



City of Del Mar Staff Report



TO: Honorable Mayor and City Council Members

FROM: Jon Terwilliger, Senior Management Analyst
Via Scott W. Huth, City Manager

DATE: May 18, 2015

SUBJECT: Authorization of a Not-to-Exceed Expenditure of \$500,000 for Professional Consulting Services for Project Management Services for City Capital Improvement Projects Including the City Hall/Town Hall Project (RFQ 2015-06), Street and Sidewalk Improvements, Utility Improvements and City Facility Maintenance/Improvement Projects, and Authorization for the City Manager to Negotiate and Execute Related Agreement(s)

REQUESTED ACTION/RECOMMENDATION:

Staff recommends that the City Council authorize a not-to-exceed amount of \$500,000 for professional consulting services for project management services for City Capital Improvement projects including the City Hall/Town Hall project, street and sidewalk improvements, utility improvements and City facility maintenance/improvement projects related to RFQ 2015-06. The proposed funds shall be expensed to the corresponding CIP projects based on actual services performed. Staff recommends that the City Council authorize the City Manager to engage in negotiations and execute an agreement for said services.

DISCUSSION/ANALYSIS:

On June 17, 2013, the City Council initiated the planning phase for a new City Hall and related municipal uses located at 1050 Camino del Mar. The planning phase concluded in June 2014 and the City Council authorized the initiation of the Master Planning Phase at their meeting of June 16, 2014. At their July 7, 2014 meeting, the City Council adopted Resolution 2014-58 affirming the development of a new City Hall/Town Hall and directing staff to proceed with efforts related to planning for and developing the project.

Project management professional services are now being sought by the City to lead the three phases of the Civic Center development process:

1. Pre-Design Management Services

City Council Action:

2. Design Management Services
3. Construction Management Services

The City is also seeking project management services for a variety of other Capital Improvement Projects.

On April 27, 2015, the City issued a Request for Qualifications (RFQ 2015-06) to solicit qualified individuals or firms to manage the phases listed above. The proposals were due May 15, 2015. With the requested action, staff will evaluate the proposals, negotiate a contract for the services described, and execute an agreement with the successful contract professional.

The contracted professional(s) will provide all program management services and perform as an extension of City staff, managing all aspects of project delivery from concept to move-in. The selected person(s) will have expertise and experience in management of architecture and related engineering services, program mobilization and supervision, bid evaluation, project scheduling, cost-benefit analysis, claims review and negotiation, and general management and administration of all design and construction components of the project(s).

Phase I – Pre-Design Management Services

Phase 1 includes pre-design program management and coordination services through the start of the design phase of the Project. The scope of services includes: supporting City staff for concept development, public outreach, and general communications; coordinating and managing the activities of the City's design team including architectural team, geotechnical, traffic, and EIR, and other related consultants; and developing a program budget.

Phase II - Design Management Services

Phase II involves pre-construction management and administration services, including design management and coordination for the project from conceptual design, schematic design, design development, and the production of construction documents through the issuance of a building permit. Work scope in this phase includes:

- Coordinating and managing the City's design team in its delivery of Architectural and Engineering (A&E) services, including all required specialty consultants such as geotechnical, traffic, noise and civil engineering design;
- Coordinating the City's CEQA compliance and environmental approval process;
- Developing budgets and or cost estimates at each phase of the design process and recommending design modifications as necessary utilizing Value Engineering principles to seek to keep at or below the construction budget established for the project;
- Providing construction logistic studies to facilitate construction within the project site and identification of additional off-site locations if required;

- Developing and maintaining overall project schedules and managing the project to ensure that timeframes for deliverables and processes prior to construction are met;
- Providing a quality check on the final construction document and specifications;
- Managing appropriate furniture, fixture and equipment bidding/procurement and installation; and
- Securing necessary permits required to construct the project.

Phase III – Construction Management Services

Phase III includes comprehensive construction management services during construction and post- construction phases of the project including the installation of furnishings, fixtures, and equipment (FF&E) and coordination of move-in. Work scope in this phase includes managing the public bidding and award process; and providing full and complete construction administration, coordination and construction observation services during and following construction.

The City Council is requested to allocate the necessary funds for the aforementioned professional services, and direct the City Manager to negotiate and execute a related agreement for an individual(s) to provide the services.

FISCAL IMPACT:

Staff requests that up to \$500,000 be authorized to be expensed from the various Capital Improvement Project budgets. No additional funding is being requested at this time. It is anticipated that the majority of the work will be focused on the City Hall/Town Hall project; however, we also anticipate using these services for a variety of other CIP Projects.

ENVIRONMENTAL IMPACT:

In accordance with California Environmental Quality Act (CEQA) standards, this project is subject to CEQA review and was initiated by the City Council at the April 20, 2015 hearing.

PRIOR CITY COUNCIL REVIEW:

During the last 24 months, the City Council has addressed the numerous topics associated with the new City Hall/Town Hall at multiple, noticed meetings. In addition, a “Community Forum” on the topic of City Hall has been included on the agendas for each City Council meeting since April 21, 2014.

ATTACHMENTS:

Attachment A – Del Mar RFQ 2015-06



**City of Del Mar
Community Development Department
Del Mar, California**

RFQ # 2015-06

**Request for Qualifications
Project Management Professional Consulting Services**

**For the Delivery of a City Hall/Town Hall Master Planned Facility,
Including Building and Related Facility Components,
and Other Projects as Needed**

April 27, 2015

REQUEST FOR QUALIFICATIONS

I. EXECUTIVE SUMMARY / INTRODUCTION

The City of Del Mar, California (City) is soliciting Request for Qualifications (RFQ) for selection of a Project Manager/Construction Manager for work related to the delivery of a new City Hall/ Town Hall as well as other Del Mar projects and/or Capital Improvement Projects as directed (Project), in accordance with the terms, conditions, and requirements set forth in this RFQ.

Project Manager professional services are being sought by the City for work in three phases; 1) Pre-Design Management Services, 2) Design Management Services; and 3) Construction Management Services.

The successful individual will provide all program management services and perform as an extension of the City's staff managing all aspects of the projects delivery from concept to move in.

II. PROJECT DESCRIPTION

City Hall/Town Hall: The project is defined as achieving a new City Hall (administrative offices), Town Hall (flexible meeting space for City Council meetings and community meetings as well as shell space for Del Mar TV), a plaza, and public parking.

The development program is:

- a. Approximately 9,250 square foot ($\pm 10\%$) City Hall that includes adequate and flexible space for public counters, lobby, conference rooms and public restrooms.
- b. Town Hall (Approximately 3,200 square foot ($\pm 10\%$)) that has seating for a minimum of 100 persons with flexibility to go up to 150 persons (in workshop table seating) in a flexible space that accommodates a variety of uses, including Council Chambers/TV Studio, community meeting rooms, and space for Del Mar TV.
- c. Approximately 160 parking stalls (all or a majority in structure).
- d. Approximately a 15,000 square-foot public plaza to be used for various events.
- e. Area (between 11,000 and 20,000 square feet) for future expansion, with maximization of expansion space.

Additional information regarding this project is posted on the City's website: <http://www.delmar.ca.us/353/City-HallTown-Hall-Design>.

Additional Projects: The City has an aggressive Capital Improvement Project list with streetscape projects, road projects, building maintenance projects, park projects, etc. that may require Project Management/Construction Management services.

III. SCOPE OF SERVICES

The objective of this RFQ process is for the City to identify and select a Project Manager (PM) to provide professional program and construction management services on a continuous and integrated basis during the pre-design, design, construction, and occupancy phases of the Projects as described in this RFQ. A summary of the anticipated services by the PM shall include, but is not limited to, the following:

Phase I - Pre-Design Management Services

Phase 1 includes pre-design program management and coordination services through the start of the design phase of the Project. Such services would include:

- Provide support to City staff for concept development, public outreach, and general communications.

- Review and confirm with City Staff the existing City program information including the most current needs assessment.
- Review and understand the existing City Council adopted design guidelines, codes, and requirements affecting this project.
- Coordinate and manage the activities of the City's design team including architectural team, geotechnical, traffic, and EIR, and other related consultants.
- Assist the City in developing a Program Budget including all project cost such as usual and customary consultant/permit/fees soft cost, building construction, onsite and offsite mitigation cost, other indirect cost, outfitting with furniture and equipment, relocation cost, financing cost, and any other cost that can be anticipated to be incurred in a public project of this scope and function.

Phase II - Design Management Services

Phase II involves pre-construction management and administration services, including design management and coordination services for the project from conceptual design, schematic design, design development, and the production of construction documents through the issuance of a building permit. The PM will review and coordinate all design work on behalf of the City. Work scope in this phase includes:

- Coordinate and manage the City's design team in its delivery of Architectural and Engineering (A&E) services, including all required specialty consultants such as geotechnical, traffic, noise and civil engineering design with special emphasis placed on the following activities:
 - Addressing functional needs for the City Hall, Park and Parking Facility as defined in the City's project program.
 - Addressing the neighborhood context.
 - Coordinate all aspects of on-site improvements, all required off-site improvements, all on-site and off-site utilities, and any other applicable improvements.
 - Addressing the principles of sustainability during the design process as may be directed by the City
 - Perusing the incorporation of depletable resource conservation, LEED, and operational efficiencies as requested by the City.
 - Addressing the importance of design, drawing and specification all complying with applicable local and State codes and design standards.
- Coordinate the City's CEQA compliance and environmental approval process, and integrate into the project.
- Develop budgets and or cost estimates at each phase of the design process and recommend design modifications as necessary utilizing Value Engineering principles to seek to keep at or below the construction budget established for the Project.
- Provide periodic design and constructability reviews.
- Provide construction logistic studies including evaluating potential locations for construction trailers, layout area, material storage, construction staff parking and other required areas to facility construction within the Project site and identification of additional off-site locations if required.
- Develop and maintain overall Project schedules and manage the Project to ensure that timeframes for deliverables and processes prior to construction are met.
- Provide a quality check on the final construction document and specifications.
- Manage appropriate furniture, fixture and equipment bidding/procurement and installation.
- Assure incorporation (and respond to) all Building Official and other permitting agency comments as appropriate, and facilitate the permitting process.
- Secure City issued building permits and all other jurisdictional permits required to construct the Project.

Phase III - Construction Management Services

Phase III includes comprehensive Construction Management services during construction and post-

construction phases of the project including the installation of furnishings, fixtures, and equipment (FF&E) and coordination of move-in. Work scope in this phase includes:

- Managing the public bidding and award process in full compliance with the Calif. Public Contract Code.
- Providing full and complete construction administration, coordination and construction observation services during and following construction, including but not limited to the following:
 - Onsite administration and management
 - Coordination of all Project consultants under direct contract to the City
 - Project and construction cost management
 - Quality assurance, inspection, and quality control.
 - Coordinate with the City's Building Inspectors
 - Dispute resolution.
 - Submittal coordination.
 - Management of Requests for Information (RFI).
 - Change order review and negotiations.
 - Manage construction materials testing, and specialty inspection services.
 - Provide schedule analysis and continuous updates.
 - Manage project close-out, including assuring the A&E team provides complete record (As-Built) drawings.
 - Construction punch-list management and completion.
 - Manage substantial and final completion processes, and project acceptance.
 - Compile program warranties.
 - Deliver operations and maintenance manuals.
 - Coordinate the installation of FF&E and move in activities
 - Manage final payment and project closeout for all consultants and contractors under direct contract with the City.
 - Coordinate warranty work for a period of up to one year

IV. AGENCY RELATIONSHIP AND DUTY

The PM shall serve as surrogate City staff. The Project will be an "open book" project whereby the City may attend any and all meetings, and the City or its designated auditors or accountants shall have access to any and all records of the PM or maintained by the PM relating to the Project.

The PM accepts a relationship of trust and confidence between itself and the City, to furnish its best skills and best judgment to cooperate with the City during its design of the Project, to act as the City's Agent assisting in opening bids in accordance with the California Public Contract Code, and in all ways to further the interests of the City and the Project. The PM shall use its best efforts to see to it that the work of the Project is done in the best and most expeditious, economical manner consistent with the interests of the City, and in strict conformity with the contract documents, including all reasonable implications of them.

V. NEGOTIATED FEE PROFESSIONAL SERVICES

Because the PM will only be providing professional services for the benefit of the City, based on a phase by phase not-to-exceed fixed fee for such services, this procurement will be made in accordance with the provisions of Chapter 10 of the California Government Code, Sections 4526 to 4529.5, which requires that individuals qualified to provide such services be selected on the basis of demonstrated competence and qualifications for the type of professional services required without regard to fees and, thereafter, who will negotiate a contract with the City for those services at a fair and reasonable fee. The City will pay the PM on a time and materials basis with a Not-to-Exceed Professional Services Fee for each phase of the Project. Such fee shall include all costs associated with the PM providing all services through the completion of the project.

The PM will be authorized to proceed with each phase of the work generally outlined above on a phase by phase basis. Prior to the beginning of Phase III, with the goal of determining the most economically and efficient way to proceed with the construction of the Project addressing Project budget, schedule and control, the City and the PM will determine whether the construction of the Project shall be contracted under a Construction Management at Risk or General Contractor Agreement. The PM agreement will therefore be augmented or adjusted accordingly to incorporate the agreed upon method of construction.

VI. QUESTIONS REGARDING THIS RFQ

All questions pertaining to this RFQ must be provided in writing (using either U.S. mail or via e-mail) no later than May 13, 2015 to:

Kathleen A. Garcia, FASLA, Planning and Community Development Director
 City of Del Mar
 1050 Camino del Mar
 Del Mar, CA 92014
 (858) 755-9313
Kgarcia@delmar.ca.us

VII. TENTATIVE PROJECT SCHEDULE

The entire period for provision of the PM services described in this RFQ will commence upon execution of the Professional Services Agreement by all parties and will be completed pursuant to the Project Schedule developed jointly by the City and PM. The approved City Hall/Town Hall project schedule (Attachment A) was adopted by City Council and is expected to be maintained. Currently, the City Hall/Town Hall project is on schedule. Additional project schedules are to be determined.

VIII. SUBMISSION OF QUALIFICATIONS

The deadline for submitting a response to this RFQ is **4:00 pm on Friday, May 15, 2015**.

Respondents shall submit one (1) hard copy of their Statement of Qualifications (SOQ) and one (1) electronic copy, which may be emailed to cityclerk@delmar.ca.us. SOQs are limited to no more than 20 total printed pages (including front and back).

The SOQ shall be delivered in a single package and plainly labeled as follows:

ATTN: Administrative Services Director/City Clerk
 RFQ for Program Management & Professional Consulting Services
 City Hall/Town Hall Master Planned Facility, and Other Projects as Needed

The City of Del Mar will accept Proposals on or before the date indicated above at the following location and address:

City of Del Mar
 1050 Camino del Mar
 Del Mar, CA 92014

IX. SELECTION PROCESS

This RFQ provides the information necessary to prepare and submit qualifications for consideration and ranking by the City. A staff selection panel will evaluate and rank the submitted proposals in the order in which they provide the "best response" based on the selection criteria.

Based on the submittals received, the City may then select up to three (3) of the top ranked respondents to interview regarding qualification for this Project. On the basis of the qualifications, references,

interviews, and using the selection criteria listed here, the City will make a recommendation identifying the most qualified individual. The City also reserves the right to investigate and rely upon information from other available sources in addition to any documents of information submitted by the individual responding to this RFQ. If the individual responding to this RFQ is selected as one of the finalist in the screening process, the City also reserves the right to request financial information from the individual. Any financial information requested will be held in strictest of confidence and used only in evaluating the financial strength of the submitting organization.

The City staff will meet with the successful individual and negotiate the final form of the contract. If good faith negotiations with the selected individual are unsuccessful, the City will terminate such negotiations and undertake new negotiations with another finalist, or finalists, if any. The City reserves the right to reject any or all proposals, at its sole discretion. The authorization for contract award to the PM for this Project will be upon approval by the City of Del Mar City Manager.

X. SOQ CONTENT & SELECTION CRITERIA

Statements of Qualifications: Statements of Qualifications must include the following:

1. Credentials, Background - Include a brief profile and resume.
2. Experience - Consultant’s experience with at least three recent public agency projects of similar scope, including references with contact person and telephone number. Provide evidence that the proposing PM has expertise and experience in management of architecture and related engineering services, program mobilization and supervision, bid evaluation, project scheduling, cost-benefit analysis, claims review and negotiation, and general management and administration of all design and construction components of the project.
3. Program Management Approach - Describe your program management philosophy and approach to the PM with emphasis on how this will meet the City’s needs. Please address the specific Selection Criteria stated below.
4. Describe any unique qualifications as they pertain to this particular project.
5. Agreement to City Contract Terms and Ability to Obtain Insurance - State your ability to execute the City’s standard Professional Services Agreement (PSA) for project (see Attachment B to this RFQ) and to obtain the necessary insurances.
6. Hourly rate schedule.

Statements of Qualifications should be limited to no more than 20 total printed pages.

Selection Criteria: Selection of the most qualified PM will be based on the submitted Qualifications and, if conducted, interviews. All Proposal packages will be evaluated against the criteria listed below; therefore, describe your approach to:

Program Management Capabilities.....25%
 Demonstrates a comprehensive understanding of the Project and knowledge of work required, good description of PM philosophy and processes, record of ability to successfully complete projects of similar scope without major legal or technical problems, demonstrated ability to accommodate the addition of this Project within its work schedule.

Qualifications and Technical Capabilities.....25%
 Background, demonstrated ability to manage project costs and meet project budgets and schedules, sensitive approach to public and regulatory concerns, discussion of quality controls.

Previous Experience.....25%
 Provided evidence of expertise and previous experience in providing PM services, specifically with public sector projects and demonstrated qualifications. Provided relevant public sector references.

Cost Control/Financial-25%
 Understanding of fiduciary responsibility, demonstrated effective cost control methods, demonstrated financial capability, bonding capacity, and ability to meet City's insurance requirements, acceptance of City's standard PSA.

Agreement to City Contract Terms and Ability to Obtain Insurance

- Affirm your ability to execute the City’s standard Professional Services Agreement (PSA) for project (see Attachment B to this RFQ). Please note that the City will be very reluctant to make changes as we feel that the City’s current PSA represents a balanced and fair approach that has been acceptable to the engineering and construction management industry.
- Provide specific assurance regarding your ability to secure insurance that meets the City requirements.

XI. GENERAL INFORMATION

City’s Reservation of Rights: The City may evaluate the proposals based on the anticipated completion of all or any portion of the Project. The City reserves the right to divide the Project into multiple parts, to reject any and all proposals and re-solicit for new proposals, or reject any and all proposals and temporarily or permanently abandon the Project. City makes no representations, written or oral, that it will enter into any form of agreement with any respondent to the RFQ for any project and no such representation is intended or should be construed by the issuance of this RFQ.

Acceptance of Evaluation Methodology: By submitting its proposal in response to this RFQ, respondent accepts the City’s Quality Based Selection criteria and evaluation process and acknowledges and accepts that determination that the process will require subjective judgments by the City.

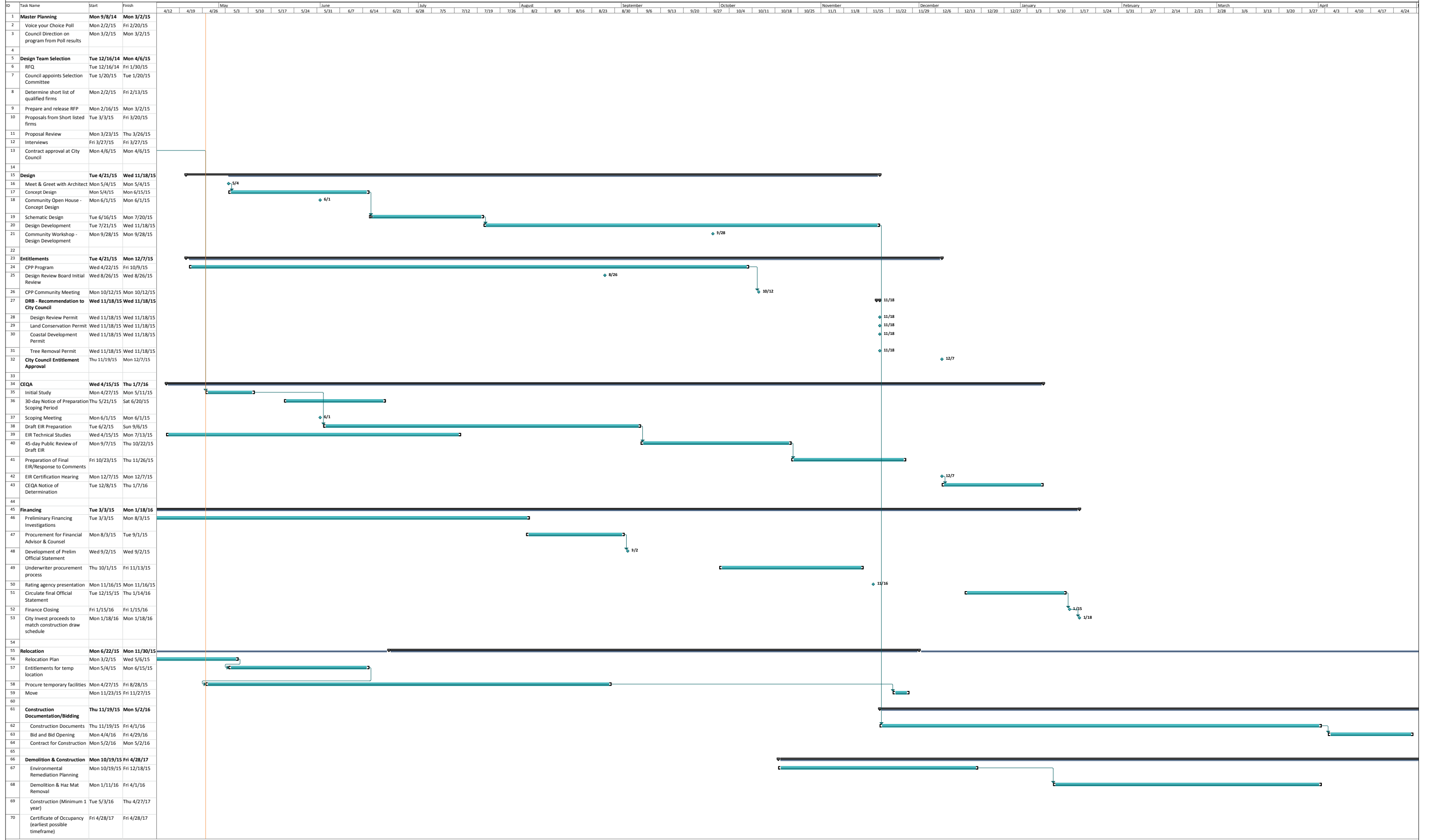
No Reimbursement for Costs: Respondent acknowledges and accepts that any costs incurred from the respondent’s participation in this RFQ process shall be at the sole risk and responsibility of the respondent.

Waiver of Claims: Each respondent, in submitting a proposal, is deemed to have waived any claims for damage by reason of the selection of another proposal and/or the rejection of its proposal.

ATTACHMENT A – City Hall/Town Hall Project Schedule, as Adopted by City Council

ATTACHMENT B – City Standard Agreement for Professional Services (PSA)

Revised City Hall/Town Hall Schedule



Project: City Hall Master Schedule
 Date: Mon 4/27/15
 Legend: Milestone, Project Summary, External Milestone, Inactive Milestone, Manual Task, Manual Summary Rollup, Start-only, Deadline, Progress, Summary, External Tasks, Inactive Task, Inactive Summary, Duration-only, Manual Summary, Finish-only, Progress

**AGREEMENT BETWEEN THE CITY OF DEL MAR
AND
[NAME OF CONSULTANT]**

This Agreement ("Agreement") is made and entered into this ____ day of _____, 20__ by and between the City of Del Mar, a Charter City and a municipal corporation ("City"), and [Name of Consultant] ("Consultant") (collectively "Parties").

WHEREAS, Chapter 7.16 of the Del Mar Municipal Code provides for acquisition of services from architects, engineers, land surveyors, construction management firms ("Design Professionals") on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the professional services required, and

WHEREAS, the City requires professional services necessary for Design Services for a [description of project] ("Project"); and

WHEREAS, Consultant has special knowledge, experience and facilities to provide such special services called for by this Agreement as provided on attached Exhibit "A;" and

WHEREAS, the City desires to retain Consultant to accomplish Design Services for _____ project as provided on attached Exhibit "A" and Consultant is willing to be so retained pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, the Parties hereto mutually covenant and agree with each other as follows:

1. CONSULTING SERVICES.

1.1 Scope of Services. The Consultant shall perform the Design Services as set forth in the written Scope of Services, attached hereto as **Exhibit "A"** and incorporated herein by reference. Such services shall be provided at the direction of the City.

1.2. Project Coordinator. The [Title of City Employee Overseeing Services] is hereby designated as the Project Coordinator for City and will monitor the progress and execution of this Agreement. Consultant shall assign a single Project Director to provide supervision and have overall responsibility for the progress and execution of this Agreement for Consultant. Director of Planning and Community Development is hereby designated as the Project Director for Consultant. City shall provide Consultant access to appropriate staff and resources for the coordination and provision of services.

1.3. City Modification of Scope of Services. City may order changes to the Scope of Services within the general scope of this Agreement consisting of additions, deletions, or other revisions. If such changes cause a change in the Consultant's cost of, or time required for, completion of the Scope of Services, an equitable adjustment to Consultant's compensation and/or contract time shall be made, subject to the City's approval. All such changes shall be authorized in writing, executed by Consultant and City. If such a change results in an extension of the term of this Agreement or increases the maximum amount to be paid under this Agreement, no such change shall have any force or effect unless an amendment to this Agreement is approved by the City Council.

2. DURATION OF AGREEMENT.

2.1 Term, Time for Performance. The services called for under this Agreement shall be provided by Consultant during the period commencing upon execution of this Agreement and this

Agreement shall terminate upon the satisfactory completion of all project obligations or on _____, whichever is earlier in time.

Time is of the essence for this Agreement and each provision of this Agreement, unless otherwise specified in this Agreement.

2.2 Delay. Any delay occasioned by causes beyond the control of Consultant may merit an extension of time for the completion of the Scope of Services. When such delay occurs, Consultant shall immediately notify the Project Coordinator in writing of the cause and the extent of the delay, whereupon the Project Coordinator shall ascertain the facts and the extent of the delay and grant an extension of time for the completion of the Consulting Services when justified by the circumstances provided that no extension of time shall be granted which would extend the time for performance beyond the date specified in section 2.1 above.

2.3 City's Right to Terminate for Default. Should Consultant be in default of any covenant or condition hereof, City may immediately terminate this Agreement for cause if Consultant fails to cure the default within ten (10) calendar days of receiving written notice of the default.

2.4 City's Right to Terminate without Cause. Without limiting its rights in the event of Consultant's default, City may terminate this Agreement, without cause, by giving written notice to Consultant. Such termination shall be effective upon receipt of the written notice. Consultant shall be compensated for all effort and material expended on behalf of City under the terms of this Agreement, up to the effective date of termination. All personal property remaining in City facilities or on City property thirty (30) days after the expiration or termination of this Agreement shall be, at City's election, considered the property of City.

3. PERFORMANCE AFTER TERMINATION. Upon termination of this Agreement as provided herein, Consultant shall, within such reasonable time period as may be directed by City Manager, complete those items of work which are in various stages of completion and which City Manager determines are necessary to be completed by Consultant to allow the project to be completed in a timely, logical, and orderly manner. Upon termination, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, and other materials prepared by Consultant shall be delivered to the City Manager, upon his request, as property of City.

4. COMPENSATION.

4.1 Total Amount. In consideration of the services to be performed by Consultant for the City as set forth in Exhibit "A" to this Agreement, the City agrees to pay Consultant a sum of _____ (\$_____).

4.2 Additional Services. City may, as the need arises or in the event of an emergency, request additional services of Consultant. Should such additional services be required, Compensation, therefore, shall be paid to the Consultant in accordance with Scope of Services contained in Exhibit "A." City and Consultant shall agree to the costs prior to commencement of such work.

4.3 Payment. Consultant shall bill the City for work provided and shall present a written request for such payment monthly.

5. INDEPENDENT CONTRACTOR. Consultant is, for all purposes arising out of this Agreement, an independent contractor. The Consultant has and shall retain the right to exercise full control and supervision of all persons assisting the Consultant in the performance of said services hereunder, the City only being concerned with the finished results of the work being performed. Neither Consultant nor Consultant's employees shall in any event be entitled to any benefits to which City employees are entitled, including, but not limited to, overtime, any retirement benefits, workers' compensation benefits, any injury leave or other leave benefits, Consultant being solely responsible for all

such matters, as well as, compliance with social security and income tax withholding and all other regulations and laws governing such matters.

6. REPRESENTATIONS. Consultant agrees that it has the financial resources, service experience, completion ability, personnel, and experience in dealing with public agencies necessary for performing the Scope of Services. Consultant will perform the services set out in this Agreement, as contemplated herein, in an efficient, timely, and professional manner, and in accordance with generally accepted standards for performing similar services. It is understood that City, in entering into this Agreement, is relying on Consultant's representations for quality and professional work performed in a timely manner, and Consultant shall perform in accordance with those representations and standards.

7. AUDIT OF RECORDS.

7.1 At any time during normal business hours and as often as may be deemed necessary, the Consultant shall make available to a representative of City for examination all of its records with respect to all matters covered by this Agreement and shall permit City to audit, examine and/or reproduce such records. Consultant shall retain such financial and program service records for at least four (4) years after termination or final payment under this Agreement.

7.2 The Consultant shall include the City's right to audit under this section in any and all of their subcontracts, and shall ensure that these sections are binding upon all subcontractors.

8. CONFIDENTIALITY. All Consulting services performed by Consultant, including but not limited to all drafts, data, correspondence, proposals, reports, research and estimates compiled or composed by Consultant, pursuant to this Agreement, are for the sole use of the City, its agents and employees. Neither the documents nor their contents shall be released to any third party without the prior written consent of the City. This provision does not apply to information that (a) was publicly known, or otherwise known to Consultant, at the time that it was disclosed to Consultant by the City, (b) subsequently becomes publicly known through no act or omission of Consultant or (c) otherwise becomes known to Consultant other than through disclosure by the City. Except for any subcontractors that may be allowed upon prior agreement, neither the documents nor their contents shall be released to any third party without the prior written consent of the City. The sole purpose of this section is to prevent disclosure of City's confidential and proprietary information by Consultant or subcontractors.

9. CONFLICTS OF INTEREST.

9.1 Consultant shall at all times comply with all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including, but not limited to, California Government Code §§ 81000 et seq. (Political Reform Act) and §§ 1090 et seq. Consultant shall immediately disqualify itself and shall not use its official position to influence in any way any matter coming before the City in which the Consultant has a financial interest as defined in Government Code § 87103. Consultant represents that it has no knowledge of any financial interests, which would require it to disqualify itself from any matter on which it might perform services for the City.

9.2 Consultant shall comply with all of the reporting requirements of the Political Reform Act. The Consultant shall file a Fair Political Practices Commission Form 700 (Assuming Office Statement) within thirty (30) calendar days of the City's determination that the Consultant is subject to a conflict of interest code. The Consultant shall also file a Form 700 (Annual Statement) on or before April 1, disclosing any financial interests held during the previous calendar year for which the Consultant was subject to a conflict of interest code.

9.3 If, in performing the Consulting Services set forth in this Agreement, the Consultant makes, or participates in, a "governmental decision" as described in Title 2, section 18701(a)(2) of the California Code of Regulations, or performs the same or substantially all the same duties for the City that would otherwise be performed by a City employee holding a position specified in

the department's conflict of interest code, the Consultant shall be subject to a conflict of interest code requiring the completion of one or more statements of economic interests disclosing the Consultant's relevant financial interests.

10. OWNERSHIP OF DOCUMENTS. All documents, data, studies, drawings, maps, models, photographs and reports prepared by Consultant under this Agreement shall be considered the property of City. Consultant shall be permitted to reference and use said materials for use in future studies, work, and marketing so long as said materials are considered "public documents" and are not subject to attorney-client privilege, or the subject of pending closed or executive session discussions.

11. INSURANCE

11.1 Consultant shall procure and maintain for the duration of the 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 and the results of that work by the Consultant, their agents, representatives, employees or subcontractors. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than "A" and "VII" and are admitted to do business in the State of California, unless otherwise approved in writing by the City's Risk Manager.

11.2 Consultant's liabilities, including, but not limited to, Consultant's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. All policies of insurance required hereunder must provide that the City is entitled to thirty (30) days prior written notice (ten (10) days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of this Agreement.

11.3 Types and Amounts Required. Consultant shall maintain, at minimum, the following insurance coverage for the duration of this Agreement:

11.3.1 Commercial General Liability (CGL). Insurance written on an ISO Occurrence form CG 00 01 07 98 or equivalent providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of **\$1,000,000** per occurrence and subject to an annual aggregate of **\$2,000,000**. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

11.3.2 Commercial Automobile Liability. For all of the Consultant's automobiles including owned, hired and non-owned automobiles, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of **\$300,000** per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).

11.3.3 Workers' Compensation. For all of the Consultant's employees who are subject to this Agreement and to the extent required by applicable state or federal law, a Workers' Compensation policy providing at minimum **\$1,000,000** employers' liability coverage. The Consultant shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.

11.3.4 Professional Liability. Professional liability (errors and omissions) coverage with a limit of **\$1,000,000** per claim and **\$2,000,000** annual aggregate. The Consultant shall ensure both that (1) the policy retroactive date is on or before the date of commencement of the Scope of Services; and (2) the policy will be maintained in force for a period of three years after substantial completion of the Scope of Services or termination of this Agreement whichever occurs last. The Consultant agrees that for the time period defined above, there will be no changes or endorsements to

the policy that increase the City's exposure to loss. All defense costs shall be outside the limits of the policy.

11.4 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions are the responsibility of the Consultant and must be declared to and approved by the City. At the option of the City, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers, or (2) the Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

11.5 Additional Required Provisions. The commercial general liability and automobile liability policies shall contain, or be endorsed to contain, the following provisions:

11.5.1 The City, its officers, officials, employees, and representatives shall be named as additional insureds. The City's Additional Insured status must be reflected on additional insured endorsement form which shall be submitted to the City.

11.5.2 The policies are primary and non-contributory to any insurance that may be carried by the City, as reflected in an endorsement which shall be submitted to the City.

11.6 Verification of Coverage. Consultant shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this Section 11. The endorsement should be on forms provided by the City or on other than the City's forms provided those endorsements conform to City requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

12. DEFENSE AND INDEMNIFICATION.

12.1 Indemnity for Professional Liability. Except for the sole negligence or willful misconduct of City, Consultant shall, to the fullest extent permitted by law, hold harmless, protect, defend and indemnify the City, its council and each member thereof, its officers, employees, representatives and their successors and assigns from and against all losses, liabilities, claims, suit, damage, expenses, cost, including reasonable attorney's fees and costs, and expert costs and investigation expenses, caused in whole or in part by the negligent acts, errors, or omissions; recklessness; or willful misconduct of Consultant in the performance of the professional services under this Agreement and those of Consultant's sub-consultants or anyone for whom Consultant is liable regardless of whether or not such claim, loss or liability is caused in part by a party indemnified hereunder.

12.2 Indemnity for Other than Professional Liability. With respect to operations other than the performance of the professional services under this Agreement, Consultant shall, to the fullest extent permitted by law, hold harmless, protect, defend and indemnify the City, its council, and each member thereof, its officers, employees, representatives and their successors and assigns, from and against losses, liabilities, claims, suit damage, expenses and costs including reasonable attorney's fees and costs, and expert costs and investigation expenses arising out of injury to any person, including death, or damage to property caused, in whole or in part, by or attributable to the performance of Consultant, its employees, representatives, subcontractors, or agents regardless of whether or not such claim, loss or liability is caused, in part by a party indemnified hereunder.

12.3 General Indemnity Provisions. This indemnity is in addition to any other rights or remedies which City may have under the law or this Agreement. In the event of any claim or demand made against any party which is entitled to be indemnified hereunder, City may, at its sole discretion, reserve, retain or apply any monies due to Consultant under this Agreement for the purpose of resolving such claims; provided however, that City may release such funds if Consultant provides City with

reasonable assurances of protection of the City's interest. The City shall, in its sole discretion determine whether such assurances are reasonable.

Consultant agrees that its duty to defend the indemnities arises upon an allegation of liability based upon the performance of services under this Agreement by Consultant, its officers, agents, representatives, employees, sub-consultants, or anyone for whom Consultant is liable and that an adjudication of Consultant's liability is not a condition precedent to Consultant's duty to defend.

12.4 Consultant's indemnification obligations shall not be limited by the insurance provisions of this Agreement. The Parties expressly agree that any payment, attorney's fees, costs or expense City incurs or makes to or on behalf of an injured employee under the City's self-administered workers' compensation is included as a loss, expense, or cost for the purposes of this section, and that this section will survive the expiration or early termination of this Agreement.

13. SUBCONTRACTORS.

13.1 The Consultant's hiring or retaining of third parties (i.e. subcontractors) to perform services related to the Project is subject to prior approval by the City.

13.2 All contracts entered into between the Consultant and its subcontractor shall also provide that each subcontractor shall obtain insurance policies which shall be kept in full force and effect during any and all work on this Project and for the duration of this Agreement. The Consultant shall require the subcontractor to obtain all policies described in section 11 of this Agreement in the amounts required by the City, which shall not be greater than the amounts required of the Consultant.

13.3 In any dispute between the Consultant and its subconsultants, the City shall not be made a party to any judicial or administrative proceeding to resolve the dispute. The Consultant agrees to defend and indemnify the City as described in section 12 of this Agreement should the City be made a party to any judicial or administrative proceeding to resolve any such dispute or should the City incur any costs in responding to third-party discovery requests.

14. NON-DISCRIMINATION. Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin, nor shall Consultant discriminate against any qualified individual with a disability. Consultant shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex or national origin and shall make reasonable accommodation to qualified individuals with disabilities. Such action shall include, but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Consultant agrees to post in conspicuous places available to employees and applicants for employment any notices provided by City setting forth the provisions of this non-discrimination clause.

15. NOTICES. All communications to either party by the other party shall be delivered to the persons listed below. Any such written communications by mail shall be conclusively deemed to have been received by the addressee five (5) calendar days after the deposit thereof in the United States Mail, postage prepaid and properly addressed as noted below.

City Manager City of Del Mar 1050 Camino del Mar Del Mar, CA 92014	If to Consultant: _____ _____ _____ _____
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16 ASSIGNABILITY. This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of the Consultant's duties be delegated or sub-contracted, without the express written consent of the City.

17. RESPONSIBILITY FOR EQUIPMENT. City shall not be responsible nor held liable for any damage to persons or property consequent upon the use, misuse, or failure of any equipment used by Consultant or any of Consultant's employees or subcontractors, even if such equipment has been furnished, rented, or loaned to Consultant by City. The acceptance or use of any such equipment by Consultant, Consultant's employees, or subcontractors shall be construed to mean that Consultant accepts full responsibility for and agrees to exonerate, indemnify and hold harmless City from and against any and all claims for any damage whatsoever resulting from the use, misuse, or failure of such equipment.

18. CALIFORNIA LAW; VENUE/MISC. This Agreement shall be construed and interpreted according to the laws of the State of California. Any action brought to enforce or interpret any portion of this Agreement shall be brought in the county of San Diego, California. Consultant hereby waives any and all rights it might have pursuant to California Code of Civil Procedure § 394.

19. COMPLIANCE WITH LAWS. The Consultant shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement.

20. CONSULTANT'S CERTIFICATION OF AWARENESS OF IMMIGRATION REFORM AND CONTROL ACT OF 1986. Consultant certifies that Consultant is aware of the requirements of the Immigration Reform and Control Act of 1986 (8 USC §§ 1101-1525) and has complied and will comply with these requirements, including, but not limited to, verifying the eligibility for employment of all agents, employees, subcontractors and consultants that are included in this Agreement.

21. ENTIRE AGREEMENT. This Agreement sets forth the entire understanding of the Parties with respect to the subject matters herein. There are no other understandings, terms, or other agreements expressed or implied, oral or written, except as set forth herein.

22. 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. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless agreed to in writing by both Parties.

23. NO WAIVER. No failure of either the City or the Consultant to insist upon the strict performance by the other of any covenant, term, or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement shall constitute a waiver of any such breach of such covenant, term or condition.

24. SEVERABILITY. The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision unenforceable, invalid, or illegal.

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

26. LEGAL FEES. In the event of the bringing of any action or suit by either party hereto against the other party hereunder to enforce or interpret any of the provisions, covenants or conditions of this Agreement, or arising out of any tortious conduct by either party incident to this Agreement, the prevailing party in such action or suit shall be entitled to recover all costs and expenses of suit, including

reasonable attorneys' fees. In any action or suit brought to enforce this Agreement, the damages available shall be limited to specific performance or other such equitable relief that the court may order.

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

28. EXHIBITS INCORPORATED. All Exhibits referenced in this Agreement are incorporated into the Agreement by this reference.

29. SIGNING AUTHORITY. The representative for each Party signing on behalf of a corporation, partnership, joint venture or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other Party or Parties hereto harmless if it is later determined that such authority does not exist.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the day and year first hereinabove written.

City of DEL MAR,
a municipal corporation

Scott Huth, City Manager

[Name of Consultant]

By: _____

Its: [Title]

ATTEST:

Andrew Potter, City Clerk

APPROVED AS TO CONTENT:

Scott Huth, City Manager

APPROVED AS TO FORM:

Leslie E. Devaney, City Attorney