



## City of Coronado, California

### NOTICE OF REQUEST FOR PROPOSALS

The City of Coronado, California, is issuing a Request for Proposals (RFP) to obtain a qualified firm to perform the following services:

#### CAYS PARK MASTER PLAN CONSULTING SERVICES

The City requires the services of a qualified consultant with specific experience in park master planning to develop a master plan for Coronado Cays Park. In addition to the development of the master plan document itself, this effort will include robust community engagement, coordination with City staff, public meetings, and presentations to City commissions and residential HOA boards, as well as the Coronado City Council.

To be considered for selection, all sealed Proposals must be received by the Public Services and Engineering Department at City Hall, 1825 Strand Way, Coronado, California 92118 **PRIOR TO the day and time below. Four (4) hard copies of the proposal are required and one electronic copy on USB drive.**

**DATE, PRIOR TO 3:00 P.M.**

The proposal documents include:

- 1) Notice Inviting Proposals; page 1.
- 2) Request for Proposals; page 2.
- 3) Instructions; page 6.
- 4) Attachments A, B and C – Cover Sheet, References, Terms and Conditions; page 8.
- 5) Draft Agreement and Attachments; page 14.

Copies of the proposal documents are available on the City's webpage (link below). It is the responsibility of the proposer to regularly check the City's webpage for any future proposal addenda or updates:

<https://www.coronado.ca.us/328/Public-Bids-RFPs-RFQs>

Hard copies of the proposal documents may be picked up City Hall, 1825 Strand Way, Coronado, California 92118.

If you have questions regarding this Notice Inviting Proposals, contact Tony Winney, 619-522-7335 or [twinney@coronado.ca.us](mailto:twinney@coronado.ca.us).



# **CITY OF CORONADO**

## **Request for Proposals for Cays Park Master Plan Services**

**DATE**

## **Introduction**

The City of Coronado (City) seeks to retain a qualified consultant with specific experience and expertise in park master planning to develop a comprehensive master plan for the Coronado Cays Park. The effort will require close coordination with City of Coronado staff and robust engagement with residents, and other community stakeholders. The primary objective of this project is to create a comprehensive planning document for Cays Park that fosters active community use, formal and informal, active and passive, while retaining and enhancing existing park amenities and celebrating the unique beauty, natural attributes and experience of the park. The plan should integrate sustainability and water conservation management, balanced with reasonable maintenance obligations. The plan should be implementable in phases to create an enduring landmark park for Coronado.

## **Background**

Coronado Cays Park, located at 100 Grand Caribe Causeway, near Coronado Cays Boulevard and adjacent to its intersection with Grand Caribe Causeway, is the City of Coronado's largest park, totaling approximately 15 acres. Most of the park is open space grass areas that are heavily used for organized sports such as youth soccer. The park features five tennis courts, two of which are being temporarily restriped for pickleball, one basketball court, a softball field with a backstop, a playground area, horseshoe pit, restroom facility, picnic tables, benches, and an unfenced but designated dog park space. A triangular-shaped parking lot is configured to park nearly 60 vehicles. Coronado Cays Park is the primary recreational destination for the Coronado Cays neighborhood and has served as a regional park for organized sports.

The City of Coronado initiated a park planning process for Cays Park in 2019 that started with a more focused scope of work to address the turf and irrigation, with updates to other amenities as needed. The planning process was interrupted by the pandemic, and once resumed in 2021, it experienced a much higher degree of community engagement and interest by residents who had used and enjoyed the park in greater numbers due to the cancellation of formal programming during the pandemic. With the evolution of attitudes and perspectives, the City is restarting the park planning process.

## **Scope of Services**

The City of Coronado is requesting Proposals from qualified firms to create a Coronado Cays Park Master Plan. With the input of residents, stakeholders and staff, the City desires to produce a Master Plan which charts capital improvement projects, priorities, and estimated costs.

The scope of services being requested at this time includes the following tasks:

- 1) Project Initiation and Review
- 2) Schematic Design
- 3) Public Outreach and Presentations
- 4) Master Plan Development
- 5) Final Master Plan Presentations
- 6) Prepare Final Documents

In responding to this Request for Proposals, Consultants should add any additional task(s) to their proposal they feel are necessary to achieve the City's overall objectives for the project. These tasks should be included as options to the scope of services listed above.

At the end of the master planning effort, at the City's sole discretion and option and based in large part on the Consultant's performance in developing the master plan, the City reserves the right to negotiate the scope of work and fees of a design contract for the Consultant to deliver the design and construction documents for the full, phased suite of projects identified in the plan. Below is a list of Project Tasks

#### Task 1 – Project Initiation and Review

The Consultant is to meet with City Project Team staff from the City Manager's Office, Recreation and Golf Services Department and Public Services and Engineering Department to gain an understanding of current park conditions and concerns and prior master plan work and Council guidance. A meeting with the project team and staff most knowledgeable about the maintenance of the park shall be conducted on-site. The City will provide the consultant with available as-built records for the park and all documentation, draft plan designs and the records of public comment from the prior master planning effort.

Additionally, Consultant will be provided with all prior Council directives about the Cays Park Master Plan such as requirements for three plan alternatives (see Task 2 – Schematic Design) to provide 100%, 75% and 50% of the current open space for active use, the quantity of pickleball and tennis courts to be integrated into the plan and associated court amenities.

Public Services and Engineering staff responsible for maintenance of the park will also provide the Consultant with direction regarding a new workspace and storage area to include in all plan alternatives. In general, a workshop building roughly 600 s.f. in area is desired along with a fenced, 500 s.f. outdoor storage area.

The Consultant will conduct at least two public workshops inviting the public to provide their input regarding the park. The public will be encouraged to include their preferences and/or concerns about the existing facilities as well as what improvements the public would support.

A professional, statistically valid resident survey will be developed and administered to solicit resident opinion. The Consultant may sub-contract this work with a program partner.

Based on the outcome of these meetings and the Consultant's review of the park and park records, the Consultant is to develop a final work plan/schedule demonstrating how the Master Plan will be developed, included meeting schedules, etc.

#### Task 2 – Schematic Design

Based on the meetings completed as part of Task 1, the Consultant shall develop three schematic Master Plan alternatives demonstrating how various improvements might be incorporated into the Cays Park. Council direction is for the alternatives to maintain 100% 75% and 50% of the open space areas programmed for organized sports such that the alternatives provide different, distinct and creative visions for the park. Preliminary cost estimates for each of the incorporated improvements, and each alternative as a whole, should be developed in coordination with City staff. These three feasible alternatives will be developed in a manner that can be presented to the public for review and comment as outlined in Task 3.

Each alternative must include turf and irrigation system replacement for the entire park.

#### Task 3 – Community Engagement and Presentations

Schematic designs developed in Task 2 are to be presented in at least two public workshops to Coronado residents by the Consultant in order to gather public comment and opinions on the various alternatives.

The Consultant shall present the various schematic designs and summarize the opinions and comments collected at the public workshop(s) to the Coronado Parks and Recreation Commission for additional public comment and to solicit the Commission's recommendation(s).

The Consultant should employ an online project site for transparency and information sharing and to solicit feedback, as appropriate. The City will promote community engagement opportunities to encourage maximum participation.

#### Task 4 – Master Plan Development

Having obtained public comments, as well as direction from the Parks and Recreation Commission, Consultant is to coordinate with City staff and develop the final Master Plan document, incorporating the recommended combination of improvements as directed by City staff. An informational presentation to the City Council at this stage may be necessary. The Master Plan should include an overall site plan and renderings of any new improvements/amenities being added to the park. Improvements should be grouped into projects that can be implemented over time as budgets allow, but that logically build on one another until all are completed. Detailed cost estimates for design and construction of each project are to be included in the document.

#### Task 5 – Final Master Plan Presentations

The Consultant shall plan to formally present the recommendations contained within the Master Plan to the Coronado Cays Homeowners Association and Coronado Parks and Recreation Commission; these groups are to be asked for their approval/support of the Master Plan document. The final document will then be presented to the City Council for adoption during a regularly scheduled City Council meeting.

#### Task 6 – Prepare Final Documents

Upon approval of the master plan by the City Council, consultant will provide six hard copies of the report, as well as electronically as a PDF of the report, including any site plans, renderings, etc.

### **Project Management/Administration**

The Consultant will assign the City a designated project manager or “Principal in Charge” who will oversee all Consultant activities from project implementation to conclusion and management of all sub-providers. This task includes activities such as project start up, minutes, agendas, budget and schedule tracking, ongoing coordination with the consultant team, and providing daily point of contact with the City.

Consultant team shall attend all collaboration meetings with the City at key milestones in the planning process such as coordination of public participation activities, development of key products and materials and review of analysis and findings.

**CITY OF CORONADO  
CAYS PARK MASTER PLAN  
INSTRUCTIONS TO PROPOSERS**

**I. PROPOSAL SUBMITTAL REQUIREMENTS**

Consultants shall submit a proposal organized in the following format and include the information noted below:

**A. Cover Letter – Introduction (including a completed “Cover Sheet” – Attachment A to this RFP).** Introduce your company and summarize your proposal. Please include the name of a contact person and/or authorized representative in your company.

**B. Consultant’s Capabilities, Qualifications and Past Experiences.** This relates to the Consultant’s qualifications and capacity to perform the desired services for the City of Coronado. This section should demonstrate the Consultant’s capabilities for the variety of anticipated work as described in the Scope of Work section.

**C. Key Personnel.** The consultant shall identify key staff and include a description of their abilities, qualifications and experience. Attach resumés of key staff that will be assigned to this project. Include a proposed project management structure and organizational chart. The “Principal in Charge” should be identified as a one-person contact for the project. The Principal in Charge shall remain the point of contact for the duration of the contract. If the firm has an office in San Diego County, as well as an office outside of the County, the staffing of the San Diego office must be clearly indicated separately from the firm’s total staffing.

**D. Consultant’s Proposal.** The Consultant shall confirm their understanding of the Scope of Work outlined in this document. The Consultant may enhance the Scope of Work as they deem necessary in order to achieve the City’s overall objectives for the project. A general schedule with key milestones should be included.

**E. References.** Provide a list, including a minimum of three references, that the City can contact to evaluate the firm’s past work experience (**Attachment B** of this RFP includes a format for reference contact information that can be used to fulfill this requirement).

**F. Proposal Fee/Budget.** In a separate sealed envelope the Consultant shall provide a proposed cost for the Scope of Work described in the proposal. The cost proposal shall include all labor costs, overhead costs, subconsultant costs, and an itemized list for direct expenses. Cost must be shown in a matrix format, by tax grouping, and show hours per staff member, base labor rates, and overhead profit

rates. **The Budget shall include a breakdown of cost categories as listed in the RFP Scope of Services described above.**

## **II. SELECTION PROCESS AND EVALUATION CRITERIA**

The method by which the City will select a successful proposer for this RFP is as follows:

Each submittal shall be judged as to the Consultant's capabilities and experience related to the scope of services the City is seeking. Selection will be based upon a 100-point criteria as follows:

- (40) Consultant's Capabilities: Each Consultant will be evaluated on its demonstrated capabilities and experience to provide the desired services for the City of Coronado. Past performance on similar types of work will be reviewed and judged on how similar that experience matches the type of services desired by the City of Coronado and for how long the firm has been successfully providing those services.
- (30) Key Personnel: Each firm will be evaluated on the experience and education of the key personnel that will be assigned to the City's projects.
- (20) Consultant's Proposal: Each firm will be evaluated on their approach to the project and proposed schedule.
- (10) References: At least one of the listed references within the proposal will be contacted and asked to assess the Consultant's performance on the project. A score will be assessed based on the feedback provided.

An evaluation committee will review and rank the submittals based on the above criteria. The top-rated firms may be short listed and invited to an interview, if needed to make a selection. Once qualifications and proposals have been reviewed and scored, proposal costs will be evaluated.

Based on the submittals and interviews, a consultant(s) will be recommended to the City Council for award of a Professional Consultant Services Contract. Upon the Council's approval, the contract will be awarded. Should the City and the selected Consultant(s) be unable to agree on contract terms, the award of the contract will be offered to the second-ranking firm, and so forth, as necessary.

Interpretation or correction prior to proposal opening:

- Any request for interpretation or correction of the Request for Proposals documents must be submitted prior to the opening of proposals to Tony Winney, Assistant City Manager, [twinney@coronado.ca.us](mailto:twinney@coronado.ca.us) by email to up to one week before the proposal due date.

- Any interpretation or correction rendered by the Contract Officer of the Request for Proposals documents shall be made immediately available to all other persons who obtained request for proposal documents from the City.

For questions or additional information, please contact:

Tony Winney, Assistant City Manager  
Phone: 619-522-7335  
Email: [twinney@coronado.ca.us](mailto:twinney@coronado.ca.us)

**CITY OF CORONADO**  
**CAYS PARK MASTER PLAN**  
**ATTACHMENT A**  
**COVER SHEET**

Name of Firm: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax \_\_\_\_\_

Firm is a:	Joint Venture	( )
	California Corporation	( )
	Partnership	( )
	Sole Proprietorship	( )
	Other	( )

Firm's Federal Tax ID Number: \_\_\_\_\_

Firm's or Individual's Professional Registration Number: \_\_\_\_\_

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Typed Name of Authorized Representative

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Typed Name of Authorized Representative

**CITY OF CORONADO**  
**CAYS PARK MASTER PLAN**

**ATTACHMENT B**

**REFERENCES**

**Provide at least three references with telephone numbers:**

**REFERENCE #1**

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Representing

\_\_\_\_\_

Project Title: \_\_\_\_\_

Description: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

—

**REFERENCE #2**

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Representing

\_\_\_\_\_

Project Title: \_\_\_\_\_

Description: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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**REFERENCE #3**

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Representing

\_\_\_\_\_  
Project Title:

Description:

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**CITY OF CORONADO**  
**CAYS PARK MASTER PLAN**

**ATTACHMENT C**

**REQUEST FOR PROPOSALS TERMS AND CONDITIONS**

**1. Right to Reject Proposals**

- a. The City retains the right to reject any and all proposals, to waive any specifications (both City's and written proposed specifications from proposing parties) and any informality or irregularity, and to sit and act as sole judge of the merit and qualifications of each product/service offered. Proposing party's past performance and the City's assurance that each proposing party would provide the requirements of the scope of work/specifications as proposed will be taken into consideration when proposals are being evaluated. The City reserves the right to reject any proposals that have the potential for conflict of interest.
- b. Proposing parties agree to honor said proposal for a period of one hundred eighty (180) days from proposal closing date. Acceptance of the proposing party's proposal by the City, during the period that the proposals shall remain valid, shall bind the proposing party to perform the Services in compliance with the terms set forth herein for the period stated in the proposal.
- c. Failure to provide all information required in this RFP may result in the proposal being rejected as incomplete and non-responsive. All prices, terms, availability, and any other conditions must be complete and in written form.
- d. This RFP does not commit the City to award a contract or to pay any costs incurred in the preparation of a proposal in response to this request. At this time, there is no commitment on the part of the City to award a contract for Services. The City will retain all proposals submitted in response to this request.

**2. Proposal Evaluation**

- a. All proposals received shall be evaluated with emphasis placed on the proposing party's ability to meet the City's requirements, the responsiveness of the proposals, and the evaluation criteria outlined in the RFP. Other factors such as the ability to meet deadlines, quality of work performed in the past, and general competence of the proposing party shall be carefully scrutinized. Cost will be evaluated in relation to the other qualified proposing parties. The City need not select the lowest cost proposal, but may choose according to what is in the best interest of the City.
- b. It should be noted that this is a competitive sealed proposal and not a competitive sealed bid. When proposals are opened, prices and other proposal information will not be made public until the proposal is awarded. There shall be no disclosure of any proposing party's information to competing proposing parties prior to the awarding of the Contract. At that time, the executed contract will become public information. Accordingly, each proposal should be submitted on the consultant's most favorable terms from a price and technical standpoint.

3. **Default**

If the proposing party to whom the award is made fails to enter into a contract as herein provided, the award will be annulled and an award may be made to the next highest rated proposing party, and such proposing party shall fulfill every stipulation embraced herein as if they were the party to whom the first award was made. The notice inviting proposals, special provisions, and specifications shall be considered as incorporated in the Contract.

4. **Sales Tax**

The City pays State of California sales tax. The City is exempt from Federal excise tax and shall furnish such tax exemption certificates as may be required.

5. **Work Performance**

- a. All work shall be completed in a competent manner according to standard practices of the industry. All persons engaged in the work, including subcontractors, will be considered as employees of the Consultant. The Consultant will be held responsible for their work. The City will deal directly with and make all payments to the prime Consultant.
- b. The subcontracting of any or all of the work to be done will in no way relieve the Consultant of any part of responsibilities under the Contract.
- c. Periods of performance may be extended if the facts as to the cause of delay justify such extension in the opinion of the Director.

6. **Licenses**

The Consultant's personnel shall furnish to the City a copy of their valid appropriate class California Driver's License upon request by the City.

7. **Signing Agreements**

The City does not sign rental, lease, or other agreements that may be requested by the successful proposing party. The City Professional Services Agreement is the contract document incorporating the specifications and terms and conditions of this RFP.

8. **Billings and Compensation**

Billings shall be submitted monthly, indicating locations and monthly rates, and shall be verified by the City's Project Manager or authorized representative. Payment for work shall be as agreed upon by the City and the Consultant. In the event of disputes, the disputed invoice shall be submitted to the Director of Public Services and Engineering for review and decision. The determination of the Director shall be final.

9. **Standards of Performance**

Services shall be performed under the Contract 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. The Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. The Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, the Consultant represents that it, its employees, and subcontractors, 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 Contract. As provided for in the indemnification provisions of this Contract, the 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.

The selected Consultant must also equip each employee performing services under this contract with a cell phone to allow the employee to effectively communicate with their base of operation and City staff.

**10. Personnel**

The Consultant shall furnish sufficient supervisory and working personnel capable of promptly accomplishing on schedule, to the satisfaction of the City or authorized representative, all work required under the Contract.

All contractual personnel shall be physically able to do their assigned work. The Consultant and its employees shall conduct themselves in a proper and efficient manner at all times and shall cause the least possible disruption to the public. The City or authorized representative may require the Consultant to promptly remove from the work site any employee deemed careless, uncooperative, incompetent, a threat to the adequate or timely completion of Services, a threat to the safety of persons or property, or otherwise objectionable, whose continued employment on the job is considered to be contrary to the best interest of the City. Such an employee shall not be re-employed to perform any of the Services.

The Consultant shall have competent employees on the job who are capable of discussing, with the City or authorized representatives, matters pertaining to this Contract. Adequate and competent supervision shall be provided for all work done by the Consultant's employees to ensure accomplishment of high quality work, which will be acceptable to the City or authorized representative.

Each employee shall be required to carry, on his person, an identification card identifying employee as an employee of the Consultant. All personnel changes or substitutes need to be reported to the City's Project Manager prior to work shift.

**11. Assignment**

The Consultant shall not assign, sublet or lease any part or portion of this Contract without the prior written approval of the City.



## **AGREEMENT FOR PROFESSIONAL SERVICES**

**[INSERT NAME OF CONSULTANT FIRM]**

**Contract No. [Insert Contract Number]**

**NOTE: CHANGE TERM CONSULTANT TO PROVIDER OR CONTRACTOR, AS REQUIRED.**

This AGREEMENT is made and entered into as of the date of execution by the City of Coronado, a California municipal corporation, hereinafter referred to as "CITY" and [Insert Name of CONSULTANT Firm], [Insert appropriate legal entity – a California Corporation, LLC, LP, Partnership, Sole Proprietorship, DBA] (Check Secretary of State at <https://businesssearch.sos.ca.gov/> for registration of the corporation, and the County fictitious name information in case it is a DBA) hereinafter referred to as "CONSULTANT." Where the contracting entity is a joint venture such entity is encompassed within the meaning of the term "CONSULTANT."

### **RECITALS**

The CITY requires the services of a CONSULTANT to provide [insert type of professional services] for its \_\_\_\_\_ project (the "PROJECT"). These services generally consist of [insert summary of the Scope of Services]. The work to be performed by CONSULTANT shall be referred to herein as the "DESCRIBED SERVICES."

CONSULTANT represents itself as being a professional [insert type of firm – e.g., engineering, geotechnical, etc.] firm, possessing the necessary experience, skills, and qualifications to provide the services required by the CITY. CONSULTANT warrants and represents that it has the necessary staff to deliver the services within the time frame herein specified.

On \_\_\_\_\_, 202\_\_, the City Council for the CITY approved this AGREEMENT and authorized the City Manager [or City Manager's Designee] to execute the form of this Agreement. [See Coronado Municipal Code Chapter 8.05.]

The CITY's [insert title and name of City's designated representative] shall serve as the CITY's "Contract Officer" for this AGREEMENT and has the authority to direct the CONSULTANT, approve actions, request changes, and approve additional services.

NOW, THEREFORE, in consideration of these recitals and the mutual covenants contained herein, CITY and CONSULTANT (collectively referred to as the "PARTIES") agree as follows:

## 1.0 TERM OF THE AGREEMENT

1.1 This AGREEMENT shall be effective beginning the day, month and year of the execution of this document by the CITY. The AGREEMENT shall be in effect for a term of [insert months or years] or until [insert date]. The CITY shall have the option to extend the AGREEMENT, if agreed to by the CONSULTANT.

1.2 The CONSULTANT shall commence the performance of the DESCRIBED SERVICES immediately upon execution of this AGREEMENT. Time is of the essence in this AGREEMENT. Failure to meet the schedule contained in this AGREEMENT is a default by the CONSULTANT.

1.3 A delay occasioned by causes beyond the control of CONSULTANT may merit an extension of time for the completion of the DESCRIBED SERVICES. When such delay occurs, CONSULTANT shall immediately notify the CONTRACT OFFICER in writing of the cause and the extent of the delay, whereupon the CONTRACT OFFICER shall ascertain the facts and the extent of the delay and may grant an extension of time for the completion of the DESCRIBED SERVICES when justified by the circumstances. CONSULTANT acknowledges and agrees that delays arising out of or related to COVID-19 or related federal, state or local laws, regulations, orders, rules, policies or guidance will not merit an extension of time. CONSULTANT represents and warrants that it can perform the DESCRIBED SERVICES competently and in a timely fashion and has taken into account circumstances and delays that may occur as a result of or arising out of COVID-19 or applicable laws related thereto in entering into this AGREEMENT.

1.4 This AGREEMENT may be terminated in accordance with the provisions contained in this AGREEMENT.

1.5 **Renewal or Extension Provisions.** This AGREEMENT shall be in effect for a term of three (3) years with two (2) one-year renewal options upon mutual consent. Prices shall remain firm for the first year of the AGREEMENT. Subsequent to the first year, and upon mutual agreement, an annual price increase, no greater than the Consumer Price Index for the San Diego Region, may be implemented. The CITY shall have the option to extend the AGREEMENT, if agreed to by the CONSULTANT.

or

1.5 **Renewal or Extension Provisions.** At the conclusion of this AGREEMENT, and subject to the conditions set forth herein, CITY shall have the right, but not the obligation, to extend its term for up to three (3) additional one-year periods on the same terms and conditions set forth herein by providing CONSULTANT with written notice of its election to extend the term sixty (60) days prior to the termination of the existing term, or any extension. Within fifteen (15) days of receipt of CITY's notice of election to extend the term of this AGREEMENT, CONSULTANT shall have the right to present, in writing, any modification of its fee schedule for the extended term. If, prior to the termination date of this AGREEMENT, CITY and CONSULTANT fail to agree to a modified fee schedule for the extended term, this AGREEMENT shall not be extended and shall terminate on the sixty-first (61st) day following CITY's notice of election to extend the term.

[Please consult with City Attorney if renewal or extension provisions are warranted and to ensure that they coincide with section 1.1.]

## **2.0 CONSULTANT'S OBLIGATIONS AND SCOPE OF WORK (ATTACHMENT A)**

2.1 CONSULTANT shall provide the CITY with the professional services for the PROJECT that are described in ATTACHMENT A and are hereinafter referred to as the “DESCRIBED SERVICES.”

2.2 CONSULTANT shall perform all the tasks required to accomplish the DESCRIBED SERVICES in conformity with the applicable requirements of federal, state, and local laws in effect at the time that the DESCRIBED SERVICES are being performed and at the time that the scope of work is substantially completed by the CONSULTANT.

a. The CONSULTANT is responsible for ensuring the professional quality, technical accuracy, and coordination of all services and documents furnished by the CONSULTANT under this AGREEMENT.

b. The CONSULTANT shall be obligated to comply with applicable standards of professional care in the performance of the DESCRIBED SERVICES. CITY recognizes that opinions relating to environmental, geologic, and geotechnical conditions are based on limited data and that actual conditions may vary from those encountered at the times and locations where the data are obtained despite the use of professional care. Where any condition exists for which the CONSULTANT must make a judgment that could result in an actual condition that is materially different, the CONSULTANT shall advise the CITY in advance and request specific direction.

c. The CONSULTANT shall, without additional compensation, immediately correct or revise any DESCRIBED SERVICES that do not meet the foregoing professional responsibility standards.

2.3 During the term of this AGREEMENT, CONSULTANT shall maintain professional certifications as required in order to properly comply with all applicable federal, state, and local laws. If the CONSULTANT lacks such certification, this AGREEMENT is void and of no effect.

2.4 Conflict of Interest and Political Reform Act Obligations, if determined to be applicable according to ATTACHMENT B – CONFLICT OF INTEREST DETERMINATION. CONSULTANT shall at all times comply with the terms of the Political Reform Act and the local Conflict of Interest Ordinance. The level of disclosure categories shall be set by the City and shall reasonably relate to the scope of the DESCRIBED SERVICES.

## **3.0 PAYMENT AND SCHEDULE OF SERVICES (ATTACHMENTS C AND D)**

3.1 CONSULTANT is hired to render the DESCRIBED SERVICES and any payments made to CONSULTANT are full compensation for such services.

3.2 The amount of payment to CONSULTANT for providing the DESCRIBED SERVICES is set forth in ATTACHMENT C. No payment shall be allowed for any reimbursable expenses unless specifically described in ATTACHMENT C.

3.3 Payment for all undisputed portions of each invoice shall be made within 45 days from the date of the invoice.

3.4 The CITY's review, approval or acceptance of, or payment for the services required under this AGREEMENT shall not be construed to operate as a release or waiver of any rights of the CITY under this AGREEMENT or of any cause of action arising out of CONSULTANT's performance of this AGREEMENT, and CONSULTANT is responsible to the CITY for all damages to the CITY caused by the CONSULTANT's performance of any of the DESCRIBED SERVICES.

**Optional paragraphs:**

3.5 CONSULTANT shall not be entitled to any additional fees for work incidental to the design, for any design clarifications, or for changes resulting from errors or omissions by the CONSULTANT or any SUBCONSULTANT. [If subconsultants used.]

3.6 Unless provided by the CITY, a Project Schedule showing all milestones shall be developed by the CONSULTANT and submitted to the CITY for approval. The form of the schedule shall be a "bar chart," "critical path," or other format, as specified by the CITY or approved by City's CONTRACT OFFICER. The final schedule is attached hereto as ATTACHMENT D. [This paragraph may be removed, as well as any references to ATTACHMENT D, if no project schedule is required.]

3.7 CONSULTANT shall at all times comply with the CITY's Administrative Procedure No. 509 regarding Payment for Special Counsel, a copy of which is attached hereto as ATTACHMENT C-1. [This paragraph is to be used for special counsel legal services agreements only.]

#### **4.0 CITY'S OBLIGATIONS**

4.1 CITY shall provide information as to the requirements of the project, including budget limitations. The CITY shall provide or approve the schedule proposed by the CONSULTANT.

4.2 CITY shall furnish the required information and services and shall render approvals and decisions expeditiously to allow the orderly progress of the DESCRIBED SERVICES as shown on the schedule required under ATTACHMENT D.

**5.0 SUBCONTRACTING** [If there are no subconsultants delete 5.1, 5.2. and 5.3, and retain the subcontracting section title with the text: "No subcontracting is permitted under this AGREEMENT" beside the title. Also delete other references to subconsultant or subcontractor elsewhere in the contract.]

5.1 The name, phone number, and location of the place of business of each SUBCONSULTANT that the CONSULTANT will use to perform work or render service to the

CONSULTANT in performing this AGREEMENT is contained in ATTACHMENT E. No change to or addition of any SUBCONSULTANT shall be made without the written approval of the CITY.

5.2 If CONSULTANT subcontracts for any of the work to be performed under this AGREEMENT, CONSULTANT shall be as fully responsible to the CITY for the acts and omissions of CONSULTANT's SUBCONSULTANTS and for the persons either directly or indirectly employed by the SUBCONSULTANTS, as CONSULTANT is for the acts and omissions of persons directly employed by CONSULTANT. Nothing contained in the AGREEMENT shall create any contractual relationship between any SUBCONSULTANT of CONSULTANT and the CITY. In any dispute between the CONSULTANT and its SUBCONSULTANT, the CITY shall not be made a party to any judicial or administrative proceeding to resolve the dispute. The CONSULTANT agrees to defend, hold harmless and indemnify the CITY as described in Section 13 of this AGREEMENT, should the CITY be made a party to any judicial or administrative proceeding to resolve any such dispute.

5.3 CONSULTANT shall bind every SUBCONSULTANT to all the terms of the AGREEMENT applicable to CONSULTANT's work unless specifically noted to the contrary in the subcontract in question and approved in writing by the CONTRACT OFFICER. All contracts entered into between the CONSULTANT and its SUBCONSULTANT shall also provide that each SUBCONSULTANT shall obtain insurance policies which shall be kept in full force and effect during any and all work on this project and for the duration of this AGREEMENT. The CONSULTANT shall require the SUBCONSULTANT to obtain all policies described in Section 14 in the amounts required by the CITY, which shall not be greater than the amounts required of the CONSULTANT.

## **6.0 CHANGES TO THE SCOPE OF WORK**

6.1 The CONSULTANT shall not perform work in excess of the DESCRIBED SERVICES without the prior written approval of the CONTRACT OFFICER. All requests for extra work shall be made by written request for a contract modification submitted to the CONTRACT OFFICER. To be effective, all contract modifications must be in writing and signed prior to the commencement of the work. Fees for additional work will be negotiated on a fixed-fee basis.

6.2 The CITY may unilaterally reduce the scope of work to be performed by the CONSULTANT. Upon doing so, CITY and CONSULTANT agree to meet in good faith and confer for the purpose of negotiating a deductive change order or amendment to the AGREEMENT.

## **7.0 ENTIRE AGREEMENT**

7.1 This AGREEMENT and incorporated attachments set forth the entire understanding of the PARTIES with respect to the subject matters herein. If there are any inconsistencies between the incorporated attachments and this AGREEMENT, the terms of this AGREEMENT control. There are no other understandings, terms, or other agreements expressed or implied, oral or written, except as set forth herein. No change, alteration, or modification of the terms or conditions of this

AGREEMENT, and no verbal understanding of the PARTIES, their officers, agents, or employees shall be valid unless agreed to in writing by both PARTIES.

## **8.0 TERMINATION OF AGREEMENT**

8.1 In the event of CONSULTANT's default of any covenant or condition hereof, including, but not limited to, failure to timely or diligently prosecute, deliver, or perform the DESCRIBED SERVICES, or where the CONSULTANT fails to perform the work in accordance with the project schedule (ATTACHMENT D), the CITY may immediately terminate this AGREEMENT for cause if CONSULTANT fails to cure the default within ten (10) calendar days of receiving written notice of the default. Thereupon, CONSULTANT shall immediately cease work and within five (5) working days: (1) assemble all documents owned by the CITY and in CONSULTANT's possession, and deliver said documents to the CITY; and (2) place all work in progress in a safe and protected condition. The CONTRACT OFFICER shall make a determination of the percentage of work that CONSULTANT has performed that is usable and of worth to the CITY. Based upon that finding, the CONTRACT OFFICER shall determine any final payment due to CONSULTANT.

8.2 This AGREEMENT may be terminated by the CITY, without cause, upon the giving of fifteen (15) days' written notice to the CONSULTANT. Prior to the fifteenth (15th) day following the giving of the notice, the CONSULTANT shall assemble the completed work product to date, and put the same in order for proper filing and closing, and deliver said product to the CITY. The CONSULTANT shall be entitled to just and equitable compensation for any satisfactory work completed. The CONTRACT OFFICER and CONSULTANT shall endeavor to agree upon a percentage complete of the contracted work if fees are fixed, or an agreed dollar sum based on services performed if hourly, and terms of payment for services and reimbursable expenses. CONSULTANT hereby expressly waives any and all claims for damages or compensation arising under this AGREEMENT except as set forth herein.

## **9.0 OWNERSHIP OF DOCUMENTS**

9.1 All work products (i.e., documents, data, studies, drawings, maps, models, photographs, and reports) prepared by CONSULTANT under this AGREEMENT, whether paper or electronic, shall become the property of CITY for use with respect to this project, and shall be turned over to the CITY upon completion of the DESCRIBED SERVICES or any phase thereof, as contemplated by this AGREEMENT.

9.2. Contemporaneously with the transfer of such documents, the CONSULTANT hereby assigns to the CITY and CONSULTANT thereby expressly waives and disclaims, any copyright in, and the right to reproduce, all written material, drawings, plans, specifications, or other work prepared under this AGREEMENT, except upon the CITY's prior authorization regarding reproduction, which authorization shall not be unreasonably withheld. The CONSULTANT shall, upon request of the CITY, execute any further document(s) necessary to further effectuate this waiver and disclaimer.

## **10.0 STATUS OF CONSULTANT**

10.1 CONSULTANT shall perform the DESCRIBED SERVICES in a manner of CONSULTANT's own choice, as an independent contractor and in pursuit of CONSULTANT's independent calling, and not as an employee of the CITY. The CONSULTANT has and shall retain the right to exercise full control and supervision of all persons assisting the CONSULTANT in the performance of the DESCRIBED SERVICES, the CITY only being concerned with the finished results of the work being performed. CONSULTANT shall confer with the CITY at a mutually agreed frequency and inform the CITY of incremental work/progress as well as receive direction from the CITY. Neither CONSULTANT nor CONSULTANT's employees shall be entitled in any manner to any employment benefits, including, but not limited to, employer-paid payroll taxes, Social Security, retirement benefits, health benefits, or any other benefits, as a result of this AGREEMENT. It is the intent of the parties that neither CONSULTANT nor its employees are to be considered employees of CITY, whether "common law" or otherwise, and CONSULTANT shall indemnify, defend and hold CITY harmless from any such obligations on the part of its officers, employees and agents.

## **11.0 ASSIGNMENT OF CONTRACT**

11.1 This AGREEMENT and any portion thereof shall not be assigned or transferred, nor shall any of the CONSULTANT's duties be delegated or subcontracted, without the express written consent of the CITY.

## **12.0 COVENANT AGAINST CONTINGENT FEES**

12.1 CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working for CONSULTANT, to solicit or secure this AGREEMENT, and that CONSULTANT has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this AGREEMENT. For breach or violation of this warranty, the CITY shall have the right to terminate this AGREEMENT without liability, or, at the CITY's sole discretion, to deduct from the AGREEMENT the price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

## **13.0 INDEMNITY – HOLD HARMLESS**

13.1 To the fullest extent permitted by law, CONSULTANT, through its duly authorized representative, agrees that CITY and its respective elected and appointed boards, officials, officers, agents, employees, and volunteers (individually and collectively, "CITY Indemnitees") shall have no liability to CONSULTANT or any other person, and CONSULTANT shall indemnify, protect, and hold harmless CITY Indemnitees from and against, any and all liabilities, claims, demands, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs, and expenses, including reasonable attorneys' fees and disbursements (collectively "claims") that arise out of, or pertain to, or relate to this AGREEMENT or the negligence, recklessness, or willful misconduct of CONSULTANT, its employees, agents, and SUBCONSULTANTS in the performance of the DESCRIBED SERVICES. The following sentence applies ONLY to A/E

design as defined in Civil Code 2782.8(c): To the extent that the DESCRIBED SERVICES are performed by a design professional within the meaning of Civil Code section 2782.8(c), the foregoing shall be limited only to the extent necessary to be enforceable in compliance with Civil Code section 2782.8(a).

13.2 CONSULTANT's obligation herein does not extend to liability for damages for death or bodily injury to persons, injury to property, or other loss, damage, or expense arising from the sole negligence, recklessness or willful misconduct of the CITY or its elected or appointed boards, officials, officers, agents, employees or volunteers.

13.3 CONSULTANT shall provide a defense (with counsel acceptable to CITY) to the CITY's Indemnitees, or, at the CITY's option, reimburse the CITY's Indemnitees for all costs, attorneys' fees, expenses, and liabilities (including judgment or portion thereof) incurred with respect to any litigation in which the CONSULTANT is obligated to indemnify, defend, and hold harmless the CITY's Indemnitees pursuant to this AGREEMENT.

13.4 The provisions of this section 13 shall not be limited by any provision of insurance coverage that the CONSULTANT may have in effect, or may be required to obtain and maintain, during the term of this AGREEMENT. The provisions of this section 13 are continuing obligations and shall survive expiration or termination of this AGREEMENT.

**INCLUDE THE FOLLOWING SECTIONS ONLY IF MUTUAL INDEMNIFICATION IS REQUIRED BY CONSULTANT:**

13.5. To the extent permitted by law, the CITY hereby agrees to indemnify and hold harmless CONSULTANT, its officers, directors, shareholders, members, contractors, agents, and employees ("CONSULTANT's Indemnitees") from and against any and all causes of action, claims, liabilities, obligations, demands, judgments, or damages, including reasonable attorneys' fees and costs of litigation ("claims") against one or more of the CONSULTANT's Indemnitees, that arises solely out of the negligence, recklessness, or willful misconduct by CITY in connection with this AGREEMENT.

13.6. In the event of claims arising out of the concurrent acts or omissions of both CONSULTANT and CITY, the parties agree to be responsible for and to hold the other party harmless from any judgment or payment attributed to it by judgment, settlement agreement, or other award. Where a trial verdict or arbitration award allocates or determines the comparative fault of the parties, or where the parties agree to a settlement determining the comparative fault of the parties, CONSULTANT and CITY may seek reimbursement and/or reallocation of defense costs, settlement payments, judgments, and awards, consistent with such comparative fault [ADD FOR DESIGN PROFESSIONALS:] and, if applicable, Civil Code section 2782.8.

13.7 **PERS Eligibility Indemnification.** In the event that any of CONSULTANT's officers, employees, agents, subcontractors, representatives or other persons providing services on CONSULTANT's behalf under this Agreement (collectively "CONSULTANT's PERSONNEL") 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, Contractor shall

indemnify, defend (with counsel acceptable to CITY), and hold harmless CITY for the payment of any employer and employee contributions for PERS benefits on behalf of CONSULTANT's PERSONNEL as well as for payment of any penalties and interest on such contributions which 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 PERSONNEL providing services 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.

**13.8 Limitation of CITY Liability.** The payment made to CONSULTANT pursuant to this AGREEMENT shall be the full and complete compensation to which CONSULTANT and CONSULTANT's PERSONNEL are entitled for performance of any work under this contract. Neither CONSULTANT nor CONSULTANT's officers or employees are entitled to any salary or wages, or retirement, health, leave or other fringe benefits applicable to employees of the CITY. The CITY will not make any federal or state tax withholdings on behalf of CONSULTANT. The CITY shall not be required to pay any workers' compensation insurance on behalf of CONSULTANT.

**13.9 Indemnification for Employee Payments.** CONSULTANT agrees to defend (with counsel acceptable to CITY), indemnify and hold harmless the CITY for and against any obligation, claim, suit, or demand for tax, retirement contribution, including any contribution to the Public Employees Retirement System (PERS), Social Security, salary, or wages, overtime payment, or workers' compensation payment which the CITY may be required to make on behalf of CONSULTANT or CONSULTANT's PERSONNEL for work done under this AGREEMENT.

**14.0 INSURANCE** [NOTE: Refer to Administrative Procedure 513 for insurance requirements.]

**14.1** CONSULTANT shall procure and maintain for the duration of this AGREEMENT insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the DESCRIBED SERVICES and the results of that work by the CONSULTANT or its agents, representatives, employees or subcontractors. Insurance shall be placed with insurers with a current A. M. Best rating of no less than "A" and "VII" unless otherwise approved in writing by the CITY's Risk Manager.

**14.2** CONSULTANT shall obtain and, during the term of this AGREEMENT, shall maintain policies of professional liability (errors and omissions), automobile liability, and general liability insurance from an insurance company authorized to do business in the State of California in insurable amounts of not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate. The insurance policies shall provide that the policies shall remain in full force during the life of the AGREEMENT, and shall not be canceled or not renewed without thirty (30) days prior written notice to the CITY from the insurance company. Statements that the carrier "will endeavor" and "failure to mail such notice shall impose no obligation or liability upon

the company, its agents, or representatives,” will not be acceptable on insurance certificates. Maintenance of specified insurance coverage is a material element of this AGREEMENT.

**14.3 Types and Amounts Required.** CONSULTANT shall maintain, at minimum, the following insurance coverage for the duration of this AGREEMENT:

**14.3.1 Commercial General Liability (CGL).** CONSULTANT shall maintain CGL Insurance written on an ISO Occurrence form or equivalent providing coverage at least as broad as CG 00 01 which shall cover liability arising from any and all personal injury or property damage, including ongoing and completed operations, in the amount of \$2,000,000 per occurrence and subject to an annual aggregate of \$4,000,000. If limits apply separately to this project (CG 25 03 or 25 04) the general aggregate limit shall not apply. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy. If the CONSULTANT or subcontractor maintains higher limits than the limits shown above, the CITY shall be entitled to coverage for the higher limits maintained by the CONSULTANT and/or their subcontractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the CITY. Any excess or umbrella policies being used to meet the required limits of insurance will be evaluated separately and must meet the same qualifications as the CONSULTANT’s primary policy. **[ADD THE FOLLOWING FOR DESIGN PROFESSIONAL CONTRACTS AS APPROPRIATE:]** If the DESCRIBED SERVICES are being performed by a design professional within the meaning of Civil Code section 2782.8(c), CONSULTANT shall obtain and maintain a project-specific general liability policy that insures all project participants for general liability exposures on a primary basis and also covers all design professionals for their legal liability arising out of their professional services on a primary basis.

**14.3.2 Commercial Automobile Liability.** CONSULTANT shall maintain Commercial Automobile Liability Insurance for all of the CONSULTANT’s automobiles, including owned, hired, and non-owned automobiles, written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of no less than \$1,000,000 per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).

**14.3.3 Workers’ Compensation.** CONSULTANT shall maintain Workers’ Compensation insurance for all of the CONSULTANT’s employees who are subject to this AGREEMENT and to the extent required by applicable state or federal law, a Workers’ Compensation policy providing at minimum \$1,000,000 employers’ liability coverage. The CONSULTANT shall provide an endorsement that the insurer waives the right of subrogation against the CITY and its respective elected officials, officers, employees, agents and representatives.

**14.3.4 Professional Liability.** CONSULTANT shall maintain Professional Liability (errors and omissions) coverage with a limit of no less than \$1,000,000 per claim and \$2,000,000 annual aggregate. The policy shall be on a claims made and in the aggregate

basis. The CONSULTANT shall ensure both that: (1) the policy retroactive date is on or before the date of commencement of the DESCRIBED SERVICES; and (2) the policy will be maintained in force for a period of three years after substantial completion of the DESCRIBED SERVICES or termination of this AGREEMENT, whichever occurs last. The CONSULTANT agrees that for the time period defined above, there will be no changes or endorsements to the policy that increase the CITY's exposure to loss. All defense costs shall be outside the limits of the policy. If CONSULTANT maintains higher limits than the limits shown above, the CITY shall be entitled to coverage for the higher limits maintained by the CONSULTANT. Any available proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the CITY.

**[INCLUDE DEPENDING ON TYPE OF CONTRACT; NOTE THAT IF YOU NEED CYBER LIABILITY, YOU LIKELY NEED TO BE USING THE TECHNOLOGY TEMPLATE WHICH HAS ADDITIONAL PROVISIONS REGARDING SECURITY AND CONFIDENTIALITY. PLEASE DISCUSS APPLICATION WITH THE CITY ATTORNEY'S OFFICE.]**

**14.3.5. Cyber Liability Insurance.** CONSULTANT shall maintain cyber liability insurance with limits not less than \$2,000,000 per occurrence or claim. Coverage shall be sufficiently broad to respond to the duties and obligations as are undertaken by CONSULTANT in this AGREEMENT and shall include claims involving infringement of intellectual property, infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to such obligations. All defense costs shall be outside the limits of the policy.

14.4 The CITY, its officers, officials, employees, and representatives shall be named as additional insureds on the required general liability, **cyber liability**, **[ONLY INCLUDE IF INCLUDED ABOVE]** and automobile liability policies with respect to liability arising out of work or operations performed by or on behalf of the CONSULTANT including materials, parts, or equipment furnished in connection with such work or operations. The CITY's additional insured status must be reflected on additional insured endorsement form (20 10 1185 or 20 10 1001 and 20 37 1001) which shall be submitted to the CITY. All policies shall contain a provision stating that the CONSULTANT's policies are primary insurance and that insurance (including self-retention) of the CITY or any named insured shall not be called upon to contribute to any loss, as reflected in an endorsement at least as broad as CG 20 01 04 13 which shall be submitted to the CITY. This provision shall apply regardless of any language of the general liability, **cyber liability**, **[ONLY INCLUDE IF INCLUDED ABOVE]** and automobile liability policy maintained by the CONSULTANT during the term of this AGREEMENT.

14.5 Before CONSULTANT shall employ any person or persons in the performance of the AGREEMENT, CONSULTANT shall procure a policy of Workers' Compensation insurance as required by the Labor Code of the State of California, or shall obtain a certificate of self-insurance from the Department of Industrial Relations.

14.6 CONSULTANT shall furnish certificates of said insurance and policy endorsements to the CONTRACT OFFICER prior to commencement of work under this AGREEMENT. Failure by the CONTRACT OFFICER to object to the contents of the certificate and/or policy endorsement or the absence of same shall not be deemed a waiver of any and all rights held by the CITY. Failure on the part of CONSULTANT to procure or maintain in full force the required insurance shall constitute a material breach of contract under which the CITY may exercise any rights it has in law or equity including, but not limited to, terminating this AGREEMENT pursuant to Paragraph 8.1 above.

14.7 The CITY reserves the right to review the insurance requirements of this section during the effective period of the AGREEMENT and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon economic conditions, recommendation of professional insurance advisors, changes in statutory law, court decisions, or other relevant factors. The CONSULTANT agrees to make any reasonable request for the deletion, revision, or modification of particular insurance policy terms, conditions, limitations, or exclusions (except where those policy provisions are established by law, or are established by regulations that are binding upon either party to the contract, or are binding upon the underwriter to the contract). Upon request by CITY, CONSULTANT shall exercise reasonable efforts to accomplish such changes in policy coverages and shall pay the cost thereof.

14.8 Any deductibles or self-insured retentions must be declared to and approved by the CITY. At the CITY's option, the CONSULTANT shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

14.9 CONSULTANT hereby grants to CITY a waiver of any right to subrogation that any insurer of said CONSULTANT may acquire against the CITY by virtue of the payment of any loss under such insurance. This provision applies regardless of whether or not the CITY has requested or received a waiver of subrogation endorsement from the insurer.

## **15.0 DISPUTES**

15.1 If a dispute should arise regarding the performance of this AGREEMENT, the following procedures shall be used to address the dispute:

- a. If the dispute is not resolved informally, then, within five (5) working days thereafter, the CONSULTANT shall prepare a written position statement containing the party's full position and a recommended method of resolution and shall deliver the position statement to the CONTRACT OFFICER.
- b. Within ten working (10) days of receipt of the position statement, the CONTRACT OFFICER shall prepare a response statement containing the CITY's full position and a recommended method of resolution and shall deliver the response statement to the CONSULTANT.

c. After the exchange of statements, if the dispute is not resolved within ten working (10) days, the CONSULTANT and the CONTRACT OFFICER shall deliver the statements to the City Manager who shall make a determination within ten working (10) days.

15.2 If the dispute remains unresolved for ten working (10) days following the City Manager's determination, and the parties have exhausted the procedures of this section, the parties may then seek resolution by mediation or such other remedies available to them by law or in equity.

## **16.0 GENERAL PROVISIONS**

16.1 **Accounting Records.** CONSULTANT shall keep records of the direct reimbursable expenses pertaining to the DESCRIBED SERVICES and the records of all accounts between the CONSULTANT and SUBCONSULTANTS. CONSULTANT shall keep such records on a generally recognized accounting basis. At any time during normal business hours, and as often as CITY may deem necessary, the CONSULTANT shall make available to the CONTRACT OFFICER, or the CONTRACT OFFICER's authorized representative, for examination, all of its records with respect to all matters covered by this AGREEMENT and shall permit CITY to audit, examine, and/or reproduce such records. CONSULTANT shall retain such financial and program service records for a period of four (4) years from the completion of the work or after termination or final payment under this AGREEMENT, whichever is later.

16.2 **CONTRACT OFFICER.** The CITY's designated CONTRACT OFFICER has the authority to direct the CONSULTANT, approve actions, request changes, and approve additional services within her/his authority. Any obligation of the CITY under this AGREEMENT shall be the responsibility of the CONTRACT OFFICER. Excepting the provisions pertaining to dispute resolution, no other person shall have any authority under this AGREEMENT unless specifically delegated in writing.

16.3 **Governing Law.** This AGREEMENT and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this AGREEMENT shall be held exclusively in a State court in the County of San Diego. CONSULTANT hereby waives the right to remove any action from San Diego County as is otherwise permitted by California Code of Civil Procedure Section 394.

16.4 **Compliance with Laws/Business Certificate.** CONSULTANT and its SUBCONSULTANTS are required to comply with all applicable federal, state and local laws, rules, regulations, orders, policies, protocols and guidance, including, but not limited to, obtaining and maintaining a City Business Certificate during the duration of this AGREEMENT and complying with COVID-19 sanitation protocols, health orders and guidance.

16.5 **Drafting Ambiguities.** The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this AGREEMENT, and the decision of whether or not to seek advice of counsel with respect to this AGREEMENT is a decision which is the sole responsibility of each Party. This AGREEMENT shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the AGREEMENT.

**16.6. Conflicts between Terms.** If an apparent conflict or inconsistency exists between the main body of this AGREEMENT and the Attachments, the main body of this AGREEMENT shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this AGREEMENT, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this AGREEMENT, the Attachments, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this AGREEMENT.

**16.7 Non-Discrimination.** CONSULTANT shall not discriminate against any employee or applicant for employment because of sex, race, color, age, religion, ancestry, national origin, disability, military or veteran status, medical condition, genetic information, gender expression, marital status, or sexual orientation. CONSULTANT shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their sex, race, color, age, religion, ancestry, national origin, disability, military or veteran status, medical condition, genetic information, gender expression, marital status, or sexual orientation and shall make reasonable accommodation to qualified individuals with disabilities or medical conditions. Such action shall include, but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation, and selection for training, including apprenticeship. CONSULTANT agrees to post in conspicuous places available to employees and applicants for employment any notices provided by CITY setting forth the provisions of this non-discrimination clause.

**16.8 Responsibility for Equipment.** [DELETE IF NO CITY EQUIPMENT, INCLUDING TECHNOLOGY, WILL BE USED AND LEAVE [Reserved] NEXT TO TITLE] Notwithstanding anything in this AGREEMENT to the contrary, CITY shall not be responsible nor held liable for any damage whatsoever, including, but not limited to persons or property, resulting from or arising out of the use, misuse or failure of any equipment used by CONSULTANT or any of CONSULTANT's agents, employees or SUBCONSULTANTS, even if such equipment has been furnished, rented, or loaned to CONSULTANT by CITY. Any and all equipment furnished, rented, or loaned to CONSULTANT by CITY is provided on an "as-is" basis. CITY MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING ITS EQUIPMENT, AND HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. The acceptance or use of any CITY equipment by CONSULTANT or CONSULTANT's agents, employees, or SUBCONSULTANTS shall be with all faults and shall be construed to mean that CONSULTANT accepts full responsibility for and agrees to defend, indemnify, and hold harmless CITY from and against any and all claims for any damage whatsoever resulting from the use, misuse, or failure of such equipment. CONSULTANT HEREBY RELEASES, WAIVES, DISCHARGES AND CONVENANTS NOT TO SUE CITY FOR ANY AND ALL LIABILITY FROM ANY AND ALL CLAIMS RELATING TO ANY CITY EQUIPMENT.

**16.9 Public Works Contract.** [DELETE IF NOT APPLICABLE-CONSULT WITH CITY ATTORNEY REGARDING APPLICABILITY-AND LEAVE [Reserved] NEXT TO TITLE].]

CONSULTANT acknowledges that this is a public works contract. CONSULTANT represents and warrants that it is familiar with the requirements of the California Labor Code and agrees to comply at all times with relevant statutes and regulations, including, but not limited to the fact that CONSULTANT must pay not less than prevailing wage rates as determined by the Director of Industrial Relations for all work done under this AGREEMENT. State of California prevailing wage rates can be found on the internet at <http://www.dir.ca.gov/DLSR/PWD/Statewide.html>. CONSULTANT is responsible for determining the correct title for job classifications and determining the appropriate wage rate. CONSULTANT agrees to perform this AGREEMENT in accordance with ATTACHMENT F and all the obligations set forth therein.

**17.0 NOTICES**

17.1 Any notices to be given under this AGREEMENT, or otherwise, shall be served by certified mail. For the purposes hereof, unless otherwise provided in writing by the parties hereto:

- a. The address of the CITY, and the proper person to receive any notice on the CITY's behalf, is:

City of Coronado  
Department  
Address of Department  
Coronado, CA 92118  
Attn.: Department Director  
Tel. No. (619) 522-XXXX; Fax (619) 522-XXXX

- b. The address of the CONSULTANT, and the proper person to receive any notice on the CONSULTANT's behalf, is:

Consultant Name & Title  
Street Address  
City, State, Zip Code  
Telephone No. (XXX) XXX-XXXX

**18.0 PROFESSIONAL CONSULTANT'S CERTIFICATION OF AWARENESS OF IMMIGRATION REFORM AND CONTROL ACT OF 1986**

18.1 CONSULTANT certifies that CONSULTANT is aware of the requirements of the Immigration Reform and Control Act of 1986 (8 U.S.C. §§ 1101-1525) and has complied and will comply with these requirements, including, but not limited to, verifying the eligibility for employment of CONSULTANT and all its agents, employees, representatives and SUBCONSULTANTS, and any other person performing any of the DESCRIBED SERVICES.

**19.0 ADDITIONAL PROVISIONS**

**19.1 Consequential Damages.** Neither Party shall be liable to the other for consequential damages, including, without limitation, loss of use or loss of profits, incurred by one another or their subsidiaries or successors, regardless of whether such damages are caused by breach of contract, willful misconduct, negligent act or omission, or other wrongful act of either of them.

**19.2 Responsibility for Others.** CONSULTANT shall be responsible to the CITY for its services and the services of its SUBCONSULTANTS. CONSULTANT shall not be responsible for the acts or omissions of any other persons engaged by the CITY nor for their construction means, methods, techniques, sequences, or procedures, or their health and safety precautions and programs.

**19.3 Representation.** The CONSULTANT is not authorized to represent the CITY, to act as the CITY's agent, or to bind the CITY to any contractual agreements whatsoever.

**19.4 Third-Party Review of CONSULTANT's Work Product (Peer Review).** At the option of the CITY, a review of the CONSULTANT's work product may be performed by an independent expert chosen by the CITY. In such case, the CONSULTANT agrees to confer and cooperate fully with the independent expert to allow a thorough review of the work product by the expert. Such review is intended to provide the CITY with a peer review of the concepts, all pre-design documentation, methods, professional recommendations, and other work product of the CONSULTANT. The results of this review will be furnished to the CITY and shall serve to assist the CITY in its review of the CONSULTANT's deliverables under this AGREEMENT.

**19.5 Periodic Reporting Requirements.** The CONSULTANT shall provide a written status report of the progress of the work on a monthly basis that shall accompany the CONSULTANT's payment invoice. The status report shall, at a minimum, report the work accomplished to date; describe any milestones accomplished; show and discuss the results on any testing or exploratory work; provide an update to the approved schedule (as set forth in ATTACHMENT D or, if no ATTACHMENT D, as approved by the CONTRACT OFFICER), and if not in accordance with the original schedule, describe how the CONSULTANT intends to get back on the original schedule; describe any problems or recommendations to increase the scope of the work; and provide any other information that may be requested by the CITY. The report is to be of a form and quality appropriate for submission to the City Council.

**19.6 Brand or Trade Names.** [This section may not apply and may be deleted with the heading [Reserved] by the title depending on the type of services being contracted.] Specifications by brand or trade names are prohibited except: (1) when at least two are listed and "or equal" substitutions are permitted; (2) when necessary to match existing items in use on a specific public improvement; or (3) when a unique or novel product application is required; or when only one brand or trade name is known. The specifications must allow at least thirty-five (35) days after award of the contract for submission of data substantiating a contractor's request for substitution of an equal form.

**19.7 Rights Cumulative.** All rights, options, and remedies of the CITY contained in this AGREEMENT shall be construed and held to be cumulative, and no one of the same shall be exclusive of any other, and the CITY shall have the right to pursue any one of all of such remedies

or any other remedy or relief that may be provided by law or in equity, whether or not stated in this AGREEMENT.

19.8 **Waiver.** No waiver by either Party of a breach by the other Party of any of the terms, covenants, or conditions of this AGREEMENT shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant, or condition herein contained. No waiver of any default of either Party hereunder shall be implied from any omission by the other Party to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect a default other than as specified expressly in said waiver.

19.9 **Severability.** In the event that any part of this AGREEMENT is found to be illegal or unenforceable under the law as it is now or hereafter in effect, either Party will be excused from performance of such portion or portions of this AGREEMENT that is found to be illegal or unenforceable without affecting the remaining provisions of this AGREEMENT.

19.10 **Attachments Incorporated.** All ATTACHMENTS referenced in this AGREEMENT are incorporated into the AGREEMENT by this reference.

**THE REMAINDER OF THIS PAGE LEFT BLANK.**

## 20. SIGNATURES

**20.1** Each signatory and Party hereto hereby warrants and represents to the other Party that it has legal authority and capacity and direction from its principal to enter into this AGREEMENT, and that all resolutions or other actions have been taken so as to enable it to enter into this AGREEMENT.

### CITY:

By: \_\_\_\_\_  
Tina Friend, City Manager

Date: \_\_\_\_\_

### CONSULTANT:

By: \_\_\_\_\_  
[Insert Name of Individual Signing Form]  
[Title]

Date: \_\_\_\_\_

[If CONSULTANT IS A CORPORATION  
OR LLC, TWO SIGNATURES ARE  
REQUIRED]

### APPROVED AS TO CONTENT:

[\_\_\_\_\_] , Director      Date \_\_\_\_\_

### APPROVAL AS TO FORM:

\_\_\_\_\_  
Johanna N. Canlas, City Attorney      Date \_\_\_\_\_

### ATTEST:

\_\_\_\_\_  
Jennifer Ekblad, CMC, City Clerk      Date \_\_\_\_\_

ATTACHMENT A – SCOPE OF WORK

ATTACHMENT B – CONSULTANT CONFLICT OF INTEREST DETERMINATION

ATTACHMENT C – PAYMENT FOR SERVICES

ATTACHMENT D – SCHEDULE OF SERVICES

ATTACHMENT E – LISTING OF SUBCONSULTANTS

ATTACHMENT F – PREVAILING WAGE

\_\_\_\_\_

**ATTACHMENT A**

**PROJECT NAME**

**Contract No. [Insert Contract Number]**

**SCOPE OF WORK**

CONSULTANT shall provide the CITY with the following professional services for the PROJECT (collectively, the “DESCRIBED SERVICES”):

## **ATTACHMENT B**

**[INSERT PROJECT NAME]**

**Contract No. [Insert Contract Number]**

### **CONFLICT OF INTEREST DETERMINATION**

CONSULTANT shall at all times comply with the terms of the Political Reform Act and the local conflict of interest ordinance. CONSULTANT shall immediately disqualify itself and shall not use its official position to influence in any way any matter coming before the City in which the CONSULTANT has a financial interest as defined in Government Code Section 87103. CONSULTANT represents that it has no knowledge of any financial interests that would require it to disqualify itself from any matter on which it might perform services for the City.

“CONSULTANT<sup>1</sup>” means an individual who, pursuant to a contract with a state or local agency:

- (A) Makes a governmental decision whether to:
  - 1. Approve a rate, rule, or regulation;
  - 2. Adopt or enforce a law;
  - 3. Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;
  - 4. Authorize the CITY to enter into, modify, or renew a contract, provided it is the type of contract that requires CITY approval;
  - 5. Grant CITY approval of a contract that requires CITY approval and to which the CITY is a party, or to the specifications for such a contract;
  - 6. Grant CITY approval of a plan, design, report, study, or similar item;
  - 7. Adopt, or grant City approval of, policies, standards, or guidelines for the CITY, or for any subdivision thereof; or
- (B) Serves in a staff capacity with the CITY and in that capacity participates in making a governmental decision as defined in Regulation 18704(a) and (b) or performs the same or substantially all the same duties for the CITY that would otherwise be performed by an individual holding a position specified in the CITY’s Conflict of Interest Code.

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<sup>1</sup> The City’s Conflict of Interest Code and the Political Reform Act refer to “consultants,” not “contractors.” The City’s professional services agreements might refer to the hired professional as a “contractor,” not a “consultant,” in which case the Conflict of Interest Code may still apply. The Conflict of Interest Code, however, does not cover public works contractors.

DISCLOSURE DETERMINATION:

- ☐ 1. CONSULTANT/CONTRACTOR will not be “making a government decision” or “serving in a staff capacity” as defined in Sections A and B above. No disclosure required.
- ☐ 2. CONSULTANT/CONTRACTOR will be “making a government decision” or “serving in a staff capacity” as defined in Sections A and B above. As a result, CONSULTANT/CONTRACTOR shall file, with the City Clerk of the City of Coronado in a timely manner as required by law, a Statement of Economic Interest (Form 700), as required by the City of Coronado Conflict of Interest Code, and the Fair Political Practices Commission, to meet the requirements of the Political Reform Act.\*

Signature \_\_\_\_\_ Date \_\_\_\_\_

Name \_\_\_\_\_ Department \_\_\_\_\_

City Attorney Approval of Determination \_\_\_\_\_

City Manager Approval of Determination \_\_\_\_\_

\*The CONSULTANT’s disclosure of investments, real property, income, loans, business positions, and gifts, shall be limited to those reasonably related to the project for which CONSULTANT has been hired by the CITY.

**ATTACHMENT B-1**

**[INSERT PROJECT NAME]**

**Contract No. [Insert Contract Number]**

**CONFLICT OF INTEREST SCOPE OF DISCLOSURE**

(For use in preparing California Form 700)

Investments: “Investment” means a financial interest in any business entity engaged in the business of [insert types of businesses, e.g., if CONSULTANT is working on a public works project, he or she should disclose investments in contracting firms, building material suppliers, design firms, etc.]

Real Property: “Real property” interests are limited to real property in the City of Coronado, wherever located.

Sources of Income: “Sources of income” means income (including loans, business positions, and gifts) of the CONSULTANT, or the CONSULTANT’s spouse or domestic partner in excess of \$500 or more during the reporting period from sources that are business entities engaged in the business of [insert types of businesses, e.g., if CONSULTANT is working on a public works project, he or she should disclose investments in contracting firms, building material suppliers, design firms, etc.]

**ATTACHMENT C**

**[INSERT PROJECT NAME]**

**Contract No. [Insert Contract Number]**

**PAYMENT FOR SERVICES**

**A. PAYMENT FOR SERVICES:** Payments to the CONSULTANT for the DESCRIBED SERVICES shall be made in the form of monthly payments due for the percentage of work performed on each Phase as a percentage of the total fee for the Phase. Percentage of completion of a Phase shall be assessed in the sole and unfettered discretion of the CONTRACT OFFICER or his/her designee. All invoices submitted by the CONSULTANT shall show an hourly reconciliation of time spent on each Phase. The original invoice shall be provided for any subcontracted services. Normal processing time for payments is four (4) weeks.

For performance of each Phase or portion thereof as identified below, CITY shall pay a fixed fee associated with the Phase of the DESCRIBED SERVICES in the amount and at the time or milestones set forth. CONSULTANT shall not commence Services under any Phase, and shall not be entitled to compensation for the Phase, unless CITY shall have issued a Notice to Proceed to the CONSULTANT as to the Phase.

**PHASE**

**FIXED FEE FOR PHASE**

1. \$ \_\_\_\_\_

2. \$ \_\_\_\_\_

3. \$ \_\_\_\_\_

**TOTAL FIXED FEE** \$ \_\_\_\_\_

**B. REIMBURSABLE SERVICES – [Describe or State “None.”]**

## ATTACHMENT C-1

### **City of Coronado ADMINISTRATIVE PROCEDURES**

<b>Subject: PAYMENT FOR SPECIAL COUNSEL</b>	<i>Number:</i>	509
	<i>Date:</i>	MARCH 1998

#### **I. Background**

Special counsel services include all legal services used by the City not provided by the City Attorney. This policy is established to ensure that the Special Counsel invoices convey the information that is necessary to manage the activities of the Special Counsel. The provisions are also designed to minimize and avoid confusion and misunderstanding, assure consistency of billing practices among the various Special Counsel retained by the City and assist the City in the management of the public's funds. The hiring of any special counsel must be coordinated with and approved by the Director of Administrative Services.

#### **II. Provisions**

- A. Separate Invoice Required: Each matter being handled by the Special Counsel must have a separate invoice, unless the Special Counsel has received written approval from the City to submit general account invoices.
- B. Billing Increments: All invoices shall be detailed in six-minute, or .10-hour, increments.
- C. Description of Work Performed: The invoice must briefly describe each item of work performed, the identity of the attorney, paralegal or expert who performed the work and the date of the work. For example, if four distinct tasks were done on a file in one day, the tasks shall be separately noted on the bill with an individual time charge for each.
- D. Totals-to-Date: Each invoice must include the total amount owed, invoiced and paid to date. That total should provide, at a glance, the total fees and costs incurred to date for the case. This will facilitate the City's approach of cost-effective litigation management. The firm must provide the total to date information on the invoice, transmittal letter or other document submitted with the invoice. **The City will not pay any amount unless the totals to date are provided.**
- E. Principal Attorney: The City expects that the attorney designated in the Special Counsel agreement as having principal responsibility for handling a case will in fact handle the case. Other members of a firm may handle various aspects of a case with appropriate adjustments to the billing rate. If the designated attorney anticipates that more than one attorney will be providing services on any particular matter, the Special Counsel must inform the City who that person will be and his/her qualifications.

**City of Coronado**  
**ADMINISTRATIVE PROCEDURES**

<b>Subject: PAYMENT FOR SPECIAL COUNSEL</b>	<i>Number:</i>	509
	<i>Date:</i>	MARCH 1998

- F. Attorney Consultations: The City recognizes that consultation between and among the Special Counsel's attorneys may be an effective method of assuring that an issue is adequately evaluated. The City will pay reasonable charges associated with such consultation, however, substantial charges of this nature indicate that a case is being over-worked. Generally, the City believes that a reasonable charge for intra-office conferences between attorneys is a charge based upon the billable time for one attorney. Invoices for consultation time should clearly indicate the substance of the discussions. The Special Counsel shall not bill for provision of instructions to subordinates, including subordinate attorneys, or for time spent training employees. The City believes that discussions between a senior attorney and a subordinate attorney are particularly suspect if both attorneys bill for the discussion time.
- G. Prohibition Against Payment for Specified Activities: Absent special circumstances and the prior written approval by the City, the City is not obligated to pay for:
1. Time spent by new attorneys to become familiar with a matter;
  2. More than one attorney to attend any court hearing, deposition, or a meeting with the City's officers and/or employees;
  3. More than one paralegal working on a matter;
  4. Expert consultants and witnesses. The need for, identity and qualifications of experts should be timely reported to the City. The City recognizes the need for well-qualified experts for the successful evaluation and defense of matters. The City encourages the use of experts not only for defense purposes, but to assist in early evaluation of cases.
  5. Special services such as the expenses related to mock juries, mock appellate panels, special investigators, computer research time and other similar services not approved in advance by the City.
  6. Law Clerks. The City will not pay for services provided by law clerks. However, when they provide cost effective research and writing and it will be beneficial or cost-effective for the City, the City will consider payment for their services on a case by case basis. Payment will be made only upon prior written authorization by the City.
  7. Secretarial Time: The City will not pay for secretarial time or secretarial overtime. The City does not pay attorneys or paralegals for secretarial tasks or tasks that should be subsumed into it the Special Counsel's overhead. For example, the City will not reimburse its Special Counsel for time spent faxing, mailing, arranging for messengers, or calendaring.

**City of Coronado**  
**ADMINISTRATIVE PROCEDURES**

<b>Subject: PAYMENT FOR SPECIAL COUNSEL</b>	<i>Number:</i>	509
	<i>Date:</i>	MARCH 1998

8. The City does not reimburse for the costs of word processing.
- H. Photocopying Charges: The City will reimburse for photocopying costs only on a per-copy basis. The maximum charge reimbursable is \$0.20 per page for the copying of documents less than 25 pages; and \$0.10 per page for the copying of documents 25 pages or greater, including any time spent making the copies. Outside copying services will be used if the cost of doing so is less expensive to the City.
- I. Facsimile Charges: Facsimile transmissions may be used when necessary. The City will pay for facsimile transmissions based upon reasonable rates associated with actual cost, excluding secretarial time.
- J. Telephone/Mail/Delivery Charges: Long distance telephone, cellular phone, and postal charges will be reimbursed at actual cost. Federal Express and similar delivery services shall be reimbursed only if the Special Counsel has obtained the prior approval of the City. Charges associated with delivery of materials, service of subpoenas and other documents, and filing by messenger services will be reimbursed at actual cost. The Special Counsel shall accomplish work sufficiently in advance to allow delivery, filing and service by U.S. Mail when not otherwise prescribed by law. Rush delivery costs will be reimbursed only if the Special Counsel has obtained the prior approval of the City.
- K. Travel Charges: Travel costs will be reimbursed only if the Special Counsel has obtained the prior approval of the City. The amounts will be reviewed by the City for necessity and reasonableness. The City will only reimburse the Special Counsel for itemized travel expenses that are deemed necessary and reasonable. Meal costs will be reimbursed only if necessarily incurred in connection with travel out of the county where the Special Counsel's office is located. The City will not pay for alcoholic beverages
- L. Invoice Review and Discussion: The City will not pay for time used to prepare invoices or for discussion of invoices. If the City has questions about invoices or requires additional information on invoices, the Special Counsel must provide the information without charge to the City.
- M. Minimum Billing Time: The City will not pay minimum billing time charges. The Special Counsel shall charge only for actual time spent. For example, minimum of .2 for a phone call or .4 for letters is unreasonable unless that is an accurate measure of time spent.
- N. File Opening and Closing: The City will not pay for time for file opening or file closing. These are not true tasks or adequate descriptions of legal activities.
- O. Payment for Prior Work: The City will not pay for products that the Special Counsel has performed and billed for in other matters. This applies to the use of forms.

**ATTACHMENT D**

**[INSERT PROJECT NAME]**

**Contract No. [Insert Contract Number]**

**SCHEDULE OF SERVICES**

PROJECT SCHEDULE – The Project Schedule shall be appended here.

CONSULTANT agrees to diligently pursue the work described. The following schedule contractually obligates the CONSULTANT to perform all services to meet the time duration for each Phase of work shown:

**[CONSULTANT to propose schedule for approval by CITY.]**

**ATTACHMENT E**

**[INSERT PROJECT NAME]**

**Contract No. [Insert Contract Number]**

**LISTING OF SUBCONSULTANTS**

Listed below are any and all SUBCONSULTANTS that the CONSULTANT plans to employ under this AGREEMENT. Include DIR Contractor Registration Numbers where applicable. No change is allowed without the prior approval of the CONTRACT OFFICER.

**SUBCONSULTANT**

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**SUBCONSULTANT**

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**SUBCONSULTANT**

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## ATTACHMENT F

### STATE PREVAILING WAGE RATES AND OBLIGATIONS

Prevailing Wage Rates: This project is a “public work” in accordance with California Labor Code §§1720, *et seq.* It is the sole responsibility of the CONSULTANT to ensure that all workers employed in the execution of the AGREEMENT are paid the correct prevailing wage rate. CONSULTANT is required to comply with California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813 and 1815, which are incorporated by reference, and the CONSULTANT agrees to comply with all of the above-referenced provisions and all other statutes or regulations that may be applicable to the performance of the DESCRIBED SERVICES. Specifically, CONSULTANT agrees to:

- a. Pay all workers not less than the general prevailing rate of per diem wages for work of similar character in the locality in which the public work is performed.
- b. Pay all workers not less than the general prevailing rate of per diem wages for holiday and for overtime work that exceeds 8 hours in one day and 40 hours in one week.
- c. Adhere to the compliance measures outlined in Labor Code section 1775(b) for any subconsultant that the CONSULTANT chooses to use on this project.
- d. Maintain, certify and make available for inspection, payroll records as required by Labor Code section 1776.
- e. Comply with all apprenticeship requirements pursuant to Labor Code section 1777.5.

Not less than the State general prevailing wages, as determined by the Director of the Department of Industrial Relations, shall be paid by the CONSULTANT and its subconsultants to all workers employed on the project, as applicable. The statutory provisions for penalties for failure to pay prevailing wages and for failure to comply with state's wage and hour laws will be enforced.

CITY has obtained from the Director of the Department of Industrial Relations said Director's General Prevailing Wage Determinations for the locality in which the work is to be performed. Said determinations are on file and available for review online at the Department of Industrial Relations' website located at: <http://www.dir.ca.gov/DLSR/PWD>

SB 854 Notice: CITY public works projects are subject to compliance monitoring and enforcement by the Department of Industrial Relations (“DIR”) in accordance with Labor Code Section 1771.4(a)(1). As part of this program, CONSULTANTS and subconsultants on Public Works Projects are required to be registered with the DIR in accordance with Labor Code Section 1725.5. Unregistered CONSULTANTS are not qualified to bid on, be listed in a bid, listed as a subconsultant, or engage in the performance of any public works contract, all as more particularly described in Labor Code Section 1771.1(a). CITY has no duty to accept a bid or enter into a contract without proof of the CONSULTANT's current registration pursuant to Labor Code Section 1771.1(b). The prime CONSULTANT shall be required to post the job site with all notices required by regulations per Labor Code Section 1771.4(a)(2), whether or not CITY also posts.

Labor Code Compliance: CONSULTANT shall comply with the provisions of the Labor Code requiring the payment of prevailing wages on public works, commencing with Section 1720. In accordance with Labor Code Section 1775, the CONSULTANT shall forfeit an amount, as determined by the Labor Commissioner, for each worker paid less than the applicable prevailing wage rate for the work or craft in which that worker is employed for any work done under the AGREEMENT by

CONSULTANT or by any subconsultant. CONSULTANT agrees to pay the difference between the prevailing wage rate and amount paid to each worker in accordance with Labor Code Section 1775 (a)(2)(E).

Pursuant to Labor Code Section 1770, the Director of the DIR has ascertained the general prevailing rate of per diem wages and a general prevailing rate for legal holiday and overtime work for each craft required for execution of the AGREEMENT. In accordance with Labor Code Section 1773.2, copies of the prevailing rate of per diem wages are on file and can be viewed during normal business hours at Coronado City Hall, located at 1825 Strand Way, Coronado, CA 92118. CONSULTANT shall post a copy of the applicable prevailing wage rates at the job site.

Wage rates set forth are the minimum that may be paid by the CONSULTANT. Nothing herein shall be construed as preventing the CONSULTANT from paying more than the minimum rates set. No extra compensation whatsoever will be allowed by the CITY due to the inability of CONSULTANT to hire labor at minimum rates, nor for necessity for payment by CONSULTANT of subsistence, travel time, overtime, or other added compensations, all of which possibilities are elements to be considered and ascertained to CONSULTANT's own satisfaction in preparing its bid or entering into the AGREEMENT.

If it becomes necessary to employ crafts other than those listed in the General Prevailing Wage Rate, CONSULTANT shall obtain a wage rate determination. The rates thus determined shall be applicable as minimum from the time of initial employment. CONSULTANT shall be responsible for paying the applicable rate.

CONSULTANT and each subconsultant shall keep, certify and make available accurate payroll record in accordance with Labor Code Sections 1771.4(a)(3) and 1776. The record shall contain the names, addresses, social security numbers, work classifications, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by CONSULTANT and/or subconsultant in connection with the DESCRIBED SERVICES. Payroll records shall be certified and shall be on forms provided by the Division of Labor Standards Enforcement, or shall contain the same information as those forms. Upon written request by the CITY, CONSULTANT's and subconsultant's certified payroll records shall be furnished within 10 days. CONSULTANT's and subconsultant's certified payroll records shall be available for inspection at the principal office of the CONSULTANT.

Apprentices: CONSULTANT and each subcontractor shall comply with the requirements of Labor Code Section 1777.5, and any related regulations regarding the employment of registered apprentices. Properly registered apprentices shall be employed in the execution of the DESCRIBED SERVICES at the ratios required, but in no case shall the ratio be less than one hour of apprentice work for every five hours of journeyman work. Every apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which the apprentice is employed, and shall be employed only at the work of the craft or trade to which the apprentice is registered. The CONSULTANT shall be responsible for compliance with Labor Code Section 1777.5 for all apprenticeable occupations.

Workers' Compensation: CONSULTANT and each subcontractor will be required to secure the payment of compensation to his or her employees and shall comply with the requirements of Labor Code Section 3700, and any related regulations regarding workers' compensation.

In signing this AGREEMENT, CONSULTANT certifies as follows:

“I hereby certify that I have read and examined Sections 3700 and 3800 of the California Labor Code. I am aware of and will comply with Section 3700 of the Labor Code, requiring every employer to be insured against liability for Workers’ Compensation or to undertake self-insurance before commencing any of the work. I further certify that if I should consult, contract or subcontract with any person, firm, or company to do all or any part of the work for which this AGREEMENT covers, I shall assure compliance by that contractor/consultant or subcontractor/subconsultant with Sections 3700 and 3800 of the State Labor Code. I further certify that all consultants and contractors (both primary and subcontractors/subconsultants) are registered with the State of California Department of Industrial Relations in compliance with Labor Code Section 1725.5.”