



City of Newport Beach, California

REQUEST FOR PROPOSALS

CONSULTANT SERVICES

Big Canyon Creek Restoration Project

Phase II -- Engineering, Design, Permitting, and Final Construction Documents

DATE MAILED: AUGUST 19, 2005
CITY OF NEWPORT BEACH, CALIFORNIA
3300 NEWPORT BOULEVARD
NEWPORT BEACH, CALIFORNIA 92663

Table of Contents

A.	Introduction.....	Page 2
B.	Description of Project.....	3
C.	Scope of Work.....	4
D.	General Requirements.....	8
E.	The City's Responsibilities.....	9
F.	Consultant Products.....	10
G.	Consultant Qualifications.....	10
H.	Required Proposal Elements.....	11
I.	Proposal Submittal.....	12
J.	Consultant Selection Process.....	13
K.	Equal Opportunity Requirements.....	13
	Exhibit A – Project Location Maps	14
	Exhibit B – Conceptual Plan	15
	Exhibit C – Standard Professional Services Agreement	16
	Exhibit D – City Attorney's Office PSA Guidelines	31

A. INTRODUCTION

Upper Newport Bay (UNB) is a 750-acre estuary in central Orange County, California. UNB includes an ecological reserve (administered by the California Department of Fish and Game [DFG]), a regional nature preserve (administered by the County of Orange) and City-owned and administered adjacent properties like the 58-acre Big Canyon Creek Nature Park. UNB is home to six endangered species, including the California Least Tern, the California Brown Pelican, and the Light-Footed Clapper Rail.

Big Canyon Creek. Big Canyon Creek is a drainage course that receives runoff from about two square miles of primarily urbanized watershed (including the Big Canyon Country Club and adjacent residences) and that runs through Big Canyon Creek Nature Park before flowing into UNB (see **Exhibit A** for location information). The Southern California Wetlands Recovery Project (“WRP”) identified Big Canyon on its Work Plan as an important resource in need of restoration. The Newport Beach City Council directed the City to move forward with an effort to restore the Creek within the Nature Park, calling the effort the **Big Canyon Creek Restoration Project**. As proposed in 2003, the Project would address:

- A restoration plan for wetlands and wetlands-related habitats;
- The needs of endangered and threatened species;
- Unfiltered urban runoff and impacts on Bay water quality;
- Drainage and hydrologic needs of golf course, City storm drains and bluffside homes, including provisions for large storm events;
- Public access and connection to Big Canyon Nature Park; and
- Maintenance access to City and other agencies’ utilities.

Phase I Complete. In 2003 and 2004, Community Conservancy International (CCI), with funding from the State Coastal Conservancy on behalf of the WRP, the City, and the Newport Bay Naturalists and Friends (“NBNF”), conducted Phase I of the Project. Phase I included preliminary analysis and reviews, public meetings, and discussions with regulatory agencies. The Phase concluded by designating a preferred alternative called the Historic Tidal Wetlands Alternative (see Exhibit B). Please see the full report on Phase I (as completed by CCI) on the City’s web site at www.city.newport-beach.ca.us and the State Coastal Conservancy’s website at www.scc.ca.gov.

About Phase II. The Project is now ready to move to its formal design phase. As the owner of the Big Canyon Creek Nature Park, the City of Newport Beach has committed to its restoration; therefore, the City will be the project lead from final design to construction and management. This Request for Proposals (RFP) solicits proposals from interested firms to complete Phase II (“Engineering, Design, Permitting, and Final Construction Documents”) of the Project. The following is important to know about Phase II:

- Its Scope of Work follows this introduction, and includes a **3rd party review** of the Alternative selected in Phase I;

- A key component in Phase II is the **water quality analysis and design** - this analysis shall include a Sampling and Analysis Plan (SAP), a Quality Assurance Program and Plan (QAPP), and shall provide for pre- and post-Project monitoring that demonstrates water quality improvement.
- It is funded in part from the **City**, the **State Coastal Conservancy**, and the **State Water Resources Control Board** (via the California Regional Water Quality Control Board, Santa Ana Region). These three agencies' goals are identical - the improvement of habitat, public access, and water quality;
- Consultant selection by the City is **subject to approval** by the State Coastal Conservancy and the State Water Resources Control Board.
- Consultant selection by the City will be a **qualifications-based selection** ("QBS") as described in Section J of this RFP.
- The City expects that the Consultant shall complete Phase II **18 months** from the date of contract award, though respondents should propose a timeline reflective of the practical and logistical needs of the Phase as opposed to an arbitrary conclusion date.

B. DESCRIPTION OF PROJECT

As refined by Phase I's information, the stakeholders intend to restore the habitat quality of the Big Canyon Creek Nature Park in a manner that will:

1. Improve the water quality of the fresh water Big Canyon Creek both as it enters the Park and as the Creek enters Upper Newport Bay;
2. Remove exotic species and replace with native, non-invasive species;
3. Create effective riparian, wetlands, coastal sage scrub, and other habitat in the Park (paying close attention to the needs of endangered and threatened species) per the attached Conceptual Plan or an updated iteration of the Conceptual Plan;
4. Design a sound drainage system that will convey runoff from significant storm events through Big Canyon Creek;
5. Provide for visitor amenities, including but not limited to parking, comfort station(s), overlooks, interpretive and educational elements, bike facilities, and a disabled-accessible trail (or boardwalk or bridge) allowing access to significant areas of the Park;
6. Design the realignment of key infrastructure in the park, including utilities, utility access facilities, Back Bay Drive, parking lots, bike facilities, comfort stations, etc.;
7. Add to the acreage of mudflat at the mouth of Big Canyon Creek so as to increase overall mudflat acreage in Upper Newport Bay;

Consultant services for the Project shall encompass the following elements:

1. A peer-reviewed and stakeholder-involved evaluation of the proposed Conceptual Plan (**Exhibit B – Historic Tidal Wetlands Alternative**) for the Big Canyon Creek Restoration Project;

2. Further improvement of the Conceptual Plan (or an alternative should the Conceptual Plan be amended as a result of this contract) into fully-approved and permitted construction documents, including but not limited to:
 - Coordinating all permitting and other Agency Approvals (including CEQA and agency review, including permit requirements of the City of Newport Beach);
 - All related engineering, landscaping design, biological analyses, and design development, including drainage systems that would maintain and protect any restoration efforts during large storm events.
 - The establishment of baseline water quality conditions, the evaluation and design of water quality improvements, and the development of a post-construction water quality monitoring plan;
3. Stakeholder and community participation, including arranging for and holding at least two (2) noticed public workshops. The workshop schedule shall be developed with the City, the SCC, and the Regional Board;
4. A Technical Advisory Committee established in consultation with the City, the SCC, and the Regional Board and staffed by the consultant (including agendas and minutes). The TAC will regularly review and comment upon the Scope of Work's work products.
5. The development of a post-construction maintenance plan and an estimate of annual costs for the post-construction maintenance plan;
6. Communication and interaction with the SCC and the Regional Board – as well as with City staff.
7. The development and submittal of an appropriate and Regional Board-accepted Quality Assurance Program Plan (QAPP) and Sampling and Analysis Plan (SAP) associated with this Project's water quality monitoring components.
8. The arranging and coordination of a publicly-accessible web site (linked to or hosted at the City's web site) as a repository of all public information about the Project;
9. A Quarterly Report issued once every three months to the City, the SCC, and to the Regional Board in a common format as directed.
10. Final construction documents, including:
 - Calculations that substantiate the key design features (e.g., flood stage that control structures are designed to withstand);
 - Detailed construction drawings; and
 - Specifications that explain the construction drawings.

C. SCOPE OF WORK

The City desires that the Consultant bring the Project from its Conceptual Plan to final construction drawings. More specifically, the Consultant shall provide these six (with an optional seventh) Parts:

- I – Feasibility Assessment;**
- II – Water Quality QAPP and SAP;**
- III – Preliminary Engineering;**
- IV – Environmental Review & Grant Opportunities;**

**V – Outreach, Final Engineering & Design;
VI – Post-Construction Water Quality Monitoring Plan; and
VII – (Optional) – Construction Management**

The Consultant may be asked to provide **Construction Management** for the Project at a later date.

Part I -- Feasibility Assessment of Phase One's Conceptual Plan. The Consultant shall assess the Project's feasibility in part by gathering required information to analyze or improve upon Phase One's Historic Wetlands Conceptual Plan. Specific tasks shall include:

1. Establish (in consultation with the City) and convene Technical Advisory Committee (TAC) and meet with TAC to review Conceptual Plan. TAC membership is suggested to include representatives of DFG, the US Fish and Wildlife Service, the National Marine Fisheries Service, the City, the State Coastal Conservancy, the Regional Board, and representation from a Non-Governmental Organization, like the NBNF;
2. Gather existing information about the Conceptual Plan, especially whether the Plan will meet water quality objectives and whether the plan is hydrologically sound;
3. Meet with impacted resources agency representatives and City staff to discuss the Conceptual Plan, its water quality component, and any alternatives and
4. Based on these meetings, determine the Optimum Plan and additional studies/analysis required, if any, to confirm its feasibility.

While it is understood that the time spent during planning can expand to accommodate examining additional options, the Consultant shall clearly define tasks that are reasonably needed to accomplish the Feasibility Assessment phase of the project.

Part II – Water Quality QAPP and SAP. The consultant shall review existing water quality data to attempt to characterize the baseline water quality of the Big Canyon system. To further this characterization, the Consultant shall:

1. Develop and submit an approved Quality Assurance Program Plan (QAPP) to the Regional Board. The QAPP must be consistent with the QAPP for the Surface Water Ambient Monitoring Program (SWAMP).
2. Develop, submit, and implement an approved Water Quality Sampling and Analysis Plan (SAP) to the Regional Board. The SAP shall describe the specific water quality constituents to be monitored and the frequency/schedule for the monitoring activities. Monitoring activities shall include pre-Project baseline monitoring and a specific plan for post-Project monitoring to determine water quality improvement resulting from the restoration project. Post-Project monitoring shall be done by the City or another contractor in the post-construction phase of the Project (*see Part VI of the Scope of Work for Post-Construction Monitoring Plan*). Sub-tasks here are:
 - a. Conduct the water quality sampling and analysis program per the approved SAP;

- b. Establish a baseline water quality evaluation of the Project area by characterizing contaminants entering or present;
- c. Submit the water quality data to the Regional Board in report form and electronic format.

Part III -- Preliminary Engineering (to 30% design for Alternatives). Services under this Phase shall include:

1. Revise timeline for Phase II (this specific phase of the larger restoration project) If appropriate, include time and budget requirements for additional studies/analysis required to confirm Optimal Plan's feasibility and/or to develop appropriate alternatives for NEPA/CEQA compliance;
2. If the Consultant proposes any changes in the Design Team that the Consultant originally submitted in response to the RFP, the Consultant shall provide such recommended changes to the City, SCC and Regional Board for approval
*NOTE: At the completion of Steps III-1 and III-2, the consultant must stop further work until receiving a formal **Notice to Proceed** from the City, SCC, and Regional Board. With a Notice to Proceed in hand, the consultant may proceed to Step III-3.*
3. Conduct additional studies and a public workshop associated with these studies, if warranted;
4. Develop the Optimal Plan and any design alternatives to a level sufficient for NEPA/CEQA analysis (level of design required for the alternatives shall be 30%). The Optimal Plan shall include:
 - Restoration of all habitat areas (riparian, wetlands, meadow, fresh water pond, mudflat, coastal sage scrub);
 - Removal of all non-natives and replacement with appropriate native and non-invasive species;
 - Water quality protective measures and facilities. NOTE: water quality improvement measures shall not rely solely on natural treatment systems (*please see "Habitat Value of Natural and Constructed Wetlands Used to Treat Urban Runoff: A Literature Review" @ www.scwrp.org/documents/SAP/Treatment_wetlands/TreatmentWetlandsCover.pdf*);
 - Erosion control, hydrologic, and hydraulic measures and facilities that control 100-year storm flows and sedimentation such that storm flows and sediment does not damage improvements in the Park or habitat in Upper Newport Bay;
 - Realignment of Back Bay Drive, pedestrian and bicycle trails, boardwalks and bridges, overlooks, parking, comfort station(s), and interpretive and educational areas for the public, including facilities that provide access to persons with disabilities (to the extent required under ADA and to the extent possible). Interpretive and educational elements should be coordinated with existing educational efforts of the stakeholders;
 - Hydrologic and hydraulic measures and facilities Realignment of Back Bay Drive (if appropriate) to City specifications, including culverts, grading, paving, etc.
 - Repair and improvement of tidal structures and/or spillways for fresh water pond areas;
5. Provide detailed control and topographical surveys;
6. Confirm the location of private and publicly-owned utilities within the Project area, and provide pre-engineering to show how they may be serviced and preserved under the Optimal Plan;

7. Provide soil borings and a geotechnical report for the proposed improvements;
8. Conduct biological studies and analysis, including (but not limited to):
 - Addressing the environmental setting;
 - Section 7 (Endangered Species Act) consultation with National Marine Fisheries and US Fish and Wildlife Service;
 - Data collection for candidate and listed species to include in a Biological Assessment for any incidental take statements; and
 - Wetlands delineation.
9. Coordinate pre-design work with City staff through the City's project manager;
10. Develop a detailed preliminary cost estimate for the selected alternative; and
11. Discuss materials and data with TAC, and respond to TAC's comments.

Part IV -- Environmental Review & Grant Opportunities. Environmental review services may progress concurrently with Preliminary Engineering tasks (where appropriate) and shall include:

1. Mitigation Opportunity Review/Planning. The Consultant shall evaluate and make recommendations on avenues for construction funding, including coordination with and assistance to interested parties (such as the County of Orange or the Transportation Corridor Agencies) who may need to use the site for mitigation expenditures. In the event that mitigation dollars are available, the Consultant shall adjust CEQA/NEPA process accordingly and detail likely maintenance obligations within CEQA/NEPA process.
2. CEQA/NEPA Review and Documentation: In addition to compliance with the CEQA, the City may need to comply with NEPA in the event that a Federal agency provides construction funding or that a Clean Water Act Section 404 permit is needed.
 - a. Prepare an Initial Study reflecting the Optimal Plan and its alternatives;
 - b. Determine which level of environmental review is appropriate (MND, EIR, other);
 - c. Prepare and submit Notice of Preparation (NOP);
 - d. Hold at least one scoping meeting and receive agency/stakeholder/TAC comments;
 - e. Prepare administrative draft of environmental document and circulate to staff of Regional Board, City, and SCC for comments and revisions;
 - f. Circulate draft environmental document to the public;
 - g. Hold public review meeting and respond to comments;
 - h. Prepare final environmental document, including mitigation measures as necessary.
3. While feedback from agencies on environmental review and permit documents should be sought before proceeding to final design and construction-ready documents, modifications of designs and construction-ready documents may be required to comply with environmental or permitting approvals.
4. Prepare and submit applications for all permits and obtain all agency approvals/permits for the Project.
5. Serve as the lead consultant (with City or other groups' support) to prepare two or more grant applications associated with the Project.

Part V – Outreach, Final Engineering & Design. Design services comprise a substantial portion of the Scope of Work, and shall bring the Optimal Plan to final design and construction-ready documents. These services shall include:

1. Join City staff and others in communication and up to two (2) meetings with residents and commercial entities upstream to discuss Optimal Plan, including any runoff reduction efforts planned for upstream businesses and residents.
2. Surveying the project site and preparing fully dimensioned base sheets. Survey information shall be provided at close intervals as needed at critical areas.
3. Final Design of the Optimal Plan. This design shall include engineering and preparation of construction-ready documents (to City of Newport Beach Public Works Standards – see later in the RFP) for the installation of all improvements;
4. Preparing detailed special provisions, quantities and a final cost estimate;
5. Development of a post-construction Long-Term Maintenance Plan (with cost estimates) for the Project;
6. Discuss materials and data in Design phase with TAC, respond to comments;
7. With assistance of City staff, convene and staff a workshop with interested stakeholders; and

Part VI –Post-Construction Monitoring Plan. Building on the pre-Project SAP for Water Quality in Part II, this section of the Scope of Work shall consist of:

1. Developing and submitting an approved Post-Construction Water Quality Sampling and Analysis Plan (SAP) to the Regional Board. The SAP shall describe the types of water quality constituents to be monitored and the frequency/schedule for the monitoring activities. No post-construction monitoring is expected from the Consultant; however, the Consultant may later be requested under a separate contract to administer the Post-Construction Monitoring SAP once the Project is constructed.

Part VII – (Optional) Construction Management. In the event that the Consultant desires to continue with this Project as its Construction Manager, the Consultant shall provide the following:

1. A summary of the expertise, roles, and duties that a selected Construction Management Team should have and should follow for this specific project.
2. A specific description of the respondent's Consultant Team (its personnel and personnel's qualifications) that would provide construction management, including a summary and qualifications of the Team's construction management experience with related projects.

D. GENERAL REQUIREMENTS

1. The Consultant shall prepare drawings and design specifications that conform with the Standard Specifications for Public Works Construction, ADA requirements, and

requirements of the City of Newport Beach Design Criteria, Special Provisions and Standard Drawings for Public Works Construction, 2004 Edition, which augments the Standard Specifications for Public Works Construction, latest revision.

2. The Consultant shall prepare drawings in AutoCAD Release 2002, plot construction drawings on standard City vellum sheets, and plot As-Built plans on standard City mylar sheets. Electronic files shall be formatted for use in any construction staking.
3. Drawings shall include all details and information required for various City departmental plan checks and for bid and construction purposes.
4. Drawings, special provisions, contract documents and amendments shall be signed by the Consultant and submitted to the City for official signatures. The Consultant shall meet with Public Works Department officials and pursue plan corrections until the plans are declared "construction-ready" by that department.
5. A detailed preliminary cost estimate shall be submitted as a part of Part III (Preliminary Engineering). The final cost estimate shall be updated following Part V (Final Engineering and Design) and submitted to the City for review.
6. The timeline required by Part III-1 must include at least the following mileposts:
 - o Receive Notice to Proceed from the Project Manager;
 - o Submit topographical survey of existing conditions to City Staff;
 - o Submit proposed horizontal control plan and site plan to City Staff;
 - o Submit 30% complete plans to City Staff;
 - o Delivery of preliminary and/or final environmental review documents and permits;
 - o Submit 90% complete plans, specifications and estimate to City Staff; and
 - o Submit Final Plans, specifications, and Engineer's Estimate to the Project Manager for approval signatures.
7. The City encourages frequent informal reviews to keep City staff fully informed.
8. The Consultant shall diligently pursue completion of services.
9. The Consultant shall be responsible for the day-to-day communications with the City and the supervision of construction document preparation.
10. If selected for this Project, the Consultant shall be responsible for completing the specified services in accordance with the City's standard Professional Services Agreement ("PSA") *without revision*. The PSA requires specific insurance coverage and indemnification language. We strongly suggest that respondents review the PSA (attached) before responding to this RFP.
11. Costs for reproduction during project development and for As-Built mylars shall be included in the Consultant's proposal. The City will reproduce the final drawings and specifications for distribution to prospective bidders.
12. This RFP does not commit the City of Newport Beach to pay costs incurred in the preparation of a proposal. Work shall not begin until a Professional Services Agreement is executed and the City has issued a Notice to Proceed.
13. All work shall be the property of the City, SCC and RWQCB.
14. Electronic files of all deliverables, analysis, calculations, figures etcetera shall be submitted to the City, SCC and RWQCB.

E. THE CITY'S RESPONSIBILITIES

The City will:

1. Provide reference drawings, survey records and easement information as are available and appurtenant to the project.
2. Provide street, utility, traffic, landscaping, and irrigation design criteria, hydraulic data and other technical information, as are available and appurtenant to the project.
3. Provide a person to be the Project Manager and the Consultant's primary point of contact with the City.
4. Provide the services of City staff to provide concept and technical information for use in the design of the improvements.
5. Waive all City plan check fees.
6. Provide reproduction of final plans and specifications for prospective bidders.

F. CONSULTANT PRODUCTS

Products from the Consultant will include, but not be limited to:

- All necessary environmental documents for project level review
- All permit-related documentation, and the required permits
- Construction documents ready for all applicable permitting agencies

The Consultant shall provide such products in hard copy as directed by the City and in electronic form to assist in public review of the documents.

G. CONSULTANT QUALIFICATIONS

The consultant team must demonstrate extensive experience in riparian and wetlands (fresh water and tidal) restoration from planning through design and construction, environmental review and documentation, water quality sampling and analysis, design and implementation of structural and non-structural treatment of urban runoff (dry and storm), permitting, and construction documentation. The consultant team must be able to demonstrate how they will work effectively to procure the necessary permits, which may include (but not be limited to) permits from:

- The City's Public Works Department
- California Department of Fish and Game
- US Fish and Wildlife Service
- National Marine Fisheries Service
- US Army Corps of Engineers
- California Coastal Commission
- California Regional Water Quality Control Board, Santa Ana Region

The consultant team must also clearly demonstrate the ability to work constructively with City staff, members of the public, area stakeholders, and resource agency representatives.

The consultant team must propose one project manager as the lead project manager and primary point of contact for the City. The PM must have extensive experience in all aspects and phases of wetland restoration. The consultant team may include subordinate consultants and contractors from which the project manager will draw expertise in order to complete and execute the contract, provided that such subordinates are approved pursuant to Part III-2. The City must be notified of key team member changes in writing prior to commencement of work. The City has the ability to approve or deny changes in key team member assignments after City is notified of such changes. Non-approved changes in key personnel may be considered a contractual breach.

H. REQUIRED PROPOSAL ELEMENTS

1. Cover letter.
2. Team Organization Chart with tasks and duties of each Team Member. Include names, addresses, phone numbers, and e-mail addresses of Team Members.
3. Intended Approach showing the Team's process to complete the Scope of Work. List all local, state, and federal approvals/permits the Team expects to be required of this Project.
4. Relevant Project Experience and References. Include names of projects, specific role of Team Members in the projects, and the approximate date that the work was done. For references, include contact name, firm name, phone number, and e-mail address. Projects done in Orange County or greater Southern California are of particular interest to the City.
5. Consultant Fees. Provide a preliminary estimate of the total direct and indirect costs to complete the Scope of Work. Include:
 - Staff hours and hourly rates, including benefit and overhead costs;
 - An estimate of all other direct costs, such as materials and reproduction costs;
 - An estimate of subconsultant services, itemized by task; and
 - An estimate of permitting fees (except for City fees, which are waived for this Project). Permitting fees are a part of the overall budget and must be allocated. The consultant will be responsible for allocating fees for all required permits.

Consultant fees shall be submitted with the proposal in a separate, sealed envelope ("sealed fees envelope"). In the event that the consultant is not selected, the City will return the sealed fees envelope to the proposer.

6. Proposed/Preliminary Timeline. Describe the Team's preliminary timeline for completing the Scope of Work. Given that grant funds will be used for this Project, the timeline should be relatively constricted. Please reflect proposed phasing and overlap of tasks.
7. Conflict of Interest/Financial Disclosure. Consultant Team must fully disclose any existing or planned work that may conflict with the Scope of Work. Consultant Team must agree that it will not perform services with any new client that would conflict with this Scope of

Work. Consultant must agree to promptly notify the City in the event that any conflict occurs between consultant's new client(s) and the City when circumstances, known to the consultant, place the City and the consultant's new client(s) in adverse, hostile, or incompatible positions where the interests of the City may be impaired.

8. One individual sample of work that the Consultant (or Team) has produced for a comparable restoration project (pages may vary). The sample should demonstrate that the Consultant has successfully completed one or more projects similar to this one, including public communications/workshops, agency approvals, etc.

I. PROPOSAL SUBMITTAL

PROPOSALS MUST BE SUBMITTED NO LATER THAN 4:00 P.M. ON THE DUE DATE OF THURSDAY, SEPTEMBER 15, 2005 IN THE OFFICE OF THE NEWPORT BEACH CITY CLERK AT THE BELOW ADDRESS. PROPOSALS WILL NOT BE ACCEPTED AFTER THE DEADLINE. THE 4:00 P.M. DEADLINE IS NON-NEGOTIABLE.

Four copies of the complete written proposal (plus one single copy of the firm's previous work per Item #F8) should be submitted to:

Mr. Dave Kiff
Assistant City Manager
ATTN: RFP FOR BIG CANYON CREEK RESTORATION PROJECT
c/o City Clerk's Office
3300 Newport Boulevard
Newport Beach, California 92663

Inquiries concerning this RFP should be presented in writing via e-mail (dkiff@city.newport-beach.ca.us).

This RFP does not commit the City to award a contract to or pay for any cost incurred by a respondent for any services. The City reserves the right to accept or reject any or all proposals received as a result of this RFP, to negotiate with any qualified source, and to cancel in part or in whole this RFP. If any proprietary information is contained in any response to this RFP, it must be clearly defined. The City reserves the right to revise the RFP prior to the date the proposals are due. Revisions to the RFP will be mailed to all potential proposers and all holders of the RFP.

The proposal shall be signed by an official authorized to bind the proposer. The proposal shall also provide the following information about the person designated to negotiate and contractually bind the proposal, and the person who may be contacted to respond to questions regarding the proposal:

Name
Title
Address

Telephone number
E-mail address

J. CONSULTANT SELECTION PROCESS

The City will convene a selection panel from City staff, the State Coastal Conservancy, and the Regional Water Quality Control Board (other interested agencies may be asked to participate as well). The selection panel will short-list qualified firms for the Project. The selection panel will then invite qualified firms to interview for the proposed contract. The schedule for nomination, selection, and award shall be determined by the City at a future date. RFP and interview responses shall be evaluated with particular attention paid to the Team's:

- Understanding of the Project, its required approvals, and the approval process;
- Approach and Methodology, including:
 - Appropriate selection and phasing of assessment and design methods;
 - Appropriate level and phasing of coordination with City, Public, Agencies, and Technical Advisory Committee;
 - Appropriate project management including degree of involvement, coordination with staff, contractors, ...
- Pertinent experience related to the requested services;
- Professional skills and credentials of the staff and consultants to be assigned to the project, till completion, and proposed level of participation of principals and other team members;
- Competence and track record of the firm/team's and individual members' with similar projects, including some in the Orange County and Southern California region.
- Project manager's expertise and experience with all aspects and stages of restoration projects;
- Ability to meet the Project schedule and complete the Scope of Work;
- Ability to meet Equal Employment standards.

Upon selection of the top-ranked firm, the City will open their sealed fees envelope and will enter into negotiations with the firm. The negotiations will cover the Scope of Work, contract schedule, contract terms and conditions, and budget. If the negotiating team is unable to reach an acceptable agreement with the selected firm, the negotiating team will terminate negotiations with them, open the second-ranked firm's sealed fees envelope and enter into negotiations with them. This selection process will continue until concluded by the City's Project Manager.

K. EQUAL OPPORTUNITY REQUIREMENTS

Consultant will comply with all applicable City ordinances, the City Charter, Title VII of the Civil Rights Act of 1964, as amended, Executive Orders 11246, 11375, and 12086, the California Fair Employment and Housing Act (sections 12920-12921) and any other applicable Federal or State laws and regulations hereinafter enacted. Consultant will not discriminate against

any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition, or place of birth.

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Exhibit A

Project Location Aerial Photograph



Big Canyon Creek
Nature Park

Vicinity Map – Big Canyon Creek Nature Park



Exhibit B

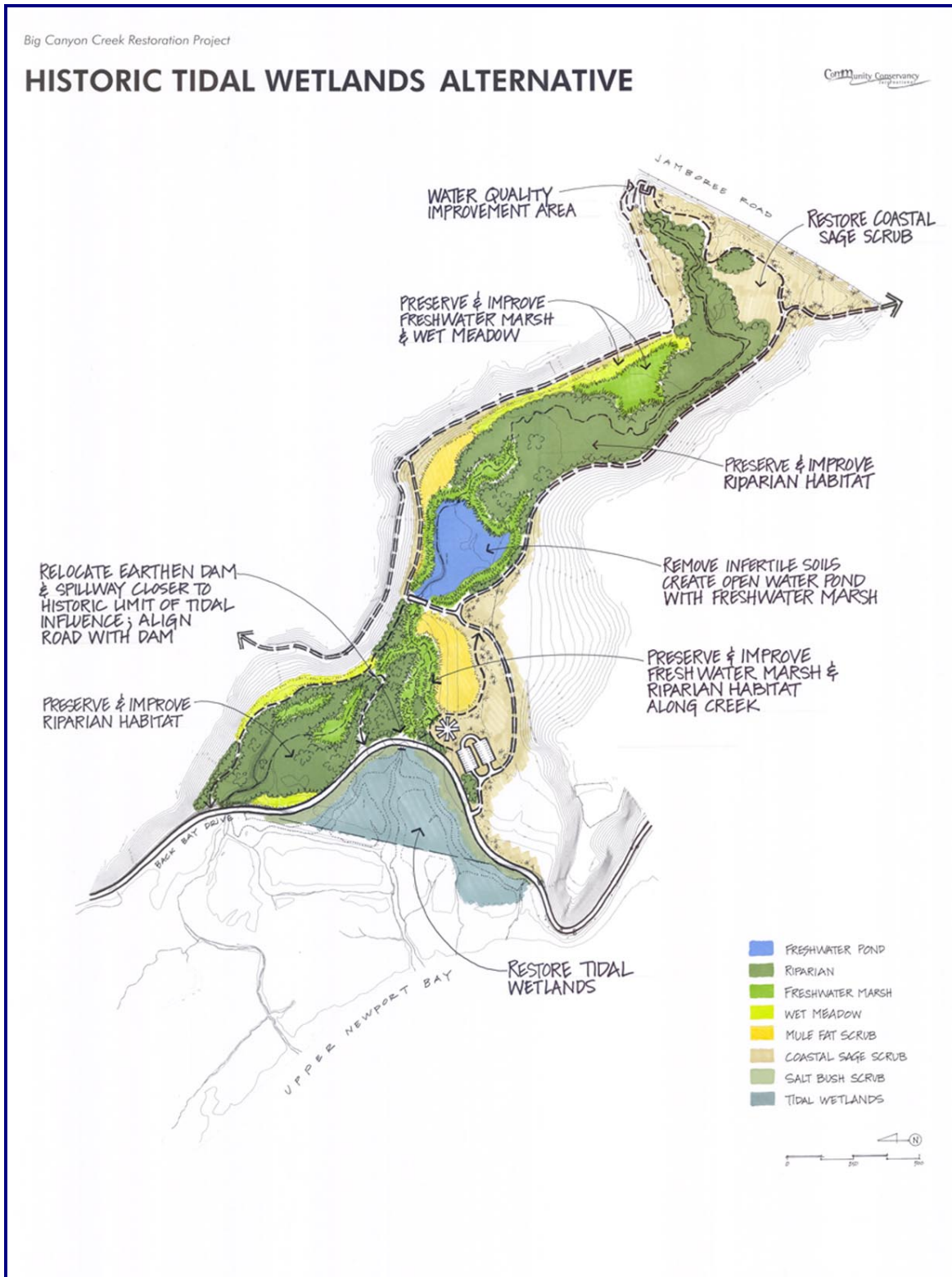


Exhibit C

PROFESSIONAL SERVICES AGREEMENT WITH [ADD NAME OF PERSON/COMPANY] FOR [PROJECT TITLE] [please use latest version]

THIS AGREEMENT is made and entered into as of this ____ day of _____, 200____, by and between the CITY OF NEWPORT BEACH, a Municipal Corporation ("City"), and _____, a [type of business, i.e., an individual, a partnership, a joint venture, a corporation or some other business entity] whose address is _____, California, _____ ("Consultant"), and is made with reference to the following:

RECITALS

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.
- B. City is planning to **(insert description of what is being planned)**
- C. City desires to engage Consultant to **(describe Consultant's services here)** ("Project").
- D. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement.
- E. The principal member of Consultant for purposes of Project, shall be _____
- F. City has solicited and received a proposal from Consultant, has reviewed the previous experience and evaluated the expertise of Consultant, and desires to retain Consultant to render professional services under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM

The term of this Agreement shall commence on the above written date, and shall terminate on the ____ day of _____, 200____, unless terminated earlier as set forth herein.

2. SERVICES TO BE PERFORMED

Consultant shall diligently perform all the services described in the Scope of Services attached hereto as Exhibit A and incorporated herein by reference. The City may elect to delete certain tasks of the Scope of Services at its sole discretion.

3. TIME OF PERFORMANCE

Time is of the essence in the performance of services under this Agreement and Consultant shall perform the services in accordance with the schedule included in Exhibit A. The failure

by Consultant to strictly adhere to the schedule may result in termination of this Agreement by City.

[Option B – Use in Place of Above Paragraph for Contracts Without Firm Schedule]

Time is of the essence in the performance of services under this Agreement and the services shall be performed to completion in a diligent and timely manner. The failure by Consultant to perform the services in a diligent and timely manner may result in termination of this Agreement by City.

Notwithstanding the foregoing, Consultant shall not be responsible for delays due to causes beyond Consultant's reasonable control. However, in the case of any such delay in the services to be provided for the Project, each party hereby agrees to provide notice to the other party so that all delays can be addressed.

- 3.1 Consultant shall submit all requests for extensions of time for performance in writing to the Project Administrator not later than ten (10) calendar days after the start of the condition that purportedly causes a delay. The Project Administrator shall review all such requests and may grant reasonable time extensions for unforeseeable delays that are beyond Consultant's control.
- 3.2 For all time periods not specifically set forth herein, Consultant shall respond in the most expedient and appropriate manner under the circumstances, by either telephone, fax, hand-delivery or mail.
- 3.3 **[Optional Provision]** The parties agree that it is extremely difficult and impractical to determine and fix the actual damages that City will sustain should the Consultant fail to complete the work called for in this Agreement. Should Consultant fail to complete the work called for in this Agreement, Consultant agrees to the deduction of liquidated damages in the sum of _____ (\$_____) per day for every day beyond the date scheduled for completion provided in Section _____.

4. COMPENSATION TO CONSULTANT

City shall pay Consultant for the services on a time and expense not-to-exceed basis in accordance with the provisions of this Section and the Schedule of Billing Rates attached hereto as Exhibit B and incorporated herein by reference. Consultant's compensation for all work performed in accordance with this Agreement, including all reimbursable items and subconsultant fees, shall not exceed _____ **Dollars and no/100 (\$_____)** without additional authorization from City. No billing rate changes shall be made during the term of this Agreement without the prior written approval of City.

- 4.1 Consultant shall submit monthly invoices to City describing the work performed the preceding month. Consultant's bills shall include the name of the person who performed the work, a brief description of the services performed and/or the specific task in the Scope of Services to which it relates, the date the services were performed, the number of hours spent on all work billed on an hourly basis, and a description of any reimbursable expenditures. City shall pay Consultant no later than thirty (30) days after approval of the monthly invoice by City staff.

- 4.2** City shall reimburse Consultant only for those costs or expenses specifically approved in this Agreement, or specifically approved in advance by City. Unless otherwise approved, such costs shall be limited and include nothing more than the following costs incurred by Consultant:
- A. The actual costs of subconsultants for performance of any of the services that Consultant agrees to render pursuant to this Agreement, which have been approved in advance by City and awarded in accordance with this Agreement.
 - B. Approved reproduction charges.
 - C. Actual costs and/or other costs and/or payments specifically authorized in advance in writing and incurred by Consultant in the performance of this Agreement.
- 4.3** Consultant shall not receive any compensation for Extra Work without the prior written authorization of City. As used herein, "Extra Work" means any work that is determined by City to be necessary for the proper completion of the Project, but which is not included within the Scope of Services and which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Compensation for any authorized Extra Work shall be paid in accordance with the Schedule of Billing Rates as set forth in Exhibit B.
- 4.4** **[Optional Provision]** Notwithstanding any other provision of this Agreement, when payments made by City equal 90% of the maximum fee provided for in this Agreement, no further payments shall be made until City has accepted the final work under this Agreement.

5. PROJECT MANAGER

Consultant shall designate a Project Manager, who shall coordinate all phases of the Project. This Project Manager shall be available to City at all reasonable times during the Agreement term. Consultant has designated _____ to be its Project Manager. Consultant shall not remove or reassign the Project Manager or any personnel listed in Exhibit A or assign any new or replacement personnel to the Project without the prior written consent of City. City's approval shall not be unreasonably withheld with respect to the removal or assignment of non-key personnel.

Consultant, at the sole discretion of City, shall remove from the Project any of its personnel assigned to the performance of services upon written request of City. Consultant warrants that it will continuously furnish the necessary personnel to complete the Project on a timely basis as contemplated by this Agreement.

[Optional Provision] If Consultant is performing inspection or construction management services for City, the Project Manager and any other assigned staff shall be equipped with a Nextel Plus type cellular/direct connect unit to communicate with City staff. Consultant's Nextel Direct Connect I.D. number will be provided to City to be programmed into City Nextel units, and vice versa.

6. ADMINISTRATION

This Agreement will be administered by the **Public Works Department**. _____ shall be the Project Administrator and shall have the authority to act for City under this Agreement. The Project Administrator or his/her authorized representative shall represent City in all matters pertaining to the services to be rendered pursuant to this Agreement.

7. CITY'S RESPONSIBILITIES

In order to assist Consultant in the execution of its responsibilities under this Agreement, City agrees to, where applicable:

- A. Provide access to, and upon request of Consultant, one copy of all existing relevant information on file at City. City will provide all such materials in a timely manner so as not to cause delays in Consultant's work schedule.
- B. Provide blueprinting and other services through City's reproduction company for bid documents. Consultant will be required to coordinate the required bid documents with City's reproduction company. All other reproduction will be the responsibility of Consultant and as defined above.
- C. Provide usable life of facilities criteria and information with regards to new facilities or facilities to be rehabilitated.

8. STANDARD OF CARE

- 8.1 All of the services shall be performed by Consultant or under Consultant's supervision. Consultant represents that it possesses the professional and technical personnel required to perform the services required by this Agreement, and that it will perform all services in a manner commensurate with community professional standards. All services shall be performed by qualified and experienced personnel who are not employed by City, nor have any contractual relationship with City.
- 8.2 Consultant represents and warrants to City that it has or shall obtain all licenses, permits, qualifications, insurance and approvals of whatsoever nature that are legally required of Consultant to practice its profession. Consultant further represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any and all licenses, permits, insurance and other approvals that are legally required of Consultant to practice its profession. Consultant shall maintain a City of Newport Beach business license during the term of this Agreement.
- 8.3 Consultant shall not be responsible for delay, nor shall Consultant be responsible for damages or be in default or deemed to be in default by reason of strikes, lockouts, accidents, or acts of God, or the failure of City to furnish timely information or to approve or disapprove Consultant's work promptly, or delay or faulty performance by City, contractors, or governmental agencies.
- 8.4 **[Optional Provision]** The term Construction Management or Construction Manager does not imply that Consultant is engaged in any aspect of the physical work of

construction contracting. Consultant shall not have control over or be in charge of and shall not be responsible for the project's design, City's project contractor ("Contractor"), construction means, methods, techniques, sequences or procedures, or for any health or safety precautions and programs in connection with the work. These duties are and shall remain the sole responsibility of the Contractor. Consultant shall not be responsible for the Contractors' schedules or failure to carry out the work in accordance with the contract documents. Consultant shall not have control over or be responsible for acts or omissions of City, Design Engineer, Contractor, Subcontractors, or their Agents or employees, or of any other persons performing portions of the work.

9. HOLD HARMLESS

[OPTION A: For Use In All Contracts Except Those With Architects, Engineers And Surveyors]

To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents and employees (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to any work performed or services provided under this Agreement (including, without limitation, defects in workmanship or materials and/or design defects [if the design originated with Consultant]) or Consultant's presence or activities conducted on the Project (including the negligent and/or willful acts, errors and/or omissions of Consultant, its principals, officers, agents, employees, vendors, suppliers, consultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them).

Notwithstanding the foregoing, nothing herein shall be construed to require Consultant to indemnify the Indemnified Parties from any Claim arising from the sole negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorney's fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the Consultant.

[OPTION B: For Use With Design Professionals (Engineers, Surveyors And Architects)]

To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents and employees (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to any work negligently performed or services provided under this Agreement (including, without limitation, defects in workmanship

or materials and/or design defects [if the design originated with Consultant] or Consultant's presence or activities conducted on the Project (including the negligent and/or willful acts, errors and/or omissions of Consultant, its principals, officers, agents, employees, vendors, suppliers, consultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them).

Notwithstanding the foregoing, nothing herein shall be construed to require Consultant to indemnify the Indemnified Parties from any Claim arising from the active negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorney's fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the Consultant.

10. INDEPENDENT CONTRACTOR

It is understood that City retains Consultant on an independent contractor basis and Consultant is not an agent or employee of City. The manner and means of conducting the work are under the control of Consultant, except to the extent they are limited by statute, rule or regulation and the expressed terms of this Agreement. Nothing in this Agreement shall be deemed to constitute approval for Consultant or any of Consultant's employees or agents, to be the agents or employees of City. Consultant shall have the responsibility for and control over the means of performing the work, provided that Consultant is in compliance with the terms of this Agreement. Anything in this Agreement that may appear to give City the right to direct Consultant as to the details of the performance or to exercise a measure of control over Consultant shall mean only that Consultant shall follow the desires of City with respect to the results of the services.

11. COOPERATION

Consultant agrees to work closely and cooperate fully with City's designated Project Administrator and any other agencies that may have jurisdiction or interest in the work to be performed. City agrees to cooperate with the Consultant on the Project.

12. CITY POLICY

Consultant shall discuss and review all matters relating to policy and Project direction with City's Project Administrator in advance of all critical decision points in order to ensure the Project proceeds in a manner consistent with City goals and policies.

13. PROGRESS

Consultant is responsible for keeping the Project Administrator and/or his/her duly authorized designee informed on a regular basis regarding the status and progress of the Project, activities performed and planned, and any meetings that have been scheduled or are desired.

14. INSURANCE

Without limiting Consultant's indemnification of City, and prior to commencement of work, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, a policy or policies of liability insurance of the type and amounts described below and in a form satisfactory to City.

- A. Certificates of Insurance. Consultant shall provide certificates of insurance with original endorsements to City as evidence of the insurance coverage required herein. Insurance certificates must be approved by City's Risk Manager prior to commencement of performance or issuance of any permit. Current certification of insurance shall be kept on file with City's at all times during the term of this Agreement.
- B. Signature. A person authorized by the insurer to bind coverage on its behalf shall sign certification of all required policies.
- C. Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.
- D. Coverage Requirements.
- i. Workers' Compensation Coverage. Consultant shall maintain Workers' Compensation Insurance and Employer's Liability Insurance for his or her employees in accordance with the laws of the State of California. In addition, Consultant shall require each subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California for all of the subcontractor's employees. Any notice of cancellation or non-renewal of all Workers' Compensation policies must be received by City at least thirty (30) calendar days prior to such change. The insurer shall agree to waive all rights of subrogation against City, its officers, agents, employees and volunteers for losses arising from work performed by Consultant for City.
 - ii. General Liability Coverage. Consultant shall maintain commercial general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage, including without limitation, contractual liability. If commercial general liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement, or the general aggregate limit shall be at least twice the required occurrence limit.
 - iii. Automobile Liability Coverage. Consultant shall maintain automobile insurance covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit for each occurrence.

- iv. Professional Errors and Omissions Insurance. Consultant shall maintain professional errors and omissions insurance, which covers the services to be performed in connection with this Agreement in the minimum amount of one million dollars (\$1,000,000).
- E. Endorsements. Each general liability and automobile liability insurance policy shall be endorsed with the following specific language:
- i. The City, its elected or appointed officers, officials, employees, agents and volunteers are to be covered as additional insureds with respect to liability arising out of work performed by or on behalf of the Consultant.
 - ii. This policy shall be considered primary insurance as respects to City, its elected or appointed officers, officials, employees, agents and volunteers as respects to all claims, losses, or liability arising directly or indirectly from the Consultant's operations or services provided to City. Any insurance maintained by City, including any self-insured retention City may have, shall be considered excess insurance only and not contributory with the insurance provided hereunder.
 - iii. This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.
 - iv. The insurer waives all rights of subrogation against City, its elected or appointed officers, officials, employees, agents and volunteers.
 - v. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its elected or appointed officers, officials, employees, agents or volunteers.
 - vi. The insurance provided by this policy shall not be suspended, voided, canceled, or reduced in coverage or in limits, by either party except after thirty (30) calendar days written notice has been received by City.
- F. Timely Notice of Claims. Consultant shall give City prompt and timely notice of claim made or suit instituted arising out of or resulting from Consultant's performance under this Agreement.
- G. Additional Insurance. Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

15. PROHIBITION AGAINST ASSIGNMENTS AND TRANSFERS

Except as specifically authorized under this Agreement, the services to be provided under this Agreement shall not be assigned, transferred contracted or subcontracted out without the prior written approval of City. Any of the following shall be construed as an assignment: The sale,

assignment, transfer or other disposition of any of the issued and outstanding capital stock of Consultant, or of the interest of any general partner or joint venturer or syndicate member or cotenant if Consultant is a partnership or joint-venture or syndicate or cotenancy, which shall result in changing the control of Consultant. Control means fifty percent (50%) or more of the voting power, or twenty-five percent (25%) or more of the assets of the corporation, partnership or joint-venture.

16. SUBCONTRACTING

[OPTION A: No Subcontractors] The parties recognize that a substantial inducement to City for entering into this Agreement is the professional reputation, experience and competence of Consultant. Assignments of any or all rights, duties or obligations of the Consultant under this Agreement will be permitted only with the express written consent of City. Consultant shall not subcontract any portion of the work to be performed under this Agreement without the prior written authorization of City.

[OPTION B: Subcontracts Authorized] City and Consultant agree that subconsultants may be used to complete the work outlined in the Scope of Services. The subconsultants authorized by City to perform work on this Project are identified in Exhibit A. Consultant shall be fully responsible to City for all acts and omissions of the subcontractor. Nothing in this Agreement shall create any contractual relationship between City and subcontractor nor shall it create any obligation on the part of City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise required by law. Except as specifically authorized herein, the services to be provided under this Agreement shall not be otherwise assigned, transferred, contracted or subcontracted out without the prior written approval of City.

17. OWNERSHIP OF DOCUMENTS

Each and every report, draft, map, record, plan, document and other writing produced (hereinafter "Documents"), prepared or caused to be prepared by Consultant, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Consultant or any other party. Consultant shall, at Consultant's expense, provide such Documents to City upon prior written request.

Documents, including drawings and specifications, prepared by Consultant pursuant to this Agreement are not intended or represented to be suitable for reuse by City or others on any other project. Any use of completed Documents for other projects and any use of incomplete Documents without specific written authorization from Consultant will be at City's sole risk and without liability to Consultant. Further, any and all liability arising out of changes made to Consultant's deliverables under this Agreement by City or persons other than Consultant is waived against Consultant and City assumes full responsibility for such changes unless City has given Consultant prior notice and has received from Consultant written consent for such changes.

[Optional Paragraph] All improvement and/or construction plans shall be prepared with indelible waterproof ink or electrostatically plotted on standard 24-inch by 36-inch Mylar with a minimum thickness of three mils. Consultant shall provide to City 'As-Built' drawings, and a

copy of digital ACAD and tiff image files of all final sheets within ninety (90) days after finalization of the Project. For more detailed requirements, a copy of the City of Newport Beach Standard Design Requirements is available from the City's Public Works Department.

18. COMPUTER DELIVERABLES

CADD data delivered to City shall include the professional stamp of the engineer or architect in charge of or responsible for the work. City agrees that Consultant shall not be liable for claims, liabilities or losses arising out of, or connected with (a) the modification or misuse by City, or anyone authorized by City, of CADD data; (b) the decline of accuracy or readability of CADD data due to inappropriate storage conditions or duration; or (c) any use by City, or anyone authorized by City, of CADD data for additions to this Project, for the completion of this Project by others, or for any other Project, excepting only such use as is authorized, in writing, by Consultant. By acceptance of CADD data, City agrees to indemnify Consultant for damages and liability resulting from the modification or misuse of such CADD data. All original drawings shall be submitted to City in the version of AutoCAD used by CITY in ".dwg" file format on a CD, and should comply with the City's digital submission requirements for Improvement Plans. The City will provide AutoCAD file of City Title Sheets. All written documents shall be transmitted to City in the City's latest adopted version of Microsoft Word and Excel.

19. CONFIDENTIALITY

All Documents, including drafts, preliminary drawings or plans, notes and communications that result from the services in this Agreement, shall be kept confidential unless City authorizes in writing the release of information.

20. OPINION OF COST

Any opinion of the construction cost prepared by Consultant represents his/her judgment as a design professional and is supplied for the general guidance of City. Since Consultant has no control over the cost of labor and material, or over competitive bidding or market conditions, Consultant does not guarantee the accuracy of such opinions as compared to contractor bids or actual cost to City.

21. INTELLECTUAL PROPERTY INDEMNITY

The Consultant shall defend and indemnify City, its agents, officers, representatives and employees against any and all liability, including costs, for infringement of any United States' letters patent, trademark, or copyright infringement, including costs, contained in Consultant's drawings and specifications provided under this Agreement.

22. RECORDS

Consultant shall keep records and invoices in connection with the work to be performed under this Agreement. Consultant shall maintain complete and accurate records with respect to the costs incurred under this Agreement and any services, expenditures and disbursements charged to City, for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such records and

invoices shall be clearly identifiable. Consultant shall allow a representative of City to examine, audit and make transcripts or copies of such records and invoices during regular business hours. Consultant shall allow inspection of all work, data, Documents, proceedings and activities related to the Agreement for a period of three (3) years from the date of final payment to Consultant under this Agreement.

23. WITHHOLDINGS

City may withhold payment to Consultant of any disputed sums until satisfaction of the dispute with respect to such payment. Such withholding shall not be deemed to constitute a failure to pay according to the terms of this Agreement. Consultant shall not discontinue work as a result of such withholding. Consultant shall have an immediate right to appeal to the City Manager or his/her designee with respect to such disputed sums. Consultant shall be entitled to receive interest on any withheld sums at the rate of return that City earned on its investments during the time period, from the date of withholding of any amounts found to have been improperly withheld.

24. ERRORS AND OMISSIONS

In the event of errors or omissions that are due to the negligence or professional inexperience of Consultant which result in expense to City greater than what would have resulted if there were not errors or omissions in the work accomplished by Consultant, the additional design, construction and/or restoration expense shall be borne by Consultant. Nothing in this paragraph is intended to limit City's rights under any other sections of this Agreement.

25. CITY'S RIGHT TO EMPLOY OTHER CONSULTANTS

City reserves the right to employ other Consultants in connection with the Project.

26. CONFLICTS OF INTEREST

The Consultant or its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "Act"), which (1) requires such persons to disclose any financial interest that may foreseeably be materially affected by the work performed under this Agreement, and (2) prohibits such persons from making, or participating in making, decisions that will foreseeably financially affect such interest.

If subject to the Act, Consultant shall conform to all requirements of the Act. Failure to do so constitutes a material breach and is grounds for immediate termination of this Agreement by City. Consultant shall indemnify and hold harmless City for any and all claims for damages resulting from Consultant's violation of this Section.

27. NOTICES

All notices, demands, requests or approvals to be given under the terms of this Agreement shall be given in writing, to City by Consultant and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided. All notices, demands, requests or approvals from Consultant to City shall be addressed to City at:

Attn: Dave Kiff, Assistant City Manager
City of Newport Beach
3300 Newport Boulevard
Newport Beach, CA, 92663
Phone: 949-644-3002
Fax: 949-644-3020
dkiff@city.newport-beach.ca.us

All notices, demands, requests or approvals from CITY to Consultant shall be addressed to Consultant at:

Attention: _____

Phone:
Fax:
E-Mail:

28. TERMINATION

In the event that either party fails or refuses to perform any of the provisions of this Agreement at the time and in the manner required, that party shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of two (2) calendar days, or if more than two (2) calendar days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within two (2) calendar days after receipt of written notice of default, specifying the nature of such default and the steps necessary to cure such default, the non-defaulting party may terminate the Agreement forthwith by giving to the defaulting party written notice thereof.

Notwithstanding the above provisions, City shall have the right, at its sole discretion and without cause, of terminating this Agreement at any time by giving seven (7) calendar days prior written notice to Consultant. In the event of termination under this Section, City shall pay Consultant for services satisfactorily performed and costs incurred up to the effective date of termination for which Consultant has not been previously paid. On the effective date of termination, Consultant shall deliver to City all reports, Documents and other information developed or accumulated in the performance of this Agreement, whether in draft or final form.

29. COMPLIANCE WITH ALL LAWS

Consultant shall at its own cost and expense comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted. In addition, all work prepared by Consultant shall conform to applicable City, county, state and federal laws, rules, regulations and permit requirements and be subject to approval of the Project Administrator and City.

30. WAIVER

A waiver by either party of any breach, of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

31. INTEGRATED CONTRACT

This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein.

32. CONFLICTS OR INCONSISTENCIES

In the event there are any conflicts or inconsistencies between this Agreement and the Scope of Services or any other attachments attached hereto, the terms of this Agreement shall govern.

33. AMENDMENTS

This Agreement may be modified or amended only by a written document executed by both Consultant and City and approved as to form by the City Attorney.

34. SEVERABILITY

If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

35. CONTROLLING LAW AND VENUE

The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange.

36. EQUAL OPPORTUNITY EMPLOYMENT

Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first written above.

APPROVED AS TO FORM:

By: _____
Robin L. Clauson
City Attorney

ATTEST:

By: _____
LaVonne Harkless,
City Clerk

CITY OF NEWPORT BEACH,
A Municipal Corporation

By: _____
for the City of Newport Beach

CONSULTANT:

By: _____

(Include Title of Authorized Signatory)
Print Name: _____

Attachments: Exhibit A (to this Agreement) – Scope of Services
 Exhibit B (to this Agreement) – Schedule of Billing Rates

Exhibit D – City Attorney’s Office PSA Guidelines

TO : Professional Services Contractors
FROM: City Attorney’s Office
RE : Professional Services Agreement Guidelines
DATE : AUGUST 2005



Thank you for your interest in providing professional services to the City of Newport Beach. Because the City values your time and contributions, the City Attorney’s Office has developed the following guidelines for consultants entering Professional Services Agreements with the City of Newport Beach. Following the guidelines will help consultants expedite processing and approval of their agreements with the City, and minimize consultant staff time needed to finalize the contract.

- 1) **Contents of the Agreement:** Most contracts for professional services entered into by the City include the following elements:
 - a) **Professional Services Agreement** -- A standard contract incorporating the City’s pre-approved terms. It is the City’s policy to minimize any deviations from this standard agreement. Any requested changes will delay and possibly disqualify the consultant from providing professional services to the City.
 - b) **Scope of Services** (Exhibit A)-- A document written by the Consultant, describing the work the Consultant is agreeing to do. (Contents detailed in (3), below.)
 - c) **Schedule of Billing Rates** (Exhibit B) – Table or list of hourly rates at which Consultant will bill for its employees’ service and the fee for each work task as listed in the Scope of Services (Exhibit A). These rates will apply for the duration of the contract, and for extra work. (Contents detailed in (4), below.)

As appropriate, other documents and exhibits may also be included.

- 2) **Compensation:** The maximum amount of compensation the consultant shall receive shall be specified in Section 4 of the Professional Services Agreement, titled “Compensation to Consultant.” In most situations, the City of Newport Beach will only enter agreements that compensate consultants on a “time and expense not to exceed” basis. Consultants shall provide the City with set billing rates for the individual members of their firms, or for employee classifications within their firms. Consultants shall bill the City for time spent by its employees, as well as any approved

reimbursable expenses incurred, at the time intervals specified in the Professional Services Agreement. However, at no point will the total amount billed over the course of the contract exceed the “not to exceed” amount specified in the Agreement. The City does not enter into contracts that contain open ended reimbursables. You must provide an allowance for this item and in no case can this allowance be exceeded without authorization by the City.

If necessary extra work arises in the course of the contract that the City and consultant did not reasonably anticipate would arise when they entered the contract, the performance and payment for that work are controlled by the Professional Services Agreement’s Extra Work provisions. If the City approves and agrees to pay for the extra work in writing prior to the performance of the work, the consultant shall be compensated for the work in accordance with the billing rates the consultant has listed in the Schedule of Billing Rates.

- 3) **Contents of Scope of Services (Exhibit A)**: The consultant shall provide the City with a Scope of Services letter, to be incorporated by reference into the Agreement. The Scope of Services should provide *only* a brief description of the project, a reasonably detailed description of the services the consultant will be providing, a project schedule, and the names of key personnel who will be working on the project. Additional information which the consultant thinks is relevant to its performance of the contract (professional background of key personnel, past experience in similar projects, etc.) is welcome in the Scope of Services letter but not generally required. **The cost of services should not be provided here. Including the cost of services in this document may delay approval of the Agreement.** The Scope of Services should be printed on the consultant’s letterhead and signed by an authorized representative of the consultant.
- 4) **Contents of Schedule of Billing Rates (Exhibit B)**: The consultant should provide the City with a Schedule of Billing Rates, to be incorporated by reference into the Agreement. The Schedule of Billing Rates shall provide the hourly rates at which the consultant shall bill for the personnel or personnel classifications which may be working on the project and shall list the fees associated with each work task as shown on the scope of services (Exhibit A). Fees for reimbursable expenses which the consultant anticipates incurring shall also be provided here. Reimbursables shall be included in the “not to exceed” amount of the proposal under Paragraph 2 of this agreement.
- 5) **Conflicting Terms**: If the attachments or exhibits contain terms that conflict with the terms of the Professional Services Agreement, the terms of the Agreement will control. For purposes of consistency and professionalism, however, the City Attorney’s office will return any documents with conflicting terms to the consultant for correction or clarification. This will result in delay of the agreement’s approval, and require additional consultant and City staff time. Consultants can avoid this by carefully checking their documents before submission to the City Attorney’s office and removing

conflicting language. (Example: The City's Professional Services Agreement specifies that invoices must be paid no later than 30 days after approval of the invoice by City staff. Standard language on some consultants' Schedule of Billing Rates provides that invoices are past due 30 days after date of invoice. This is a conflicting term, and must be resolved before the agreement can be approved and executed.) The following terms shall not be included in Exhibits A and B:

- Reimbursable charges (except as provided for under a reimbursable allowance)
- Surcharges for Reimbursables and Subconsultants
- Basis of charges
- Mileage charges (except as provided for under a reimbursable allowance)
- Effective date
- Expenses (except as provided for under a reimbursable allowance)
- Terms of billing
- Terms of payment
- Rate schedule terms
- Invoicing terms
- Standard of Care
- Force Majeur
- Electronic file date changes
- Indemnification language
- Termination of contract
- Revocation clause
- Legal matters such as deposition testimony, expert witness testimony, preparation for trial and court appearances

6) **Deviations from Standard Terms:** The standard terms of the Professional Services Agreement were developed by the City to protect all parties and make it feasible for the City to process the large number of contracts it enters each year. To maintain the purpose of the standard agreement, the City will not depart from its standard, pre-approved contract terms unless a unique situation warrants a deviation from the standard terms. If a unique situation warrants deviation from the standard terms, the City Attorney's office will approve the change only if the head of the City department forming the contract has seen and approved the deviation. In some cases, the City may also require approval from its Risk Manager.

7) **Insurance Requirements:** The Agreement provisions require you to furnish **original certificates of insurance and original endorsements in strict compliance with all of the requirements outlined in Professional Services Agreement Section 14. INSURANCE.** An individual authorized by the insurer to bind coverage on its behalf must execute these documents. Also, the **Cancellation Clause shall read:** "Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will mail **10 days** written notice to the certificate holder named to the left." All certificates and endorsements **must** be received and approved by the City prior to the commencement of the work. **We suggest that you fax a complete copy of Section 14. INSURANCE of the Agreement to your insurance carrier to**

expedite the process. There are no exceptions to our insurance requirements.

8) Execution of Agreement: All Professional Services Agreements must be signed by a representative or representatives of the consultant who has or have the capacity to legally bind the consulting company. Different legal entities have different requirements.

Corporations: If the consulting company is a corporation, the Agreement must be executed in the corporate name and must be signed by **either:**

1. An officer of the corporation who is either the chairman of the board, the president of the corporation, or any vice president of the corporation (the executive category of officers), **and** an officer who is either the corporate secretary, any assistant corporate secretary, the chief financial officer, or any assistant treasurer of the corporation (the financial category of officers.) (two signatures required) **Or;**
2. An officer of the corporation who holds an office from the executive category of officers **and** an office from the financial category of officers (one signature required). **Or;**
3. An individual who has been given authority by the corporation to sign for and bind the corporation (usually by board resolution) (one signature plus proof of authorization required.)

Limited Liability Corporation: If the consulting company is an LLC, any member or manager who has authority to bind the corporation may sign.

General Partnership: Any partner with authority to bind the partnership may sign, but the signature line shall indicate that the partner is signing on behalf of the partnership.

Limited Partnership: An agreement with a limited partnership shall be signed by the general partner. The signature line shall indicate the name and title of the general partner, and indicate that the general partner is signing on behalf of the partnership.

Sole Proprietorship: If the consulting company is a sole proprietorship, it shall be signed by the sole proprietor. If the individual is doing business under a fictitious name, the Agreement must be signed by all persons having an interest in the business, and the fictitious name must be signed also.

Work should not start until your firm receives a fully executed Agreement.

We ask that Consultants follow these guidelines as it can save approval time and prevent duplication of effort on the part of Consultants and City staff. Thank you for your cooperation and your assistance in our efforts to provide the highest quality of service to the residents and business of Newport Beach.

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