



City of San Clemente

REQUEST FOR PROPOSAL

Housing Element Update 2021 - 2029 Planning Period Sixth Cycle

Issue Date: 28 October 2019
Submittal Deadline: 25 November 2019, 5:00 p.m.

Community Development Department
910 Calle Negocio, San Clemente, CA 92673
(949) 361-6100

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I. Introduction

The City of San Clemente (City) Community Development Department is seeking proposals from qualified consulting firm(s) to prepare an update of the City's General Plan Housing and Safety Elements and corresponding environmental documents prepared in accordance with the California Environmental Quality Act ("CEQA").

The consultant must have an established working relationship with the California Department of Housing and Community Development ("HCD") and familiarity with State housing law. The consultant must be proactive in maintaining communication with City staff, keeping staff informed with project status updates, meeting deadlines and ultimately meeting the requirements of HCD for the timely certification of the Housing Element.

After review and evaluation of the submitted proposals, the City will recommend the finalist to the City Council for award of contract. The following defines the proposed project, scope of services, proposal requirements, selection process and other information required to prepare and submit a proposal.

II. Background Information

The City of San Clemente is located in Orange County about 26 miles south of Irvine, CA. San Clemente is bordered on the east and southeast by the County of San Diego and Camp Pendleton, on the west by the Pacific Ocean and Dana Point, on the north by San Juan Capistrano. The City is about 18 square miles in size and has a population of about 67,000 people with approximately 27,500 housing units. The City has two Metrolink stations – San Clemente and San Clemente Pier. The SCAG 2016-2040 Regional Transportation Plan/Sustainable Communities Strategy identifies San Clemente stations as an HQT area.

The City's 2013-2021 Housing Element was adopted on September 5, 2017. The midterm updated was adopted on October 10, 2017 and is currently in compliance with State Housing Element law by the State Department of Housing and Community Development (HCD). The City's Safety Element was approved in February 4, 2014.

III. Project Description

A. The purpose of this project is to update the Housing Element to be internally consistent with the City's General Plan and in compliance with state statutes so as to be certified by HCD before October 2021. The Housing Element must be updated to include City policies, strategies, and actions to facilitate the construction of new housing and preservation of existing housing to meet the needs of the population during the planning period (2021-2029) for all economic segments. The Housing Element must also address the City's Regional Housing Needs Assessment (RHNA) allocation. Anticipated adoption of the final allocation is October 2020.

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The Housing Element must also include a complete analysis of the specific needs and resources available to address these needs; an inventory of land suitable for residential development to meet the City’s housing needs; identification and analysis of potential and actual governmental constraints; identification of specific programs to implement the policies and goals; and other considerations to comply with applicable State law.

- B. The Safety Element must be reviewed and updated as necessary to address the risk of fire in state responsibility areas and very high fire hazard severity zones, taking into account specified considerations, including, among others, the most recent version of the Office of Planning and Research’s “Fire Hazard Planning” document.

Proposed Schedule of Events

Release Request for Proposal	October 28, 2019
Proposal due	November 25, 2019
Consultant Interviews	Week of December 9, 2019
City Council Selection and Award	January 2020 (date TBD)
Kick-off Meeting	January 2020 (date TBD)

IV. City Point of Contact and Submittal Guidelines

- A. The City’s contact for this RFP is Jennifer Savage, Senior Planner at (949) 361 6186 and savagej@san-clemente.org. Proposals and all written inquiries related to this RFP are to be submitted to Jennifer Savage at the following address:

RE: Housing Element Update Consultant Services
Community Development Department
Attn: Jennifer Savage, Senior Planner
City of San Clemente
910 Calle Negocio
San Clemente, CA 92673

- B. **Last day to submit questions pertaining to this RFP will be November 11, 2019 by 5 P.M. PST. All questions and answers will be posted on the City’s website no later than November 14, 2019 by 5 P.M. PST.**
- C. **ALL PROPOSALS MUST BE RECEIVED AT THE CITY OFFICES NO LATER THAN 5 P.M. ON 25 NOVEMBER 2019. NO LATE PROPOSALS WILL BE ACCEPTED.**
- D. Each submittal must include: One (1) signed original; three (3) copies and one (1) “soft” copy in MS Word (Preferred) on a flash drive. The original signature copy is to be clearly marked as “ORIGINAL” on the outside cover and contain original ink signatures.

- E. All proposals shall be submitted on standard 8.5-inch x 11-inch paper.
- F. All responses to this RFP shall fully address each requirement and task.

V. Scope of Work

Task 1 – Project Management

- 1.1 **Kick-off Meeting.** Consultant will schedule a kick-off meeting with City staff to discuss project expectations for coordination, reporting, deliverables, and all relevant project information. Consultant will prepare a meeting summary with project goals, objectives and action items. *Deliverable(s): Meeting Summary.*
- 1.2 **Project Schedule.** Consultant will work with City staff to finalize a project schedule within five (5) working days after the kick-off meeting that includes tasks and milestones for certification of the Housing Element by State HCD before October 2021. The schedule shall include timelines for responses to State HCD review and State HCD certification of the Housing Element Update, and City staff review times. The project schedule will be confirmed and/or modified by the consultant and submitted to the City Project Manager on or before the 30th day of each month during the course of the project. In the event project schedule delays are anticipated, consultant shall advise the City on strategies to correct and mitigate. *Deliverable(s): Initial Project Schedule, Monthly Updated Schedules.*

Task 2 – Review and Evaluation

- 2.1 **Evaluation of 2014-2021 Housing Element and Safety Element.** Consultant will review and evaluate the current Housing and Safety Elements and respective programs to determine the revisions necessary to comply with current State requirements and ensure certification by HCD. The evaluation shall include a discussion of the effectiveness of the existing housing program and policies. *Deliverable(s): One (1) electronic copy in Microsoft Word.*

Task 3 – Assessment, Analysis, and Implementation

- 3.1 **Housing Assessment and Needs Analysis.** The Consultant will complete the housing assessment and needs analysis to satisfy Government Code Section 65582(a). The Consultant will coordinate with staff to develop a current housing inventory to evaluate housing conditions using State approved criteria and evaluate existing policies in comparison to the applicable Hazard Mitigation Plan(s). Where necessary to complete this task, the Consultant will obtain and analyze the most current data available on demographics and housing in the City of San Clemente. *Deliverable(s): One (1) electronic copy in Microsoft Word.*

- 3.2 Sites Analysis.** The Consultant will prepare an "adequate sites analysis" showing the relationship between the City's Regional Housing Need Assessment (RHNA) allocation, and the dwelling unit capacity, availability of potential housing sites based on zoning, infrastructure, and General Plan policies, requirements, and limitations. *Deliverable(s): One (1) electronic copy in Microsoft Word.*
- 3.3 Housing Resources and Opportunities.** The Consultant will identify housing resources, including programmatic, physical, and financial. In addition, the consultant will prepare an analysis of the relationship between the projected housing needs and the dwelling unit capacity and availability of services to said sites. *Deliverable(s): One (1) electronic copy in Microsoft Word.*
- 3.4 Housing Constraints.** The Consultant will identify potential and actual governmental and nongovernmental constraints to housing production. Where constraints exist, the Consultant will develop housing programs to mitigate them or, where appropriate and legally possible, remove them. *Deliverable(s): One (1) electronic copy in Microsoft Word.*
- 3.5 Housing Goals, Policies, and Quantified Objectives.** The Consultant must formulate an eight-year implementation plan with appropriate and implementable housing policies and quantified objectives. This work will need to satisfy the applicable requirements of State law. *Deliverable(s): One (1) electronic copy in Microsoft Word.*

Task 4 – Prepare and Finalize Housing and Safety Elements

- 4.1 Administrative Draft Housing and Safety Elements.** The Consultant will be required to prepare and submit the Administrative Draft Housing and Safety Elements for Staff review and comment. Once Staff has reviewed and commented on the draft, the Consultant will modify the Administrative Draft as directed. *Deliverable(s): One (1) electronic copy in Microsoft Word.*
- a. Task 4.1 assumes one round of Staff review and comment. Please include an optional task for an additional round of Staff review and comment.
- 4.2 Draft Housing and Safety Elements.** The Consultant will then prepare and submit fifteen (15) copies and one (1) electronic copy of the Draft Housing and Safety Elements for the City to provide to HCD and the State Office of Emergency Services (OES), the City Council, and the general public for review and comment. *Deliverable(s): Fifteen (15) copies and one (1) electronic copy.*
- 4.3 Community Meetings and City Hearings.** The Consultant must attend two (2) community meetings and two public hearings to respond to questions during public review of the Draft Housing and Safety Elements. The Consultant will assist Staff in responding to any public or agency comments, including comments from HCD, OES, and California Coastal Commission (CCC), and shall be available to attend additional hearings on a time-and-materials basis.

- 4.4 Housing and Safety Elements.** The Consultant will prepare final versions of the Housing and Safety Elements, including any changes to the draft required by HCD, OES, CCC, and City Staff and officials, for adoption and transmittal to the State. Consultant will work closely with Staff to ensure that the City meets all HCD and OES deadlines and requirements. *Deliverable(s): One (1) electronic PDF copy and one (1) electronic copy in Microsoft Word.*
- 4.5 State Certification.** The Consultant must follow through with assisting the City in achieving State certification of the Housing and Safety Elements after adoption by the City. The Consultant will work closely with HCD, OES, and the City of San Clemente to ensure that City meets State requirements and will recommend modification to the adopted Housing and Safety Elements, if required to obtain certification.

Task 5 – Environmental Review

The Consultant shall prepare an environmental determination and analysis, in compliance with California Environmental Quality Act (CEQA) Guidelines, that assumes the maximum residential development for the sites identified in the Sites Analysis. This may result in a programmatic environmental document. The Consultant may present and discuss options with City staff.

- 5.1 Environmental Determination.** Consultant will conduct an initial environmental review of the project and complete an initial study checklist on the Housing and Safety Element Amendments in compliance with California Environmental Quality Act (CEQA) Guidelines. *Deliverable(s): One (1) electronic copy in Microsoft Word.*
- 5.2 Administrative Draft of Environmental Analysis.** Consultant will prepare an administrative draft of the environmental document in compliance with CEQA Guidelines and submit the draft to the City for a 30-day internal staff review period. *Deliverable(s): One (1) electronic copy in Microsoft Word.*
- a. Task 5.2 assumes one round of Staff review and comment. Please include an optional task for an additional round of Staff review and comment.
- 5.3 Draft of Environmental Analysis.** Consultant will prepare a draft environmental document in compliance with CEQA Guidelines for general public review and comment and, if applicable, for OPR review. *Deliverable(s): One (1) electronic copy in Microsoft Word.*
- 5.4 Final Environmental Analysis.** Consultant will work with City staff to review and consider comments/suggestions received on the public draft environmental analysis. If the level of environmental analysis warrants, the Consultant will review public comments, incorporate revisions and prepare the final environmental document. *Deliverable(s): One (1) reproducible copy and one (1) electronic copy in Microsoft Word.*

VI. Proposal Contents

Proposal responses must adhere to the requirements set forth in this section, both for content and sequence. Failure to adhere to these requirements or the inclusion of conditions, limitations or misrepresentations may be cause for rejection of the submittal. Use 8-1/2 x 11 sheets (foldouts are acceptable for charts, etc.) and font size large enough to be easily legible, but not smaller than 10 point. The original proposal and each subsequent copy must be labeled in the following order:

- A. Cover letter:** Provide a cover letter and introduction, including the name and address of the organization or individual submitting the proposal, together with the name, address, telephone and fax numbers, and e-mail address of the contact person who shall be authorized to make representations for the organization, and an expression of the consultant's ability and desire to meet the requirements of this Request for Proposal. The letter must be signed by an individual authorized to bind the firm contractually.
- B. Table of Contents:** This section shall include a detailed table of contents and an outline of the submittal, identified by sequential page number and by section title as described herein.
- C. Executive Summary:** An executive summary should briefly describe the Project Lead and any Subcontractors. The summary should include a description of the consultant and/or subconsultants, briefly describe the consultant's and/or subconsultant's experience in preparing Housing Elements, Safety Elements, and associated CEQA review, and disclose the person authorized to negotiate contract conditions for the project.
- D. Experience:** Describe the firm's resources, experience and capabilities as they relate to the scope of services described hereinabove. This section should include a description of similar and relevant projects completed for other cities or counties in California in the last ten (10) years.
- E. Understanding of Project:** Describe your understanding of the project and the Housing Element update process.
- F. Approach and Scope of Work:** Describe the firm's approach to completing the Housing and Safety Elements, provide summary of major tasks and key sub-tasks that align with the scope of work described hereinabove. The consultant should explain its approach toward CEQA review.
- G. Work Schedule:** Include a proposed schedule of work or timeline and phased milestones for completion of the scope of work, based on a start date in January 2020. The work schedule should demonstrate key tasks and corresponding completion dates that commence with the execution of a professional services

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agreement and end with the certification of the Housing Element by HCD. Provide an estimated number of hours it will take for each task to be completed.

- H. Key Personnel:** Identify all project personnel, including subcontractors, and their role in completing this project, the percentage of involvement of staff members/staff positions that would provide the services anticipated by this RFP, and summarize the relevant qualifications and experience of each. Provide a representative listing of similar projects completed in California in the past 8 years. Explain any experience in working with HCD.
- I. Fee Schedule and Cost Estimate:** Provide a fee schedule for the types of services and personnel expected to be included in this scope of work. List travel costs and any other direct or indirect costs association with performing the required services. Provide a detailed cost breakdown, including the costs for each task necessary for the proposed scope of work identified above. Costs should include hours and staff assignments for each task. Budget should include cost for all administrative, reproduction and material costs.
- J. Additional Information:** Provide any additional information relevant to evaluating the proposal.
- K. Media Attachments:** CDs/DVDs/thumb drives shall be provided within a storage page at the end of the document or within a storage pocket attached to the interior of the last page of the document with the contents of the CD/DVD/thumb drive clearly labeled. Documents within the DVD/CD/thumb drive must be in .docx or .pdf format as specified above.

VII. Selection Criteria

Proposals shall be ranked using the following weighted criteria:

Criteria	Weight (Points)
a. Successful Experience in Similar Efforts	30
b. Commitment of Senior and Qualified Staff to the Project	20
c. Project Schedule	15
d. Responsiveness to RFP and City Priorities	10
e. Quality in the Content and Format of Referenced Work	10
f. Quality in the Content and Format of Proposal	5
g. Public/Stakeholder Participation Process	5
Total	100

VIII. General Conditions

- 1. Authority to Withdraw RFP and/or Not Award Contract.** The City of San Clemente reserves the right to withdraw this RFP at any time without prior notice. Further, the City makes no representations that any agreement will be awarded to any contractor

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

- 2. Pricing Approach.** The City of San Clemente intends to award a fixed price contract for the conduct of this project. In no event shall the City pay an amount in excess of the dollar value negotiated in the contractual agreement with the successful contractor.
- 3. Right to Reject Proposals.** The City of San Clemente reserves the right to reject any or all proposals submitted. Any award made for this engagement will be made to the contractor which, in the opinion of the City, is best qualified to conduct the project.
- 4. Insurance Coverage.** Prior to commencement of any project activities, consultant is to secure worker's compensation insurance, so as to be in compliance with State statutes and comprehensive general liability insurance, including auto and contractual liability coverage, in an amount not less than \$1 million.
- 5. Business License Requirement.** After selection and execution of a consultant services agreement and prior to rendering services to the City, the successful consultant shall obtain a business license from the City. It is unlawful for any person to furnish supplies or services, or transact any kind of business in the City without possessing a City business license. Business license applications are available at www.san-clemente.org Contact Business Services at (949) 361-6166 for further information.

PROFESSIONAL SERVICES AGREEMENT
FOR **[IDENTIFY PROJECT]**

THIS PROFESSIONAL SERVICES AGREEMENT (the "Agreement") is made and entered into this _____ day of _____, 20__ (the "Effective Date"), by and between the City of San Clemente, a municipal corporation, hereinafter referred to as the "CITY", and _____ of _____ **[address]** hereinafter referred to as the "CONTRACTOR".

RECITALS:

- A. CITY requires professional **[identify type of service]** services to be performed at or in connection with **[identify project]**.
- B. CONTRACTOR has represented to CITY that CONTRACTOR is qualified to perform said services and has submitted a proposal to CITY for same.
- C. CITY desires to have CONTRACTOR perform said services on the terms and conditions set forth herein.

COVENANTS:

Based on the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by both parties, CITY and CONTRACTOR agree as follows:

ARTICLE 1
RESPONSIBILITIES OF CONTRACTOR

1.1 Term.

The term of this Agreement shall commence on the Effective Date, and shall continue and remain in effect, until **[Insert Termination Date]**, unless terminated earlier pursuant to the terms hereof. Notwithstanding the forgoing, the City Manager or his or her designee shall have the authority on behalf of the City to administratively approve extensions to the term hereof not to exceed a cumulative total of one hundred eighty (180) days.

1.2 Scope of Services.

CONTRACTOR shall perform any and all work necessary for the completion of the tasks and services set forth in the "Scope of Services" attached hereto and incorporated herein as Exhibit "A" in a manner satisfactory to CITY. By execution of this Agreement, CONTRACTOR warrants that (i) it has thoroughly investigated and considered the work

to be performed; (ii) it has carefully examined the location or locations at or with respect to which the work is to be performed, as applicable; and (iii) it fully understands the difficulties and restrictions attending the performance of the work provided for under this Agreement. CONTRACTOR acknowledges that certain refinements to the Scope of Services may, on occasion, be necessary to achieve CITY's goals hereunder, and CONTRACTOR shall cooperate with and assist the CITY to identify and make such refinements prior to undertaking any tasks or services that may require refinement.

1.3 Schedule of Performance.

Prior to the City's execution of this Agreement, and as a condition to the effectiveness hereof, CONTRACTOR shall furnish to CITY proof of insurance coverage as required under Article 5, Insurance. Upon CITY's release to CONTRACTOR of a fully executed copy hereof and issuance of a written Notice to Proceed, CONTRACTOR shall promptly commence performance of the work. Until such time, CONTRACTOR is not authorized to perform and will not be paid for performing any work under this Agreement. CONTRACTOR shall exercise reasonable diligence to have the services as set forth in Exhibit "A" completed and submitted to CITY for final approval as soon as reasonably practicable and in accordance with the schedule of performance attached hereto and incorporated herein as Exhibit "B", provided that CONTRACTOR shall be entitled to an extension of time for any delays caused by events or occurrences beyond CONTRACTOR's reasonable control.

1.4 Identity of Persons Performing Work.

CONTRACTOR represents that it employs or will employ at its own expense all personnel required for the satisfactory performance of any and all tasks and services required hereunder. CONTRACTOR shall not replace any of the principal members of the Project team, including any of the persons listed in Exhibit "A" (if CONTRACTOR'S personnel is listed on Exhibit "A"), or any successors to any of such persons, without CITY's prior written approval.

CONTRACTOR represents that the tasks and services required hereunder will be performed by CONTRACTOR or under its direct supervision, and that all personnel engaged in such work shall be fully qualified and shall be authorized and permitted under applicable State and local law to perform such tasks and services. In carrying out such tasks and services, CONTRACTOR shall not employ any undocumented aliens (i.e., persons who are not citizens or nationals of the United States).

This Agreement contemplates the personal services of CONTRACTOR and CONTRACTOR's employees, and it is recognized by the parties hereto that a substantial inducement to CITY for entering into this Agreement was, and is, the professional reputation and competence of CONTRACTOR and CONTRACTOR's employees. Neither this Agreement nor any interest therein may be assigned by CONTRACTOR, except upon written consent of CITY.

Furthermore, CONTRACTOR shall not subcontract any portion of the performance contemplated and provided for herein without the prior written approval of CITY, except for those subcontractors named in the proposal for the project. Nothing herein contained is intended to or shall be construed as preventing CONTRACTOR from employing or hiring as many employees as CONTRACTOR may deem necessary for the proper and efficient execution of this Agreement.

1.5 Cooperation and Coordination of Work With CITY.

CONTRACTOR shall work closely with CITY's designated representative, either individual or committee, who shall have the principal responsibility for liaison and who shall, on a continuous basis, review and approve CONTRACTOR's work. CONTRACTOR shall ensure that CITY has reviewed and approved all required work as the project progresses.

1.6 Compliance With Laws.

CONTRACTOR shall comply with all applicable Federal, State and local laws, ordinances and regulations, including without limitation all applicable fair labor standards. CONTRACTOR shall not discriminate against any employee or applicant for employment or any approved subcontractor, agent, supplier or other firm or person providing services to CONTRACTOR in connection with this Agreement on the basis of race, color, creed, ancestry, national origin, religion, sex, sexual orientation, marital status, or mental or physical disability. CONTRACTOR shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, color, creed, ancestry, national origin, religion, sex, sexual orientation, marital status, and mental or physical disability. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

Prior to execution of this Agreement, CONTRACTOR shall furnish to CITY proof that CONTRACTOR and all of its subcontractors have a current, valid business license issued by CITY.

1.7 Standard of Performance.

CONTRACTOR acknowledges and understands that the services and work contracted for under this Agreement require specialized skills and abilities and that, consistent with this understanding, CONTRACTOR's services and work shall be held to a standard of quality and workmanship prevalent in the industry for such service and work. CONTRACTOR represents to CITY that CONTRACTOR holds the necessary skills and abilities to satisfy the standard of work as set forth in this Agreement. CONTRACTOR shall perform the work and services under this Agreement in accordance with such standard of work and in accordance with the accepted standards of the professional disciplines involved in the project. All work shall be completed to the reasonable satisfaction of CITY. If CITY

reasonably determines that the work is not satisfactory, CITY shall have the right to: (i) meet with CONTRACTOR to review CONTRACTOR's work and resolve matters of concern; and/or (ii) require CONTRACTOR to repeat unsatisfactory work at no additional charge until it is satisfactory.

1.8 Contractor Ethics.

CONTRACTOR represents and warrants that it has not provided or promised to provide any gift or other consideration, directly or indirectly, to any officer, employee, or agent of CITY to obtain CITY's approval of this Agreement. CONTRACTOR shall not, at any time, have any financial interest in this Agreement or the project that is the subject of this Agreement other than the compensation to be paid to CONTRACTOR pursuant to Article 3, Compensation. In the event the work and/or services to be performed hereunder relate to a project and/or application under consideration by or on file with the City, (i) CONTRACTOR shall not possess or maintain any business relationship with the applicant or any other person or entity which CONTRACTOR knows to have a personal stake in said project and/or application, (ii) other than performing its work and/or services to CITY in accordance with this Agreement CONTRACTOR shall not advocate either for or against said project and/or application, and (iii) CONTRACTOR shall immediately notify CITY in the event CONTRACTOR determines that CONTRACTOR has or acquires any such business relationship with the applicant or other person or entity which has a personal stake in said project and/or application. The provisions in this Section 1.8 shall be applicable to all of CONTRACTOR's officers, directors, employees, and agents, and shall survive the termination of this Agreement.

1.9 Changes and Additions to Scope of Services.

CITY may make changes within the general scope of services provided for in this Agreement. CONTRACTOR shall agree to any such changes that are reasonable. CONTRACTOR shall make no change in or addition to the character or extent of the work required by this Agreement except as may be authorized in advance in writing by CITY. Such supplemental authorization shall set forth the specific changes of work to be performed and related extension of time and/or adjustment of fee to be paid to CONTRACTOR by CITY.

1.10 Hiring of Illegal Aliens Prohibited

CONTRACTOR shall not hire or employ any person to perform work within the City of San Clemente or allow any person to perform work required under this Agreement unless such person is a United States citizen or is properly documented and legally entitled to be employed within the United States.

1.11 Endorsement on PS&E/Other Data

CONTRACTOR shall sign all plans, specifications, estimates (PS&E) and engineering data furnished by CONTRACTOR, and where appropriate will indicate CONTRACTOR's authorized signature and professional registration number.

ARTICLE 2
RESPONSIBILITIES OF CITY

2.1 Provision of Information.

CITY shall provide full information regarding its requirements for the project, and it shall furnish, without charge to CONTRACTOR, any and all information, data, plans, maps and records which are available to CITY and are necessary for the provision by CONTRACTOR of the tasks and services set forth herein.

2.2 Cooperation With CONTRACTOR.

CITY shall cooperate with CONTRACTOR in carrying out the work and services required hereunder without undue delay. In this regard, CITY, including any representative thereof, shall examine plans and documents submitted by CONTRACTOR, shall consult with CONTRACTOR regarding any such plans and documents, and shall render any necessary decisions pertaining to such plans and documents as promptly as is practicable.

ARTICLE 3
PAYMENT

3.1 Payment Schedule: Maximum Payment Amount.

Prior to the tenth of the month, CONTRACTOR shall submit to CITY a monthly status report and invoices itemizing the services rendered during the previous month. Within fifteen (15) working days after receipt of an invoice from CONTRACTOR, CITY shall determine whether and to what extent CONTRACTOR has adequately performed the services for which payment is sought. If CITY determines that CONTRACTOR has not adequately performed such services, CITY shall inform CONTRACTOR of those acts which are necessary for satisfactory completion. Subject to the provisions of Section 5.2 below, which provide for the City to withhold payment in the event CONTRACTOR's insurance expires during the term of this Agreement, CITY shall cause payment to be made to CONTRACTOR within fifteen (15) working days from CITY's determination that CONTRACTOR has adequately performed those services for which CITY has been invoiced. In no case shall CITY pay in excess of each line item set forth in Exhibit "A" for any particular task unless approved and authorized by the CITY in writing (applicable only if Exhibit "A" breaks down the Scope of Services on a line item basis). The total compensation for the Scope of Services set forth in Exhibit "A" shall not exceed _____ (\$_____), including all amounts payable to

CONTRACTOR for its overhead, payroll, profit, and all costs of whatever nature, including without limitation all costs for subcontracts, materials, equipment, supplies, and costs arising from or due to termination of this Agreement (the "Total Compensation").

3.2 Changes in Work.

If CONTRACTOR estimates that any proposed change within the general scope of services set forth in Exhibit "A" causes an increase or decrease in the cost and/or the time required for performance of this Agreement, CONTRACTOR shall so notify CITY of that fact in advance of commencing performance of such work. Any such change, and the cost for such change, shall be agreed upon by CITY and CONTRACTOR, and reduced to a writing that, once signed by both CITY and CONTRACTOR, shall modify this Agreement accordingly. In determining the amount of any cost increase for such change, the value of the incomplete portions of the original tasks and services affected by the change shall be credited back to CITY.

3.3 Additional Work.

CITY may request CONTRACTOR to perform additional services not covered by the specific scope of services set forth in Exhibit "A", and CONTRACTOR shall perform such extra services and will be paid for such extra services when the extra services and the cost thereof are reduced to writing, signed by both CITY and CONTRACTOR, and made a part of this Agreement. CITY shall not be liable for payment of any extra services nor shall CONTRACTOR be obligated to perform any extra services except upon such written amendment. To the extent that the extra services render all or a portion of the original tasks and services unnecessary, the value of the unnecessary and incomplete portions of original tasks and services shall be credited back to CITY.

ARTICLE 4 INDEPENDENT CONTRACTOR

CONTRACTOR is an independent contractor and not an employee of the CITY. Neither the CITY nor any of its employees shall have any control over the conduct of the CONTRACTOR or any of CONTRACTOR's employees, except as herein set forth, and CONTRACTOR expressly warrants not to, at any time or in any manner, represent that CONTRACTOR, or any of CONTRACTOR's agents, servants or employees, are in any manner agents, servants or employees of the CITY, it being distinctly understood that CONTRACTOR is and shall at all times remain as to the CITY a wholly independent contractor and that CONTRACTOR's obligations to the CITY are solely such as are prescribed by this Agreement.

ARTICLE 5
INDEMNITY AND INSURANCE

5.1 Indemnification

FOLLOWING PARAGRAPH APPLICABLE TO AGREEMENTS WHERE CONTRACTOR IS A “LICENSED DESIGN PROFESSIONAL” AND IS PROVIDING DESIGN PROFESSIONAL SERVICES:

To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.6), CONTRACTOR shall defend (with legal counsel reasonably acceptable to the CITY), indemnify, and hold free and harmless CITY and CITY's agents, officers, and employees, and the San Clemente Redevelopment Agency and its agents, officers, and employees (collectively, the “Indemnitees”) from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of CONTRACTOR or any officers, agents, employees, representatives, or subcontractors of CONTRACTOR [collectively, the “CONTRACTOR ENTITIES”]), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney’s fees, litigation expenses and fees of expert Contractors or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of CONTRACTOR, any of the CONTRACTOR ENTITIES, anyone directly or indirectly employed by any of them, or anyone that they control (collectively, the “Liabilities”). Such obligation to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused in part by the sole negligence, active negligence, or willful misconduct of such Indemnitee.

FOLLOWING PARAGRAPH APPLICABLE TO AGREEMENTS WHERE CONTRACTOR IS NOT A “LICENSED DESIGN PROFESSIONAL”:

CONTRACTOR shall defend (with legal counsel reasonably acceptable to the CITY), indemnify, and hold free and harmless CITY and CITY's agents, officers, and employees, and the San Clemente Redevelopment Agency and its agents, officers, and employees from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of CONTRACTOR or CONTRACTOR’s officers, agents, employees, representatives, or subcontractors [collectively, the “CONTRACTOR ENTITIES”]), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney’s fees, litigation expenses and fees of expert Contractors or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the actions or failure to act of CONTRACTOR, any of the CONTRACTOR ENTITIES, anyone directly or indirectly employed by any of them, or anyone that they control, under this Agreement.

For purposes of this Agreement, a “Licensed Design Professional” shall be limited to licensed architects, registered professional engineers, licensed professional land surveyors and landscape architects, all as defined under current law, and as may be amended from time to time by California Civil Code § 2782.8.

5.2 Insurance.

Prior to the City’s execution of this Agreement, and as a condition to the effectiveness hereof, CONTRACTOR shall submit certificates and endorsements to CITY indicating compliance with the following minimum insurance requirements, and CONTRACTOR shall maintain such insurance in effect during the entire term of this Agreement:

- A. Workers' Compensation insurance to cover CONTRACTOR's employees as required by the California Labor Code with employer’s liability limits not less than One Million Dollars (\$1,000,000) per accident or disease. Before execution of this Agreement by CITY, CONTRACTOR shall file with CITY the attached signed Worker's Compensation Insurance Certification. CONTRACTOR shall require all subcontractors similarly to provide such compensation insurance for the respective employees.

None of the CITY, the San Clemente Redevelopment Agency, or any of their respective officers, employees, and agents will be responsible for any claims in law or equity occasioned by failure of CONTRACTOR to comply with this paragraph.

- B. Commercial General Liability, personal injury and property damage liability, contractual liability, independent contractor's liability, and automobile liability insurance, with minimum combined liability limits of One Million Dollars (\$1,000,000) per occurrence for all covered losses, and Two Million Dollars (\$2,000,000) in the aggregate. Any deductible or self-insured retention in excess of Five Thousand Dollars (\$5,000) shall be declared to the City and requires the prior approval of the City’s Risk Manager. Each such policy of insurance shall:

- (1) be issued by companies that hold a current policy holder’s alphabetic and financial size category rating of not less than A-VII, according to the current Best’s Key Rating Guide or a company of equal financial stability that is approved by CITY’s Risk Manager for all coverages except surety.
- (2) name and list as additional insureds CITY, CITY’s officers, employees, and agents and, if the CITY’s Risk Manager so requires, the City of San Clemente Redevelopment Agency and its officers, employees, and agents. An endorsement shall accompany the insurance certificate naming such additional insureds.

- (3) specify it acts as primary insurance and that no insurance held or owned by CITY (or, if applicable, the San Clemente Redevelopment Agency) shall be called upon to cover a loss under said policy;
- (4) contain a clause substantially in the following words: "it is hereby understood and agreed that this policy may not be canceled or materially changed except upon thirty (30) days prior written notice to CITY of such cancellation or material change as evidenced by a return receipt for a registered letter;"
- (5) cover the operations of CONTRACTOR pursuant to the terms of this Agreement; and
- (6) be written on an occurrence and not a claims made basis.

C. Professional Liability or Errors and Omissions insurance specifically designed to protect against acts, errors or omissions of the CONTRACTOR and "covered professional services" as designated in the policy must specifically include work performed under this Agreement. The policy limit shall be not less than One Million Dollars (\$1,000,000) per claim and One Million Dollars (\$1,000,000) in the aggregate. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

If this box is checked and CITY has initialed below, the requirement for Professional Liability or Errors and Omissions insurance set forth in paragraph C above is hereby waived.

CITY's Initials: _____

Notwithstanding anything herein to the contrary, in the event any of CONTRACTOR's insurance as required pursuant to this Section 5.2 expires during the term of this Agreement, CITY shall withhold any payment due to CONTRACTOR hereunder until such time as CONTRACTOR obtains replacement insurance that meets all of the applicable requirements hereunder and submits certificates and endorsements evidencing such insurance to CITY.

CONTRACTOR shall require all of its subcontractors to procure and maintain during the course of their subcontract work with CONTRACTOR insurance that complies with the foregoing minimum insurance requirements. CONTRACTOR shall obtain from such subcontractors and retain in its files certificates evidencing such compliance.

ARTICLE 6
TERMINATION

This Agreement may be terminated by CITY for any reason, with or without cause, upon written notice to CONTRACTOR. In such event, CONTRACTOR shall be compensated for all services performed and costs incurred up to the date of notification for which CONTRACTOR has not been previously compensated, plus termination expenses reasonably incurred and properly accounted for (but in no event to exceed the amount which, when combined with other amounts paid, exceeds the amount for any uncompleted task set forth in Exhibit "A", as applicable). Upon receipt of notice of termination from CITY, CONTRACTOR shall immediately stop its services, unless otherwise directed, and deliver to CITY all data, drawings, reports, estimates, summaries and such other information and materials as may have been accumulated by CONTRACTOR in the performance of this Agreement, whether completed or in process.

ARTICLE 7
MISCELLANEOUS

7.1 Ownership of Documents.

All reports, software programs, as well as original data collected, original reproducible drawings, plans, studies, memoranda, computation sheets and other documents assembled or prepared by CONTRACTOR or furnished to CONTRACTOR in connection with this Agreement shall be the property of CITY and delivered to CITY at completion of the project or termination of this Agreement, whichever occurs first. Copies of said documents may be retained by CONTRACTOR, but shall not be made available by CONTRACTOR to any individual or organization without the prior written approval of CITY.

Any use of completed documents for projects other than that covered by this Agreement and/or any use of uncompleted documents without specific written authorization from CONTRACTOR will be at CITY's sole risk and without liability or legal exposure to CONTRACTOR.

7.2 Notices.

Any notices to be given under this Agreement shall be given by enclosing the same in a sealed envelope, postage prepaid, and depositing the same in the United States mail, addressed to CONTRACTOR at [address] , and to the City of San Clemente, [address] , San Clemente, California , Attention: [specify] .

7.3 Covenant Against Contingent Fees.

CONTRACTOR warrants that it has not employed or retained any company or person to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person any fee or commission from the award or making of this Agreement. For breach

or violation of this warranty, CITY shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee or commission.

7.4 Liquidated Damages.

APPLICABLE ONLY IF THIS BOX HAS BEEN CHECKED AND BOTH PARTIES HAVE INITIALED BELOW.

If CITY seeks monetary damages for CONTRACTOR’S failure to complete all of the services required hereunder by the completion date set forth in Exhibit “B” (the “Completion Date”), CONTRACTOR shall be required to pay to CITY _____ Dollars (\$_____) per day for each day beyond the Completion Date that any of such services remain uncompleted; provided, however, that nothing herein shall be deemed to limit CITY’S remedy for CONTRACTOR’S failure to complete all services required hereunder by the Completion Date to seeking monetary damages, and CITY shall be entitled to pursue any other equitable remedy permitted by law, including, without limitation, specific performance.

THE PARTIES HERETO AGREE THAT THE AMOUNT SET FORTH IN THIS SECTION 7.4 (THE “DAMAGE AMOUNT”) CONSTITUTES A REASONABLE APPROXIMATION OF THE ACTUAL DAMAGES THAT CITY WOULD SUFFER DUE TO CONTRACTOR’S FAILURE TO COMPLETE ALL OF THE SERVICES REQUIRED HEREUNDER BY THE COMPLETION DATE, CONSIDERING ALL OF THE CIRCUMSTANCES EXISTING ON THE EFFECTIVE DATE OF THIS AGREEMENT, INCLUDING THE RELATIONSHIP OF THE DAMAGE AMOUNTS TO THE RANGE OF HARM TO CITY, THAT REASONABLY COULD BE ANTICIPATED AND THE ANTICIPATION THAT PROOF OF ACTUAL DAMAGES WOULD BE COSTLY OR INCONVENIENT. THE DAMAGE AMOUNT SET FORTH IN THIS SECTION 7.4 SHALL BE THE SOLE DAMAGES REMEDY FOR CONTRACTOR’S FAILURE TO COMPLETE ALL OF THE SERVICES REQUIRED HEREUNDER BY THE COMPLETION DATE, BUT NOTHING IN THIS SECTION 7.4 SHALL BE INTERPRETED TO LIMIT CITY’S REMEDY FOR CONTRACTOR’S FAILURE TO COMPLETE ALL OF THE SERVICES REQUIRED HEREUNDER BY THE COMPLETION DATE TO SUCH A DAMAGES REMEDY. IN PLACING ITS INITIALS AT THE PLACES PROVIDED HEREINBELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY HAS BEEN REPRESENTED BY COUNSEL OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY COUNSEL TO EXPLAIN THE CONSEQUENCES OF THE LIQUIDATED DAMAGES PROVISION AT OR PRIOR TO THE TIME EACH EXECUTED THIS AGREEMENT.

CONTRACTOR’S INITIALS: _____ CITY’S INITIALS: _____

Notwithstanding any of the above, nothing herein is intended to preclude the CITY's recovery of its attorney's fees and costs incurred to enforce this Section 7.4, as provided in Section 7.10 below.

7.5 Interpretation and Enforcement of Agreement.

This Agreement shall be construed and interpreted both as to validity and performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted and maintained in the Superior Court of the County of Orange, State of California, or in any other appropriate court with jurisdiction in such county, and CONTRACTOR agrees to submit to the personal jurisdiction of such court.

7.6 Disputes.

In the event of any dispute arising under this Agreement, the injured party shall notify the defaulting party in writing of its contentions by submitting a claim therefor. The injured party shall continue performance of its obligations hereunder so long as the defaulting party immediately commences to cure such default and completes the cure of such default with reasonable diligence and in no event to exceed 30 days after service of the notice, or such longer period as may be permitted by the injured party; provided, that if the default results in an immediate danger to the health, safety, and general welfare, CITY may take such immediate action as CITY deems warranted.

7.7 Retention of Funds.

CITY may withhold from any monies payable to CONTRACTOR sufficient funds to compensate CITY for any losses, costs, liabilities or damages suffered by CITY due to default of CONTRACTOR in the performance of the services required by this Agreement.

7.8 Waiver.

No delay or omission in the exercise of any right or remedy by a nondefaulting party shall impair such right or remedy or be construed as a waiver. CITY's consent or waiver of one act or omission by CONTRACTOR shall not be deemed to constitute a consent or waiver of CITY's rights with respect to any subsequent act or omission by CONTRACTOR. Any waiver by either party of any default must be in writing.

7.9 Rights and Remedies are Cumulative.

Except as may be expressly set forth in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies or other rights or remedies as may be permitted by law or in equity shall not preclude the exercise by such party, at the same or different times, of any other rights or remedies to which such party may be entitled.

7.10 Attorneys' Fees.

In the event either party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party in such action shall be entitled to recover its reasonable costs and expenses, including without limitation reasonable attorneys' fees and costs. Attorneys' fees shall include attorneys' fees on any appeal, and in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, including the taking of depositions and discovery, expert witness fees, and all other necessary costs incurred in the litigation, suit, or other action requiring attorney time. All such fees shall be enforceable whether or not such action is prosecuted to final judgment.

7.11 Integrated Agreement.

This Agreement contains all of the agreements of the parties and cannot be amended or modified except by written agreement. No prior oral or written understanding shall be of any force or effect with respect to those matters covered in this Agreement.

7.12 Authority.

The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties.

[APPLICABLE TO INDIVIDUAL CONTRACTORS ONLY]

7.13 Compliance with California Unemployment Insurance Code Section 1088.8:

Prior to signing the Contract, CONTRACTOR shall provide to CITY a completed and signed Form W-9, Request for Taxpayer Identification Number and Certification. CONTRACTOR understands that pursuant to California Unemployment Insurance Code Section 1088.8, the CITY will report the information from Form W-9 to the State of California Unemployment Development Department, and that the information may be used for the purposes of establishing, modifying, or enforcing child support obligations, including collections, or reported to the Franchise Tax Board for tax enforcement purposes.

[End – Signature page follows]

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

CITY OF SAN CLEMENTE

By: _____

Its: _____

Dated: _____, 20__

ATTEST:

CITY CLERK of the City of
San Clemente, California

APPROVED AS TO FORM:
BEST BEST & KRIEGER

By: _____
City Attorney

APPROVED AS TO AVAILABILITY
OF FUNDING

By: _____
Finance Authorization

("CONTRACTOR")

Contractor's License Number _____

By: _____

Its: _____

Dated: _____, 20__

EXHIBIT "A"

SCOPE OF SERVICES

[To be inserted by CITY]

[Scope of Services should include complete description of scope of work, identification of Project team, and payment schedule by task. See Sections 1.2, 1.4, and 3.1 of Agreement]

EXHIBIT “B”

SCHEDULE OF PERFORMANCE

[To be inserted by CITY]

[See 1.3 of Agreement]

WORKER'S COMPENSATION INSURANCE CERTIFICATION

Project No. _____

WORKERS' COMPENSATION DECLARATION

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

(ONE OF THE BOXES BELOW MUST BE CHECKED)

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

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

Carrier _____

Policy Number _____

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

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

Dated: _____, 20____

Contracting Firm

By: _____

Title

Address



Attachment 2

Statement of Non-Collusion

The proposal is submitted as a firm and fixed request valid and open for 180 days from the submission deadline.

This proposal is genuine, and not sham or collusive, nor made in the interest or in behalf of any person not herein named: the proposer has not directly or indirectly induced or solicited any other proposer to put in a sham proposal and the proposer has not in any manner sought by collusion to secure for himself or herself an advantage over any other proposer.

In addition, this organization and its members are not now and will not in the future be engaged in any activity resulting in a conflict of interest, real or apparent, in the selection, award, or administration of a subcontract.

Signature of Authorized Representative

Date

Name and Title of Authorized Representative
