



CITY OF DANA POINT

REQUEST FOR PROPOSALS

GENERAL PLAN UPDATE (Amendments of the Land Use, Circulation and Economic Development Elements)

JULY 2023

Notice is hereby given that the City of Dana Point is requesting proposals (RFP) from qualified consulting firms and their subconsultants to assist in the preparation of a General Plan Update and required Environmental Impact Report (EIR).

SCHEDULE

45-Day RFP Release	Monday, July 24, 2023
Proposal Submittal Deadline	Thursday, September 7, 2023
Consultant Interviews	Week of September 11, 2023
Consultant Selection/Contract Negotiation	Week of September 18, 2023
City Council Approval of Contract	Tuesday, October 3, 2023

Proposals shall be submitted electronically via email **no later than Thursday, September 7, 2023 at 5:00 p.m.**, labeled as “RFP – General Plan Update” and addressed to:

Belinda Deines, Principal Planner
City of Dana Point
33282 Golden Lantern, Suite 209
Dana Point, CA 92629
(949) 248-3570
bdeines@danapoint.org

The City of Dana Point reserves the right to reject any and all proposals or portions thereof, to accept a proposal or portion thereof, and to waive minor technicalities.

PROJECT OVERVIEW

The City of Dana Point (City) invites qualified consultant teams (Consultant) to respond to this Request for Proposals (RFP) to assist in the completion of the Dana Point General Plan Update – Phase 2.

In May 2022, the City Council initiated a General Plan Update (GPU) and directed City staff to begin work in a phased approach. Phase 1 included a visioning process to create awareness and gather public input with a dedicated community engagement program and communications plan. Additional information regarding the Phase 1 visioning process can be found at: www.plandanapoint.com. The vision statement and guiding principles prepared in Phase 1 are intended to facilitate policy development for Phase 2.

Phase 2 includes preparation of:

1. A General Plan Update, specifically focused on updating the Land Use, Circulation and Economic Development elements, to address the immediate needs of the community more efficiently. Update of the remaining elements, Urban Design, Conservation & Open Space, Noise, and Public Facilities/Growth Management will immediately follow, but should not be included in the subject scope. In 2022, the City completed updates of its 2021-2029 Housing Element and Public Safety Element; therefore, those elements are also not included in the scope of this proposal.

It is important to note that the Land Use, Open Space/Conservation, and Urban Design Elements constitute the City's Local Coastal Program (LCP). Any modifications to the LCP are subject to California Coastal Commission certification.

2. Environmental Impact Report (EIR) for the General Plan Update. The EIR shall be prepared in full compliance with applicable California Environmental Quality Act (CEQA) regulations for the General Plan Update. Following adoption of the General Plan Update, the City will undertake the necessary steps to update the LCP and Dana Point Zoning Code. The General Plan EIR is anticipated to serve as the base CEQA document and environmental analysis for the LCP and Zoning Code updates as well.

The update of the City's existing General Plan shall incorporate legislative requirements, best planning practices, and new relevant topics. The selected Consultant must be multi-disciplinary and include expertise in all appropriate areas of the General Plan. In addition to compliance with adopted regulations and policies, the consultant shall provide recommendations regarding the use of the State of California Office of Planning and Research General Plan Guidelines (2017).

The Consultant will take primary responsibility for the project, collaborating with City staff to prepare an updated General Plan, Environmental Impact Report, background, technical documents, and all other deliverables. The Scope of Work involves ongoing public outreach throughout the planning process.

The GPU will be a collaborative, multi-year engagement of the City’s decision makers, stakeholders, community members, various City staff, and a highly skilled consulting team.

CITY BACKGROUND

Past: The City of Dana Point is a General Law city incorporated in 1989 and is named after Richard Henry Dana, Jr. (1815-1882), a Harvard-trained lawyer, seaman, and author of the classic sea journal, *Two Years Before the Mast* (1840). In his journal, Dana documents his voyage from Boston around Cape Horn to California on the merchant ship, Pilgrim. Therein, Dana describes the area once known as Capistrano Bay, as “the most romantic spot in California.” Today, Capistrano Bay is known as Dana Point. Dana Point is renowned for its natural beauty and picturesque harbor. The City’s coastline boasts breathtaking cliffs, sandy beaches, and panoramic ocean views. Dana Point is a popular destination for outdoor enthusiasts, offering activities like surfing, fishing, boating, and whale watching.

Present: Located in southern Orange County, California, Dana Point is approximately halfway between Los Angeles and San Diego, and is bordered by the cities of Laguna Beach and Laguna Niguel to the north, San Juan Capistrano to the east, and San Clemente to the south. According to the California Department of Finance, Dana Point is home to 32,821 residents as of 2021. The City is characterized by nearly seven miles of prominent coastal bluffs and rolling hills along the Pacific Ocean. The most noteworthy of these bluffs is a unique promontory known as the Headlands, which overlooks Dana Point Harbor, one of the most significant landmarks of the Orange County coastline.

Future: Dana Point’s mission is to set the standard as a vibrant, world-class city. The City’s Strategic Plan (2022) identifies the following goals:

1. **Maintain and ensure public safety** – Dana Point prides itself in maintaining and creating a safe environment for its residents and visitors;
2. **Maintain and improve infrastructure and environmental sustainability** – Maintain City assets and the natural environment with safe, clean, and quality conditions for the enjoyment of residents and visitors;
3. **Foster economic health and prosperity** – Promote a healthy and growing economy reflecting the community’s mission and values;
4. **Effective, efficient, and innovative city administration** – Provide an effective and efficient government to serve our community with integrity; and
5. **Maintain and enhance Dana Point’s unique sense of place** – Honor Dana Point’s unique culture and sense of community.

The City’s Strategic Plan Goal 3 identifies completion of the General Plan update as a project objective for effective and efficient regulations managing the City’s land use.

GOALS FOR GENERAL PLAN UPDATE - PHASE 2

The following goals provide guidance on the City's priorities for the GPU Phase 2:

- **Update of Land Use, Circulation and Economic Development Elements:** The Consultant will be expected to review the City's current General Plan as it relates to applicable State legislation and identify updates needed to bring the General Plan into conformance with current State law. The scope shall be limited to amendments of the Land Use, Circulation and Economic Development elements to address the immediate needs of the community more efficiently. Update of the remaining elements, Urban Design, Conservation & Open Space, Noise, and Public Facilities/Growth Management will immediately follow, but should not be included in the subject scope.

The Housing and Public Safety Elements were updated and adopted by the City Council in 2022. The 2021-2029 Housing Element was certified by California Department of Housing and Community Development in October 2022. Therefore, updates to the Housing and Safety Elements are not included in this scope of work, though the Consultant will verify internal consistency within the General Plan.

- **Target Completion Date:** The City's goal is to complete GPU Phase 2 by no later than October 2025, approximately two years from kick-off. It is the City's priority to obtain City Council adoption of the Land Use, Circulation, and Economic Development elements and EIR certification by this target completion date.
- **Review of Existing Policies:** GPU Phase 2 will focus on updates to the General Plan by building on established policy direction provided for by the following existing documents:
 - Monarch Beach Resort Specific Plan (1997)
 - Headlands Development & Conservation Plan (2004)
 - Bicycle and Pedestrian Trail Master Plan (2006)
 - Dana Point Harbor Revitalization Plan & District Regulations (2007)
 - Parks, Recreation, and Open Space Master Plan (2013)
 - Town Center Plan (2016)
 - Citywide Parking Implementation Plan (2017)
 - Sea Level Rise Vulnerability Assessment (2019)
 - Economic and Market Profile (2021)
 - Doheny Village Plan (2022)
 - 2021-2029 Housing Element and Public Safety Element (2022)
- **Addition/Subtraction of Optional Elements:** The City seeks to evaluate whether the existing optional elements should be either: (1) retained and updated, or (2) migrated with portions of the elements relevant to the mandatory elements of the General Plan.

- **Public Outreach:** The City has committed to community engagement and public outreach during all phases of the GPU. The proposal shall specify what types of approaches and level of involvement is proposed. It is anticipated that Phase 2 will involve the formation of a General Plan Advisory Committee (GPAC).
- **User-Friendly Document:** The Dana Point General Plan should result in a graphic and illustrative document in keeping with the City’s adopted Style Guide and Plan Dana Point project branding, written in a manner that allows for flexibility rather than rigid policies. The City is open to alternative formatting in a dynamic web-based platform or another innovative format. The General Plan should reflect the City’s aspirations for the future and achieve maximum utility.
- **Implementation:** The City is committed to updating the General Plan, which would include short-, medium-, and long-term action items to implement its policies and objectives.

SCOPE OF WORK

The City intends to obtain the services of a qualified consulting team to provide the following services, including best industry and management practices that may not be explicitly stated. This RFP requests that the Consultant develop a scope of work for the General Plan Update that corresponds to the project tasks below. The core elements of the work to be conducted by the Consultant include, but are not limited to:

1. **PROJECT MANAGEMENT AND COORDINATION:** The Consultant shall manage project and coordination activities, including coordination of subconsultants and administrative tasks. Firms should be creative in proposing a team approach that demonstrates a thorough understanding of the City’s unique qualities and issues. Proposals should include a team with **extensive experience in coastal city planning issues**, land use, transportation, and environmental review.
2. **PROJECT INITIATION:** Project initiation shall establish project management and communication protocols, lead kickoff meeting with City staff, attend tour of the City with City staff, refine scope of work and project schedule, and gather data, maps, and documents. Introductory meetings with advisory bodies may be required.
3. **DOCUMENT REVIEW:** Review the City’s existing General Plan, existing draft Economic Development Element, and various land use policy documents and where appropriate, migrate the Land Use Policies into the updated General Plan elements.
4. **GENERAL PLAN UPDATE:** A General Plan Update specifically focused on updating the Land Use, Circulation, and Economic Development elements, to address the immediate needs

of the community more efficiently. Consultant shall update the General Plan using user-friendly and concise language and graphics that are easily understood by non-technical stakeholders and reflect the City's interest in exploring innovative means of structuring the General Plan. The following elements shall be updated:

- a. Land Use
- b. Circulation
- c. Economic Development

Update of the remaining elements, Urban Design, Open Space/Conservation, Noise, and Public Facilities/Growth Management will immediately follow, but should not be included in the subject scope. In 2022, the City completed updates of its 2021-2029 Housing Element and Public Safety Element; therefore, those elements are also not included in the scope of this proposal. The proposed scope of work shall include a review of these elements for the purpose of identifying potential inconsistencies.

5. **PUBLIC ENGAGEMENT:** Consultant shall prepare and implement a community outreach program to continue public participation throughout the GPU process, identifying different outreach phases with goals, objectives, and programming. The Consultant shall be expected to possess expertise in all aspects of community engagement and facilitation of all legally required meetings and hearings.
6. **GENERAL PLAN ADVISORY COMMITTEE (OPTIONAL):** The City may consider the formation of a General Plan Advisory Committee (GPAC) to serve as a sounding board and to act as ambassadors to the community. The Consultant, based on their expertise, shall include an optional task to facilitate a GPAC, propose recommendations for the GPAC's composition, as well as frequency of meetings. Lastly, the Consultant shall discuss the pros and cons of integrating a GPAC into the process.
7. **ENVIRONMENTAL IMPACT REPORT:** Consultant shall prepare all required items for CEQA compliance. Due to the nature of the elements to be amended, the need for an EIR is anticipated. The EIR shall serve as the base document for the CEQA analysis for updates to the LCP and Zoning Code.
8. **TECHNICAL STUDIES:** Consultant shall identify any required technical studies necessary to complete the GPU.
9. **HEARINGS, MEETINGS, AND EVENTS:** Proposals shall reflect the time required to prepare for, number and frequency of meetings and attend in-person:
 - a. Internal kick-off meeting with City staff
 - b. Bi-weekly or monthly check-in/coordination meetings with City staff (may consist of appropriate mix between in-person meetings and virtual calls)
 - c. GPAC Facilitation (if needed)
 - d. Community meetings/events

- e. CEQA Scoping Meeting
- f. Planning Commission workshops/meetings
- g. City Council meetings

10. ZONING CODE AND MAP CONSISTENCY RECOMMENDATIONS: Consultant shall prepare recommendations for Zoning Code and Map amendments necessary to implement the General Plan and ensure consistency with the Plan’s goals, policies, and programs. The recommendations should be provided as a summary matrix of issues that require attention, a list of next steps, and potential zoning amendments.

11. OTHER RECOMMENDATIONS (OPTIONAL): Consultant shall propose additional recommendations consistent with their experience supporting other local government agencies to meet statutory requirements.

The Proposal should specify the volume, timing, general approach, and duration of each task in a phased scope of work. The Consultant is strongly encouraged to suggest other ideas, items, structure, or partnerships that could be of value to the Dana Point community. The Proposal shall clearly and in a detailed way demonstrate the following: (1) their approach to the project; (2) an understanding of the existing information and documents; (3) needed technical studies and background reports; and (4) a proven public outreach and involvement process.

Please note that the City uses a paperless format for Planning Commission and City Council agenda items. All written documentation submitted to the City, including the proposal, project updates or reports, shall be submitted via electronic media. All draft reports and final documents shall be provided in Microsoft Word format in addition to a final PDF format. Any charts, graphs, or photographs used in the proposal, updates, or reports must be submitted in an editable, electronic media format.

PROJECT MANAGEMENT

The City’s Planning Division shall manage the consultant contract. The Consultant will be required to maintain close communication with City staff to ensure that the City’s project objectives are achieved, including cost and schedule. Consultant will be required to designate a Project Manager who will coordinate the consultant team and serve as the principal liaison to the City staff and lead the consultant team at community meetings and public hearings. Upon City Council adoption, City staff shall manage the Local Coastal Program Amendment process for California Coastal Commission re-certification of the City’s Land Use Element.

SUBMITTAL REQUIREMENTS

Proposal Format

The Proposer shall submit via email an electronic PDF version of the proposal containing the following information in the format indicated below. Incomplete proposals and those not organized according to this format may be rejected. **Faxed proposals will be rejected.**

Response to this RFP must be in the form of a proposal package, which must be submitted in the following format:

1. **Cover Page:** Attachment A is to be used as the cover page. This form must be fully completed and signed by an authorized officer of the Proposer.
2. **Statement of Certification:** Include the following on Attachment B:
 - a. A statement that the offer made in the proposal is firm and binding for 180 days from the date the proposal is opened and recorded;
 - b. A statement that all aspects of the proposal, including cost, have been determined independently, without consultation with any other Proposer or Competitor for the purpose of restricting competition;
 - c. A statement that all declarations in the proposal and attachments are true and that this shall constitute a warranty, the falsity of which will entitle the City to pursue any remedy by law;
 - d. A statement that the Proposer agrees that all aspects of the RFP and the proposal submitted shall be binding if the proposal is selected and a Contract awarded;
 - e. A statement that the Proposer agrees to provide the City with any other information the City determines is necessary for an accurate determination of the Proposer's ability to perform the services as proposed; and
 - f. A statement that the prospective Proposer, if selected, will comply with all applicable rules, laws, and regulations.
3. **Table of Contents:** All pages of the proposal, including the enclosures, must be clearly and consecutively numbered and correspond to the Table of Contents.
4. **Executive Summary:** An overview of the proposal, its highlights, your firm's interest in the project, the proposed approach to successfully complete this project, and estimated time frame (limited to two (2) pages in length).
5. **Scope of Work Methodology:** Consultant will clearly explain the methodology proposed to complete Phase 2 of this project. The proposal should include a detailed scope of work, including all project tasks identified in the scope of work section, any optional recommendations (marked separately), how the Consultant will address Dana Point's General Plan Update.

6. **List of Deliverables:** Provide a detailed list of project deliverables, specifying number of documents (draft and final), meetings, hearings, and workshops.
7. **Schedule:** The tentative project schedule (shown in weeks and months) shall identify specific tasks, milestones, and critical dates. The schedule must be in a graph format as a flow chart depicting overall project schedule, milestones, review periods, deliverable due dates, community meetings, Planning Commission hearings, and City Council hearings. Identify the focus of each meeting, personnel who will be in attendance, and expected cost.

The schedule shall reflect City Council adoption for the Land Use, Circulation, and Economic Development Elements and EIR certification by October 2025.

8. **Qualifications:** An outline of your firm’s background, qualifications, and ability to perform the services required. Provide relevant information about the firm’s capabilities, size, range of services, and length of time in existence. This also applies to the sub-consultants (subcontractors) you propose to use (i.e. company size, location of office(s), size of staff, etc.).
 - a. Brief resume of your firm’s background and expertise in the area of General Plan updates or similar work for public agencies;
 - b. Briefly outline your firm’s methodology that was used to successfully complete similar projects, especially for General Plan updates in coastal jurisdictions; and
 - c. Include the name, address, and phone number of the agency and individual responsible for the contract management of the project and a list of references who may be contacted.
9. **Key Personnel:** This section should include a list of all key personnel and anticipated supporting personnel, including those of the sub-consultant, who will be assigned to perform services or be employed on the project. Brief resumes of the project manager, key personnel, and sub-consultants should be included as related to this project, their roles in the project, and a synopsis of their experience relevant to these roles. This section should also include a description of their responsibilities and identify a designated project manager with full authority to administer the contract and bind your firm to a contract with the City.
 - a. List firm experience separate from individual experience;
 - b. Individual experience to be listed for persons with key roles in the project only identifying the person who completed the work; and
 - c. Senior personnel identified in your proposal may not be removed from the project without prior written consent of the City. Subcontractors must also meet all requirements requested of the selected Consultant and be approved by the City.
10. **Cost Proposal and Budget:** Complete proposed pricing as directed in the Scope of Work.

- a. Please submit a budget showing estimated costs for each milestone and task of the project, and hourly billing rates for all members of the team. Prices shall represent the cost of finished products and cost estimates shall identify expenditures for graphics, maps, public meetings and hearings, printing, legal notices, postage, mailing, advertising, and other incidental and administrative costs. This budget shall include a 10% contingency billing amount of the overall cost for each milestone to accommodate any unanticipated activities or time necessary to achieve the milestone.
- b. Include proposed method of compensation for providing professional consulting services under a cost reimbursement type contract. The project budget shall be depicted in a table or other format that clearly shows a breakdown by task and product. Reimbursement shall be given upon the City's receipt and acceptance of deliverables.
 - i. Amount of time and staff to be expended for each phase of the project;
 - ii. Indicate hourly rates of individuals involved, number of hours for each component, task or product, billing and expense reimbursement rates, and other optional items;
 - iii. Include budget information written so that it may be incorporated as an attachment to the Agreement for Consulting Services;
 - iv. All costs shall be stated as "not to exceed" amounts. All costs must be detailed specifically in the cost summary section of the proposal;
 - v. No additional charges (e.g., for sales tax, transportation, out-of-pocket expenses, etc.) will be allowed unless specified in the proposal; and
 - vi. A separate budget and table should be provided for preparation of the EIR. At the City's discretion, the City reserves the right to award separate contracts to differing consultants for the GPU Phase 2 work and the EIR. The Consultant's budget should take this into consideration and state if there will be an impact on the work schedule or budget should the Consultant not be awarded a contract for both the GPU Phase 2 and EIR.

11. References:

- a. List five public sector clients including three of the most recent and relevant, with whom similar, comparable services have been performed. Provide name, mailing address, and telephone number of the principal contact. If there are multiple firms included in the proposal, include five references for each firm; and
- b. Provide a brief description of the service provided and the dates of the work provided.

SELECTION PROCESS

Proposals will be reviewed by City staff for completeness and responsiveness. Each submittal will be reviewed in accordance with the Scope of Work previously described. The selection

process includes the following steps:

1. An Evaluation Committee comprised of City staff will review each proposal and contact the references provided for each firm. The staff will consider such factors as:
 - a. The qualifications of consultant firm and each team member and their sub-consultants;
 - b. The relevant and current experience of each member of the team detailing the team members' involvement with the projects described and the outcomes (i.e. met timeline, adoption, etc.);
 - c. The approach to be taken by the Consultant including the scope of services and deliverables;
 - d. Ability to provide comprehensive, clear and concise answers to the information requested by the RFP;
 - e. The proposed timeline allotting reasonable time ranges per task and demonstration of the ability to meet project schedule;
 - f. Demonstrated knowledge of federal, state, and local laws, rules and regulations; and
 - g. The proposed fee in relation to the services and products to be provided, including a contingency amount.
2. City staff will conduct an oral interview of qualifying firms.
3. During the review process, the City reserves the right, where it may serve the City's best interests, to request additional information or clarification from those who submit a Proposal, or allow clarifications, corrections of errors, or omissions.
4. Based upon the review of each proposal, reference checks, and the result of any interviews, City staff will make a recommendation to the City Council for final selection of the project consultant after negotiating the project scope and fee.

ADDITIONAL INFORMATION

Right to Reject Proposals

The City of Dana Point reserves the right to reject any or all proposals, or any part of any proposal, to waive minor technicalities, or to solicit new proposals on the same project. Proposals may be rejected for any alterations of form, additions or alternatives not requested, incomplete information, or irregularities of any kind.

Notification of Withdrawal of Proposals

Proposals may be modified or withdrawn prior to the time and date specified for proposal submission by formal written notice from an authorized representative of the consultant. Proposals submitted will become the property of the City of Dana Point after the proposal submission deadline and may be released as a public document after that time.

Cost of Preparation of Proposal

The City of Dana Point will not pay any costs incurred in the preparation, printing, interview, or negotiation process. All costs associated with preparing and presenting proposals shall be borne by the proposing consultants.

Request for Proposals is Not a Commitment

This Request for Proposals is not a contract or commitment of any kind by the City of Dana Point and does not commit the City to award a contract or to pay any costs incurred in the submission of a proposal. All proposals will become the property of the City of Dana Point.

ATTACHMENT A – COVER PAGE

PROPOSER'S NAME (*name of firm, entity, or organization*):

FEDERAL EMPLOYER IDENTIFICATION NUMBER:

NAME AND TITLE OF PROPOSER'S CONTACT PERSON:

MAILING ADDRESS:
Street Address: _____
City, State, Zip: _____

TELEPHONE NUMBER: _____

FAX NUMBER: _____

EMAIL ADDRESS: _____

PROPOSER'S ORGANIZATIONAL STRUCTURE
 Corporation Partnership Proprietorship Joint Venture
 Other (explain): _____

If Corporation, Date Incorporated: _____ State Incorporated: _____
States Registered in as foreign corporation: _____

PROPOSERS SERVICES OR BUSINESS ACTIVITIES OTHER THAN WHAT THIS RFP REQUESTS:

PROPOSER'S AUTHORIZED SIGNATURE:
The undersigned hereby certifies that this proposal is submitted in response to this solicitation.

SIGNED: _____

DATE: _____

NAME: _____

TITLE: _____

ATTACHMENT B – STATEMENT OF CERTIFICATION

The following statements are incorporated in our response to the City of Dana Point.

	Statement	Agree (initial)	Agree with qualification (Initial and attach explanation)
1.	The offer made in the proposal is firm and binding for 180 days from the date the proposal is opened and recorded.		
2.	All aspects of the proposal, including cost, have been determined independently, without consultation with any other Proposes or competitor for the purpose of restricting competition.		
3.	All declarations in the proposal and attachments are true and that this shall constitute a warranty, the falsity of which will entitle the City to pursue any remedy by law.		
4.	Proposer agrees that all aspects of the RFP and the proposal submitted shall be binding if the proposal is selected and a Contract is awarded.		
5.	Proposer agrees to provide the City with any other information the City determines is necessary for an accurate determination of the Proposer’s ability to perform the services as proposed; and		
6.	Proposer, if selected, will comply with all applicable rules, laws, and regulations.		

ATTACHMENT C - PROFESSIONAL SERVICES CONTRACT TEMPLATE

CITY OF DANA POINT

AGREEMENT FOR CONTRACTOR SERVICES

THIS AGREEMENT is made and effective as of _____, between the City of Dana Point, a municipal corporation ("City") and _____, a[n] _____ [*individual, sole proprietorship, partnership, limited liability partnership, corporation, . . .*] ("Contractor"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM**

This Agreement shall commence on _____, and shall remain and continue in effect until tasks described herein are completed, but in no event later than _____, _____, unless sooner terminated pursuant to the provisions of this Agreement. Notwithstanding the above, Section 9 of this Agreement shall survive the term of this Agreement.

2. **SERVICES**

Contractor shall perform the tasks described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. Contractor shall complete the tasks according to the schedule of performance which is also set forth in Exhibit A.

3. **PERFORMANCE**

Contractor shall at all times faithfully, competently and to the best of his/her ability, experience, and talent, perform all tasks described herein. Contractor shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Contractor hereunder in meeting its obligations under this Agreement. Contractor represents it holds the necessary skills and abilities to perform the work as set forth in this Agreement, and City relies upon the skills and abilities of Contractor. Contractor shall perform the work and services under this Agreement in accordance with such heightened standard of work and in accordance with the accepted standards of the professional disciplines involved in the tasks described herein.

4. **CITY MANAGEMENT**

City's _____ shall represent City in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by Contractor, but not including the authority to enlarge the

Tasks to Be Performed or change the compensation due to Contractor. City's City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Tasks to Be Performed or change Contractor's compensation, subject to Section 5 hereof.

5. **PAYMENT**

(a) Except as otherwise stated herein, the City agrees to pay Contractor monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. Final payment shall be coordinated and conditioned with completion of the tasks set forth in Exhibit A. This amount shall not exceed _____ dollars (\$____.00) for the total term of the Agreement unless additional payment is approved as provided in this Agreement ("Total Agreement Amount").

(b) Contractor shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Contractor shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and Contractor at the time City's written authorization is given to Contractor for the performance of said services. The City Manager may approve additional work not to exceed ten percent (10%) of the amount of the Agreement, but in no event shall such sum exceed ten-thousand dollars (\$10,000.00). Any additional work in excess of this amount shall be approved by the City Council. ***[Note: If additional payment pushes total contract amount above \$35,000 and Agreement was not previously approved by City Council, City Council must approve increased amount. (See DPMC, § 3.12.280.)]***

(c) Contractor will submit invoices monthly for actual services performed. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Invoices shall include the contract amount, invoice amount to date, and balance remaining. Payment shall be made within thirty (30) days of receipt of each invoice as to all undisputed fees. If the City disputes any of Contractor's fees it shall give written notice to Contractor within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice.

(d) Prior to signing the Agreement, Contractor shall provide to City a completed and signed Form W-9, Request for Taxpayer Identification Number and Certification. All of City's monetary obligations set forth in this Agreement are conditioned upon City's receipt of an executed W-9 form from Contractor.

(e) Notwithstanding Contractor's delivery of invoices to City and/or other remedies available to the City, City **[shall/may]** retain ten percent (10%) of the payment on

each month's invoice, on a cumulative basis, until Contractor has completed all of the tasks set forth in Exhibit A.

(f) Notwithstanding Contractor's delivery of invoices to City and/or other remedies available to the City, if Contractor has not delivered to the City the required certified insurance policies and endorsements within the time required by Section 10(f) (3) of this Agreement, City has the sole discretion to withhold any and all payments to Contractor until Contractor delivers to the City the certified insurance policies and endorsements required by Section 10 of this Agreement.

6. **SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE**

(a) The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Contractor at least ten (10) days prior written notice. Upon receipt of said notice, the Contractor shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

(b) In the event this Agreement is terminated pursuant to this Section, the City shall pay to Contractor the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Contractor will submit an invoice to the City pursuant to Section 5.

(c) Except as otherwise provided herein and prior to the termination date of this Agreement, this Agreement may be terminated by written consent of both the City and the Contractor.

7. **DEFAULT OF CONTRACTOR**

(a) The Contractor's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Contractor is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Contractor for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Contractor. If such failure by the Contractor to make progress in the performance of work hereunder arises out of causes beyond the Contractor's control, and without fault or negligence of the Contractor, it shall not be considered a default.

(b) If the City Manager or his/her delegate determines that the Contractor is in default in the performance of any of the terms or conditions of this Agreement, he/she shall cause to be served upon the Contractor a written notice of the default. The Contractor shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the

Contractor fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

8. **OWNERSHIP OF DOCUMENTS**

(a) Contractor shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by City that relate to the performance of services under this Agreement. Contractor shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Contractor shall provide free access to the representatives of City or its designees at reasonable times to such books and records; shall give City the right to examine and audit said books and records; shall permit City to make transcripts there from as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

(b) Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused, or otherwise disposed of by the City without the permission of the Contractor. With respect to computer files, Contractor shall make available to the City, at the Contractor's office and upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring, and printing computer files.

[Note: The Following Paragraph Is Applicable Only To Agreements for the design of public improvements.]

(c) With respect to the design of public improvements, the Contractor shall not be liable for any injuries or property damage resulting from the reuse of the design at a location other than that specified in Exhibit A without the written consent of the Contractor.

9. **INDEMNIFICATION**

(a) Indemnification

[Note: The Following Paragraph Is Applicable Only To Agreements Where

Contractor Is A “Licensed Design Professional.”]

To the fullest extent permitted by law, Contractor shall protect, indemnify, defend and hold harmless City and any and all of its officials, employees, volunteers and agents from and against any and all losses, liabilities, damages, and costs and expenses (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorney’s fees and costs, court costs, interest, defense costs, and expert witness fees) where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the negligence, recklessness, or willful misconduct of Contractor, its officers, agents, employees or subcontractors, or any entity or individual that Contractor shall bear the legal liability thereof.

[Note: The Following Paragraph Is Applicable Only To Agreements Where Contractor Is Not A “Licensed Design Professional.”]

To the fullest extent permitted by law, Contractor shall protect, indemnify, defend and hold harmless City and any and all of its officials, employees, volunteers and agents from and against any and all losses, liabilities, damages, and costs and expenses (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorney’s fees and costs, court costs, interest, defense costs, and expert witness fees) where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the actions or failure to act of Contractor, its officers, agents, employees or subcontractors, or any entity or individual that Contractor shall bear the legal liability thereof.

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

(b) Indemnification Provisions Pertaining To Subcontractors And Others Performing Work. Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth in this section from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Contractor in the performance of this Agreement. In the event Contractor fails to obtain such indemnity obligations from others as required herein, Contractor agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations

on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth herein is binding on successors, assigns or heirs of Contractor and shall survive the termination of this Agreement or this section.

[Note: The Following Paragraph Is To Be Used Only When The Professional Services Contract Is Related To Construction.]

(c) Indemnity Provisions for Contracts Related to Construction. Without affecting the rights of City under any provision of this Agreement, Contractor shall not be required to indemnify, defend or hold harmless City from such liability, claims, losses, damages or expenses arising from City's sole negligence or willful acts.

10. **INSURANCE REQUIREMENTS**

Prior to the beginning of and throughout the duration of the Work, Contractor shall maintain insurance in conformance with the requirements set forth below. Contractor shall use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, Contractor agrees to amend, supplement or endorse the existing coverage to do so. Contractor acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to City in excess of the limits and coverage required in this agreement and which is applicable to a given loss, will be available to City.

Contractor shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees. All Sections of this Agreement and any provision in City's Request for Proposal and Contractor's submitted proposal are subordinate to and superseded by the requirements contained in this Section to the extent that any provision or portion thereof conflicts with or impairs these requirements or any obligation to or right under or pursuant to these insurance requirements. These insurance requirements are intended to be separate and distinct from any other provision in this Agreement and are intended by the parties to be interpreted as such.

(a) Minimum Scope of Insurance. Coverage shall be at least as broad as:

- (1) Commercial General Liability Insurance – Written on the Insurance Services Office “Commercial General Liability” policy form CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another.

- (2) Business Auto Coverage –Written on the ISO Business Auto Coverage form CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. If Contractor owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Contractor or Contractor’s employees will use personal autos in any way on this project, Contractor shall provide evidence of personal auto liability coverage for each person.
- (3) Workers' Compensation/Employer's Liability Insurance - Written on a policy form providing workers' compensation statutory benefits as required by the State of California. Employer's Liability limits shall be no less than one millions dollars (\$1,000,000) per accident or disease. Employer's Liability coverage shall be scheduled under any umbrella policy described above. Unless otherwise agreed, this policy shall be endorsed to waive any right of subrogation as respects City, its officers, officials, employees, or agents.

[Note: Delete the above workers' compensation and employer's liability insurance requirements for certain sole proprietorships, partnerships, or corporations without employees and use the following paragraph instead.]

Contractor certified that the company does not have employees and does have Workers' Compensation/ employer's Liability Insurance. As soon as the Contractor has employees, he/she will have the insurance below:

Workers' Compensation/Employer's Liability Insurance - Written on a policy form providing workers' compensation statutory benefits as required by the State of California. Employer's Liability limits shall be no less than one millions dollars (\$1,000,000) per accident or disease. Employer's Liability coverage shall be scheduled under any umbrella policy described above. Unless otherwise agreed, this policy shall be endorsed to waive any right of subrogation as respects City, its officers, officials, employees, or agents.

- (4) Professional Liability or Errors and Omissions Insurance as appropriate to the Contractor's profession - Written on policy form coverage 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.

- (b) Minimum Limits of Insurance. Contractor shall maintain limits no less than:

[Note: The insurance amounts listed herein are general limits and higher limits may be required depending on the nature and risks of the project. Refer to the Risk Analysis Matrix on the public shared drive in the Administrative Services Templates & Forms folder (it is a PDF file) and/or consult with Risk Management staff to determine the appropriate amount of insurance to require on a particular project.]

- (1) General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- (2) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
- (3) Errors and Omissions Liability: The policy limit shall be no less than \$1,000,000 per claim and in the aggregate. The policy must “pay on behalf of” the insured and must include a provision establishing the insurer’s duty to defend. The policy retroactive date shall be on or before the effective date of this agreement. Insurance shall continue to be effective to cover all claims made within three (3) years of the completion of the work in the Agreement.

[Note: If the required limits for general liability, auto and employer’s liability are \$1 million or less, the following paragraph may be omitted.]

- (4) Excess or Umbrella Liability Insurance (Over Primary): If used to meet limit requirements, it shall provide coverage at least as broad as specified for the underlying coverages. Any such coverage provided under an umbrella liability policy shall include a drop down provision providing primary coverage above a maximum \$25,000 self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be provided on a “pay on behalf” basis, with defense costs payable in addition to policy limits. Policy shall contain a provision obligating insurer at the time insured’s liability is determined, not requiring actual payment by the insured first. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to City for injury to employees of Contractor, subcontractors or others involved in the Work. The scope of coverage provided is subject to approval of City following receipt of proof of insurance as required

herein. Limits are subject to review but in no event less than \$ _____ **(Note: refer to Risk Analysis Matrix)** per occurrence.

(c) Deductibles and Self-Insured Retention. Contractor agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any contractor, subcontractor, Architect, Engineer or other entity or person in any way involved in the performance of work on the project contemplated by this agreement to self-insure its obligations to City. If Contractor's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the City. At that time the City shall review options with the Contractor, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or the Contractor to procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses or other solutions. Any deductibles in excess of ten percent (10%) or self-insured retention must be approved by the City Manager.

(d) Other Insurance Provisions. The general liability, business auto liability, and any necessary umbrella liability policies are to contain, or be endorsed to contain, the following provisions:

- (1) General liability and umbrella policies shall cover the City, its officers, officials, employees, agents, and volunteers are to be covered as insureds or additional insureds as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, agents, or volunteers. Endorsements including the additional insured shall be identified on standard ISO endorsement number CG 20 10, attached to an ISO-CGL policy with an edition prior to 1992, or other form as expressly approved by City, and which does not limit the scope of coverage for the additional insured to vicarious liability or to the additional insured's supervision of a given project. In no event shall the Contractor use an additional insured endorsement with an edition date of 1992 or later, absent express written authorization by City. Contractor also agrees to require all contractors and subcontractors to do likewise.
- (2) For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respect to the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

- (3) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees, agents, or volunteers.
- (4) The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability, and there shall be no cross liability exclusions that preclude coverage for suits between Contractor and City or between City and any other insured. Contractor expressly waives any claim against City for any covered act or event, and Contractor's insurance policy shall not prevent such waiver. The limits of insurance required herein shall in no way limit the liability of the party providing the insurance. In addition, if the coverage or limits available to Contractor exceed that required by this Agreement, and the loss incurred by the additional insured exceeds the amount required by this Agreement, it is the parties' intent that all such additional coverage and limits available will apply irrespective of the specific coverage or limits required herein.
- (5) No liability insurance coverage provided to comply with this Agreement shall prohibit Contractor, or Contractor's employees, or agents, from waiving the right of subrogation prior to a loss. Contractor agrees to waive subrogation rights against City regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractors to do likewise.
- (6) All insurance coverage and limits provided by Contractor and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operations limits the application of such insurance coverage.
- (7) The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Contractor ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Contractor, the City will negotiate additional compensation proportional to the increased benefit to City.
- (8) For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.
- (9) Contractor acknowledges and agrees that any actual or alleged

failure on the part of City to inform Contractor of non-compliance with any insurance requirement in no way imposes any additional obligations on City nor does it waive any rights hereunder in this or any other regard.

- (10) None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.
- (11) No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor.
- (12) All coverage types and limits required are subject to approval, modification and additional requirements by the City, as the need arises. Contractor shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect City's protection without City's prior written consent.
- (13) The provisions of any workers' compensation or similar act will not limit the obligations of Contractor under this Agreement. Contractor expressly agrees not to use any statutory immunity defenses under such laws with respect to City, its employees, officials and agents.
- (14) Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.
- (15) Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

(e) Acceptability of Insurers. Insurance is to be placed with insurers authorized and admitted to do business in California and with a current A.M. Best's rating of A or better and a financial size of VII or greater, unless otherwise acceptable to the

City.

(f) Verification of Coverage and Notice of Cancellation.

- (1) Contractor shall immediately furnish to City certificates of insurance or endorsements, satisfactory to City, evidencing the insurance coverage above required prior to the commencement of performance of services hereunder. These certificates or endorsements shall provide that such insurance is the minimum, is in no way limited by any provision herein, and allows for the application of all coverage available to the additional insureds. Further, the certificates or endorsements shall require thirty (30) days written notice to additional insured City prior to any termination, suspension, cancellation, or non-renewal, or the reduction of available coverage, or any change in the terms of coverage. Contractor agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will “endeavor” (as opposed to being required) to comply with the requirements of the certificate.
- (2) Contractor agrees that if Contractor commences work under this Agreement without first providing City copies of the required insurance certificates or endorsements, that Contractor does so at its own and sole risk. In the event Contractor's insurance is not acceptable to City or copies of insurance certificates or endorsements are not provided, City shall have no obligations to compensate Contractor for such work unless Contractor possesses a notice to proceed from City for this work.
- (3) Within sixty (60) days of the commencement of this Agreement, Contractor shall furnish certified copies of the actual policies and endorsements. Failure to submit such policies shall constitute a material breach of this Agreement entitling City to any and all remedies at law or in equity, including summary termination of this Agreement. If proof of any insurance required under this Agreement is not delivered as required or if such insurance is canceled at any time and no replacement coverage is provided, City shall have the right but not the duty to obtain any insurance it deems necessary to protect its interests under this Agreement, express or implied, in any way relating to City. Any premium for such coverage shall be charged to and promptly paid by Contractor or, at City's option, may be deducted from sums due to Contractor.
- (4) In the event of the premature termination of this Agreement for any reason, Contractor agrees to maintain the required insurance coverage until City provides written authorization to terminate the

coverage following a review and determination that all liability posed under this Agreement as to the party providing the insurance has been eliminated.

(5) Except as outlined in Section 10(b) (3) above, Contractor will renew the required coverage annually as long as City, or its employees or agents face an exposure from operations of any type pursuant to this Agreement. This obligation applies whether or not the agreement is canceled or terminated for any reason. Termination of this obligation is not effective until City executes a written statement to that effect.

(6) Contractor shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Contractor's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to City within five days of the expiration of the coverages.

(g) Notice of Claim or Loss. Contractor agrees to provide immediate notice to City of any claim or loss likely to involve City or its employees or agents which exceeds \$2,500 or is likely to exceed that amount arising out of the work performed under this Agreement. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.

(h) Sub-Contractor Insurance Requirements. Contractor agrees to require that all parties, including but not limited to sub-Contractors and additional Contractors or professional services with whom Contractor enters into contracts or whom Contractor hires pursuant to or in any way related to the performance of this Agreement, provide the insurance coverage required here, at a minimum. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Section. Contractor acknowledges and agrees that upon request, all agreements with sub-Contractors and others engaged in the project contemplated by this Agreement will be submitted to City for review. Contractor agrees and acknowledges that such contracts may require modification as to the insurance requirements necessary to properly protect City.

11. INDEPENDENT CONTRACTOR

(a) Contractor is and shall at all times remain as to the City a wholly independent Contractor. The personnel performing the services under this Agreement on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control

over the conduct of Contractor or any of Contractor's officers, employees, or agents, except as set forth in this Agreement. Contractor shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the City. Contractor shall not incur or have the power to incur any debt, obligation, or liability whatever against City, or bind City in any manner.

(b) No employee benefits shall be available to Contractor in connection with the performance of this Agreement. Except for the fees paid to Contractor as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Contractor for performing services hereunder for City. City shall not be liable for compensation or indemnification to Contractor for injury or sickness arising out of performing services hereunder.

12. **LEGAL RESPONSIBILITIES**

The Contractor shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Contractor shall at all times observe and comply with all such laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Contractor to comply with this Section.

13. **UNDUE INFLUENCE**

Contractor declares and warrants that no undue influence or pressure is used against or in concert with any officer or employee of the City of Dana Point in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the City of Dana Point will receive compensation, directly or indirectly, from Contractor, or from any officer, employee or agent of Contractor, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling the City to any and all remedies at law or in equity.

14. **NO BENEFIT TO ARISE TO LOCAL EMPLOYEES**

No member, officer, or employee of City, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the project during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with this Agreement.

15. **RELEASE OF INFORMATION/CONFLICTS OF INTEREST**

(a) All information gained by Contractor in performance of this Agreement shall be considered confidential and shall not be released by Contractor without City's prior written authorization. Contractor, its officers, employees, agents, or sub-Contractors, shall not without written authorization from the City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided Contractor gives City notice of such court order or subpoena.

(b) Contractor shall promptly notify City should Contractor, its officers, employees, agents, or sub-Contractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request, court order, or subpoena from any person or party regarding this Agreement and the work performed hereunder or with respect to any project or property located within the City. City retains the right, but has no obligation, to represent Contractor and/or be present at any deposition, hearing, or similar proceeding. Contractor agrees to cooperate fully with City and to provide the opportunity to review any response to discovery requests provided by Contractor. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

[Note: The following paragraph is only to be used when the City will be taking in a fee or deposit from an applicant and use that fund to retain the Contractor to prepare an EIR, Specific Plan, or some other specific document or where the City is funding a similar development-type study.]

(c) Contractor covenants that neither he/she nor any officer or principal of their firm have any interest in, or shall acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of their services hereunder. Contractor further covenants that in the performance of this Agreement, no person having such interest shall be employed by them as an officer, employee, agent, or subcontractor. Contractor further covenants that Contractor has not contracted with nor is performing any services, directly or indirectly, with any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the study area and further covenants and agrees that Contractor and/or its subcontractors shall provide no service or enter into any agreement or agreements with a/any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the study area prior to the completion of the work under this Agreement.

16. **NOTICES**

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To City: City of Dana Point
33282 Golden Lantern
Dana Point, California 92629
Attention: City Clerk

To Contractor: _____

17. **ASSIGNMENT**

The Contractor shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City. Because of the personal nature of the services to be rendered pursuant to this Agreement, only _____ shall perform the services described in this Agreement.

_____ may use assistants, under its direct supervision, to perform some of the services under this Agreement. Contractor shall provide City fourteen (14) days' notice prior to the departure of _____ from Contractor's employ. Should he/she leave Contractor's employ, the City shall have the option to immediately terminate this Agreement, within three (3) days of the close of said notice period. Upon termination of this Agreement, Contractor's sole compensation shall be payment for actual services performed up to, and including, the date of termination or as may be otherwise agreed to in writing between the City Council and the Contractor.

18. **LICENSES**

At all times during the term of this Agreement, Contractor shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement.

19. **GOVERNING LAW**

The City and Contractor understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to

this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with jurisdiction over the City of Dana Point.

20. **ENTIRE AGREEMENT**

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

21. **SEVERABILITY**

The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of the other provisions of this Agreement.

22. **NO PRESUMPTION REGARDING DRAFTER OF THIS AGREEMENT**

The parties acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between the parties and their attorneys, and this Agreement reflects their mutual agreement regarding the same. Because of the nature of such negotiations and discussions, it would be inappropriate to deem any party to be the drafter of this Agreement, and therefore, no presumption for or against validity or as to any interpretation hereof, based upon the identity of the drafter shall be applicable in interpreting or enforcing this Agreement.

23. **ATTORNEY'S FEES**

If any action at law or suit in equity, including an action for declaratory relief, is brought by either party with respect to this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, in addition to any other relief to which it may be entitled, and such amount may be added to, and made a part of, such judgment.

[Note: It is not always beneficial to have an attorney's fee provision in the Agreement, particularly when the Contractor's prospective attorney's fees in a dispute may be higher than the City's. Consult with Risk Management or the City Attorney's Office to determine whether an attorney's fees provision is beneficial for this project.]

24. **WORK SCHEDULED/TIME OF COMPLETION**

[Note: This section is optional and should be included only when the project is particularly time-sensitive.]

City and Contractor agree that time is of the essence in this Agreement. ***[Note: The following language may be added if the project includes the erection, construction, alteration, repair, or improvement of any structure, building, road, railway, or other improvement, and the procurement of any other goods or services that are manufactured specifically, designed specifically, or produced specifically, pursuant to the Agreement with the City.]*** City and Contractor further agree that Contractor's failure to perform on or at the times set forth in this Agreement will damage and injure City, but the extent of such damage and injury is difficult or speculative to ascertain. Consequently, City and Contractor agree that any failure to perform by Contractor at or within the times set forth herein shall result in liquidated damages of _____ dollars (\$_____) per day for each and every day such performance is late. City and Contractor agree that such sum is reasonable and fair. Furthermore, City and Contractor agree that this Agreement is subject to Government Code Section 53069.85 and that each party hereto is familiar with and understands the obligations of said Section of the Government Code.

25. **CONTENTS OF REQUEST FOR PROPOSAL AND PROPOSAL**

[Note: This section and Exhibits C and D are only included if the City did a Request for Proposal and Contractor submitted a proposal to the City.]

Contractor is bound by the contents of City's Request for Proposal, Exhibit "C" hereto and incorporated herein by this reference, and the contents of the proposal submitted by the Contractor, Exhibit "D" hereto. In the event of conflict, the requirements of City's Request for Proposals and this Agreement shall take precedence over those contained in the Contractor's proposals.

26. **AUTHORITY TO EXECUTE THIS AGREEMENT**

The person or persons executing this Agreement on behalf of Contractor warrants and represents that he/she has the authority to execute this Agreement on behalf of the Contractor and has the authority to bind Contractor to the performance of its obligations hereunder.

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

CITY OF DANA POINT

By: _____
City Manager or Designee

Attest:

Shayna Sharke, City Clerk

Approved As to Form:

Patrick Munoz, City Attorney

CONTRACTOR

By: _____
(Signature)

(Typed Name)

Its: _____
(Title)

By: _____
(Signature)

(Typed name)

Its: _____
(Title)

EXHIBIT A

TASKS TO BE PERFORMED

EXHIBIT B
PAYMENT SCHEDULE

EXHIBIT C

CITY'S REQUEST FOR PROPOSAL

EXHIBIT D

CONTRACTOR'S PROPOSAL