional users, if any. An unlimited number of users is preferred.
 - **Updated CMS** - The CMS is accessible from any location and adaptable to current and changing technology. Software updates are included in user/maintenance fees, and are performed without assistance from the City.

3. THIRD PARTY INTEGRATIONS

Vendor must analyze all third-party plug-ins, APIs, and user interfaces for integration with a new web design. Vendor must ensure all third-party applications are compatible with the new website, and provide recommendations and solutions to the City to maintain and/or enhance the customer experience. Included in their response the vendor shall:

- Analyze the City's current website for all third-party applications.
- Provide a list to the City of San Clemente of all third-party applications.
- Include recommendations for enhancing the end-user experience with third party applications.

4. DESIGN GUIDELINES AND QUALIFICATIONS

The redesign of the website should be welcoming, user-friendly, and created by a professional design staff with significant input from the City of San Clemente. The final version of the design should be a collaborative effort between the City of San Clemente and the vendor, incorporating elements that represent the City of San Clemente's brand.

- Vendor must provide a project plan for the design phase of the website.
- Vendor shall provide a minimum of three (3) designs of the proposed website to the City.
- Vendor must provide design mock ups of primary website sections.
- Vendor will work with City staff to determine a new website content information architecture and navigation framework to support easy navigation to key City services.
- Vendor must determine a consistent look and feel for the website, graphic elements, and navigation tools that provide straightforward navigation within a unifying graphic theme.
- Vendor must design the website to support the City's branding and social media as well as the design needs of specific departments/services.

5. TRAINING AND DOCUMENTATION

The vendor will provide full and complete training on the use of the CMS, including:

- On-demand digital manuals, how-to guides, and FAQs should be provided.
- A style guide with graphic design standards, font/colors and digital images must be supplied.
- Identify and provide web information management tools to comply with the State of California Public Records retention guidelines.
- Explain CMS training approach for City users in a decentralized web-management environment pre-launch and post go-live.

6. HOSTING, MAINTENANCE, AND SUPPORT

In all submitted proposals, vendors shall be able to produce a Service Level Agreement that outlines all website/CMS hosting and maintenance services, and details guarantees of customer support as well as a service escalation process. While the website content updates are to be managed by the City of San Clemente through the CMS, the vendor must commit to hosting, and regular maintenance and updating of the CMS and associated applications for the purpose of keeping the existing software up-to-date as well as introducing new functionality and applications.

- Provide hosting services, including guaranteed uptime and performance monitoring, data back-up and storage service providers.
- Content creators of the CMS shall have unlimited access to live support via e-mail or phone during the City of San Clemente's normal business hours.
- Designated administrators shall have access to live support 24/7 for emergencies.
- The support communication will be direct call in or via email and portal ports. The response time and support level are negotiable prior to contract signing.

7. SECURITY/AUTHORIZATION

In all submitted proposals, vendors shall be able to provide an overview of security, encryption, and other website protections to ensure that the City's website and content management systems are safe and secure. Should a breach occur, the vendor shall assist the City of San Clemente in restoring data at no cost. Additional security features shall include:

- Ability to centrally add and manage users and specify access rights.
- Ability to create groups with different access rights.
- Ability to limit certain group members from specific content and content management functionality.
- Publishing workflow with the ability to customize by security group and user.

F. SCHEDULE

- | | |
|----------------------|---|
| • September 25, 2024 | RFP Release Date. |
| • October 8, 2024 | Final Date for Clarification of Questions |
| • October 15, 2024 | Response to Questions |
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CITY OF SAN CLEMENTE

REQUEST FOR PROPOSAL

WEBSITE DESIGN SERVICES AND CONTENT MANAGEMENT SYSTEM

INSTRUCTIONS AND CONDITIONS

The following instructions and conditions apply to this RFP:

A. GENERAL CONDITIONS

1. Pre-Contractual Expenses

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

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

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

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

The City of San Clemente reserves the right to withdraw this RFP at any time without prior notice. Further, the City makes no representations that any agreement will be awarded to any contractor responding to this RFP. The City expressly reserves the right to postpone the opening of proposals for its own convenience and to reject any and all proposals in response to this RFP without indicating any reasons for such rejection(s).

3. Pricing Approach

The City of San Clemente intends to award a fixed price contract for the conduct of this project. In no event shall the City pay an amount in excess

of the dollar value negotiated in the contractual agreement with the successful contractor.

4. Right to Reject Proposals

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. Proposal Evaluation Criteria

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

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

1. 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.

I. Background and Approach

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

II. Methodology(ies)

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.

III. Work Plan

Describe the sequential work tasks you plan to carry out in accomplishing this project. Indicate all key deliverables and their contents. Identify how much of the work will be done on site.

IV. 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.

V. 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.

VI. Project Schedule

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

VII. 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.

VIII. Statement of Compliance

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

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

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

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

IX. Other Information

Include any other information you consider to be relevant to the proposal.

- X.** 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.

SUMMARY OF MAJOR COMPLIANCE REQUIREMENTS

The following highlights the key compliance elements contained in the City contract:

Meetings

This is a suggested schedule which is open to discussion.

1. Attend weekly progress meetings with the City's Project Manager.
2. Attend monthly meetings with Department Heads and Project Stakeholders.

Reporting

1. Bi-weekly project report to City Project Manager including:
 - Monthly report to Department Heads.
 - Summary of work completed during previous two weeks.
 - Discussion of any significant problems encountered or issues arising during the project.
 - Percentage of project completion by work task.

RFP - INSTRUCTIONS AND CONDITIONS

- Explanation of variance between actual work task completed vis-a-vis the work plan.
2. Oral briefings/summary of project findings for presentation to City Project Manager.
 3. Copies of the Draft Final Report, including Executive Summary, findings for presentation to City Project Manager.
 4. Oral presentation of findings and recommendations to the City Council, City Manager, and employee groups.

Insurance Coverage

1. Prior to commencement of any project activities, consultant is to secure worker's compensation insurance, so as to be in compliance with State statutes and comprehensive general liability insurance, including auto and contractual liability coverage, in an amount not less than \$1 million.

ATTACHMENT A

CITY OF SAN CLEMENTE

PROFESSIONAL CONSULTANT SERVICES AGREEMENT

1. PARTIES AND DATE.

This Agreement is made and entered into this ____ day of _____, 20____, 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 **[INSERT NAME OF COMPANY]**, a **[INSERT TYPE OF BUSINESS; I.E., CORPORATION (INCLUDE STATE OF INCORPORATION), LIMITED LIABILITY COMPANY, SOLE PROPRIETORSHIP, ETC.]**, with its principal place of business at **[INSERT ADDRESS]** ("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 **[INSERT TYPE]** 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 **[INSERT TYPE]** 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 **[INSERT TYPE]** consulting services for the **[INSERT NAME OF PROJECT, AND CONTRACT NUMBER, IF APPLICABLE]** project ("Project") as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional **[INSERT TYPE]** 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. **[INSERT IF FEDERAL FUNDS WILL BE USED; OTHERWISE ALWAYS DELETE: Additionally, Consultant shall comply with all Federal requirements applicable to the Services as set forth in Exhibit "A-I."]**

3.1.2 Term. The term of this Agreement shall be from **[INSERT DATE]** to **[INSERT DATE]**, unless earlier terminated as provided herein. **[***INSERT THE FOLLOWING SENTENCE FOR MULTI-YEAR, AUTOMATIC RENEWAL NOT TO EXCEED THREE CONSECUTIVE YEARS; OTHERWISE, ALWAYS DELETE: The City shall have the unilateral**

option, at its sole discretion, to renew this Agreement automatically for no more than **[INSERT NUMBER]** additional one-year terms.*** Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

3.2 Responsibilities of Consultant.

3.2.1 Independent Contractor; Control and Payment of Subordinates. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of City and shall at all times be under Consultant's exclusive direction and control, the City being only concerned with the finished results of the work being performed. Neither City, nor any of its officials, officers, directors, employees or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be solely responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance. Neither Consultant nor Consultant's employees shall in any event be entitled to any benefits to which City employees are entitled, including, but not limited to, overtime, retirement benefits, workers' compensation benefits, injury leave or other leave benefits. Consultant is solely responsible for all such matters, as well as compliance with social security and income tax withholding and all other regulations and laws governing such matters.

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

3.2.3 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, City shall respond to Consultant's submittals in a timely manner. Upon request of City, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.4 Endorsement on PS&E/ Other Data. Consultant shall sign all plans, specifications, estimates (PS&E) and engineering data furnished by Consultant, and where appropriate will indicate Consultant's authorized signature and professional registration number.

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

3.2.6 Substitution of Key Personnel. Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the City. The key personnel for performance of this Agreement are as follows: **[INSERT NAME AND TITLE]**.

3.2.7 City's Representative. The City hereby designates **[INSERT NAME AND TITLE]**, 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 **[INSERT NAME AND TITLE]**, or his/her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his/her best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

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

3.2.10 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement.

As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

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

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

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

3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "D" attached hereto and incorporated herein by reference. The total compensation shall not exceed **[INSERT AMOUNT WRITTEN OUT] (\$[INSERT NUMBER])** without written approval of the City Council or City Manager as applicable. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit to City a monthly invoice which indicates work completed and hours of Services rendered by Consultant. The invoice shall describe the amount of Services provided since the initial commencement date, or

since the start of the subsequent billing periods, as appropriate, through the date of the invoice. City shall, within 30 days of receiving such invoice, review the invoice and pay all non-disputed and approved charges thereon. If the City disputes any of Consultant's fees, the City shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth therein.

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

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

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

3.3.6 Labor Code Requirements.

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

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

3.4 Accounting Records.

3.4.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such

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

3.5 General Provisions.

3.5.1 Termination of Agreement.

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

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

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

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

Consultant:

[INSERT BUSINESS NAME]
[INSERT STREET ADDRESS]
[INSERT CITY STATE ZIP]
ATTN: [INSERT NAME AND TITLE]

City:

City of San Clemente
910 Calle Negocio
San Clemente, CA 92673
ATTN: [INSERT NAME AND TITLE]

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

3.5.3 Ownership of Materials and Confidentiality.

3.5.3.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans,

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

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

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

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

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

3.5.6 Indemnification.

3.5.6.1 To the fullest extent permitted by law, Consultant shall defend

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

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

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

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

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

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

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

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

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

this Agreement.

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

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

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

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

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

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

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

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

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

DRAFT

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

CITY OF SAN CLEMENTE

By: _____
Andy Hall, City Manager

Dated: _____, 20____

ATTEST:

CITY CLERK of the City of
San Clemente, California

APPROVED AS TO FORM:

Elizabeth A. Mitchell, City Attorney

**APPROVED AS TO AVAILABILITY
OF FUNDING:**

Finance Authorization

("CONSULTANT")

By: _____
(Name, Title)

Dated: _____, 20____

By: _____
(Name, Title)

Dated: _____, 20____

EXHIBIT "A"
SCOPE OF SERVICES

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

[COPY, PASTE AND EDIT AS NECESSARY FROM THE RFP OR PROPOSAL]
(Proposal can be attached in addition to the above if they are technical specs or similar)

DRAFT

EXHIBIT "A-I"
FEDERALLY REQUIRED PROVISIONS FOR SERVICES

**[INSERT FEDERALLY REQUIRED PROVISIONS TRIGGERED BY RECEIPT OF
FEDERAL FUNDS FOR THE SERVICES; OTHERWISE
ALWAYS DELETE ENTIRE EXHIBIT "A-I"]**

DRAFT

EXHIBIT "B"
SCHEDULE OF SERVICES

Consultant shall diligently perform the services to the City's satisfaction and as set forth in the attached proposal from **[INSERT NAME OF COMPANY]** dated **[INSERT DATE OF PROPOSAL]**, which is incorporated fully herein by this reference.

Alternative Language: [Consultant shall diligently perform the services to the City's satisfaction according to the timeframe requested by the City.]

EXHIBIT "C"
INSURANCE REQUIREMENTS

3.2.12 Insurance. **[CITY RISK MANAGER TO REVIEW PRIOR TO EACH USE]**

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

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

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

(B) **Automobile Liability Insurance:** Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1), or the exact equivalent, covering bodily injury and property damage for all activities with limits of not less than \$1,000,000 combined limit for each occurrence. *****NOTE: If Consultant does not own any company vehicles or may not be able to purchase a Business Automobile Insurance Policy, the requirement may be satisfied by providing either of the following:** (1) a Personal Automobile Liability policy for the Consultant's own vehicle stipulating "Automobile Liability Insurance with a limit of not less than \$1,000,000 each accident"; and (2) a non-owned auto endorsement to the Commercial General Liability policy if Consultant uses vehicles of others (e.g., vehicles of employees). **ALWAYS DELETE THIS SECTION IF NOT USED***]**

(C) **Workers' Compensation:** Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 per accident for bodily injury and disease.

(D) **Professional Liability (Errors & Omissions):** Professional Liability insurance or Errors & Omissions insurance appropriate to Consultant's profession with limits of not less than \$1,000,000 per claim. Covered professional services shall specifically include all work to be performed under the Agreement and delete any exclusions that may potentially affect the work to be performed (for example, any exclusions relating to lead, asbestos, pollution, testing, underground storage tanks, laboratory analysis, soil work, etc.). If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial

Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least three (3) years from termination or expiration of this Agreement.

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

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

(A) Commercial General Liability:

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

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

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

(B) Automobile Liability:

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

3.2.12.4 Professional Liability (Errors & Omissions):

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

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

3.2.12.5 Workers' Compensation:

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

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

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

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

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

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

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

3.2.12.12 Enforcement of Agreement Provisions (non estoppel).

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

3.2.12.13 Requirements Not Limiting.

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

3.2.12.14 Insurance for Subconsultants.

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

**EXHIBIT “D”
COMPENSATION**

In full compensation for the Services rendered by the Consultant under the Agreement, the City shall pay the Consultant for actual work performed at the following hourly rates:

[INSERT RATE TABLE]

Maximum compensation under this Agreement shall not exceed \$XX,XXX. There are no reimbursable expenses under this Agreement.

OR

In full compensation for the Services rendered by the Consultant under the Agreement, the City shall pay the Consultant the following lump sum, fixed price:

[INSERT INFORMATION ON LUMP SUM/TASK LIST ITEMS]

There are no reimbursable expenses under this Agreement.

WORKER'S COMPENSATION INSURANCE CERTIFICATION

WORKERS' COMPENSATION DECLARATION

I hereby affirm under penalty of perjury one of the following declarations:

(ONE OF THE BOXES BELOW MUST BE CHECKED)

☐

I have and will maintain a certificate of consent from the California Labor Commission to self-insure for workers' compensation, as provided for by Section 3700 of the Labor Code, for the performance of the work to be performed under this contract.

☐

I have and will maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work to be performed under this contract. My workers' compensation insurance carrier and policy number are:

Carrier _____

Policy Number _____

☐

I certify that, in the performance of the work under this Agreement, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, and I hereby agree to indemnify, defend, and hold harmless the City of San Clemente and all of its officials, employees, and agents from and against any and all claims, liabilities, and losses relating to personal injury or death, economic losses, and property damage arising out of my failure to provide such worker's compensation insurance. I further agree that, if I should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions.

WARNING: FAILURE TO SECURE WORKERS' COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS (\$100,000), IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706 OF THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.

Dated: _____, 20____

("CONSULTANT")

By: _____

Title

Address
