



**CITY OF DEL MAR
REQUEST FOR QUALIFICATIONS
No. 2023-02**

**CONSULTING SERVICES FOR
WATER AND WASTEWATER UTILITY RATE STUDIES**

March 20, 2023

I. NOTICE OF REQUEST FOR QUALIFICATIONS (RFQ):

The City of Del Mar (City) is seeking proposals from qualified firms to perform comprehensive water and wastewater utility rate studies and to provide recommended changes to current user rates and fees. The focus of these rate studies is to ensure the City's water and wastewater utilities have sufficient, defensible funding to meet their operational and capital obligations, and those utility rates are set proportionate to the cost of providing service to each customer class.

Responses to this RFQ will be accepted until **3:00 PM (PST) on Friday, April 14, 2023**, via email to Mariel Cairns, Management Analyst at mcairns@delmar.ca.us.

All questions regarding this RFQ must be submitted via email before **3:00 PM (PST) on Friday, March 31, 2023**, and directed to Mariel Cairns, Management Analyst at mcairns@delmar.ca.us. City responses to questions will be made by addendum and posted on the City's website at: <https://www.delmar.ca.us/Bids.aspx>. Such addendum shall be considered a part of the RFQ and must be signed and submitted with the proposal.

II. KEY DATES

Anticipated timeline for RFQ Process:

Action	Tentative Timeline/Deadline
Issue Notice of RFQ	March 20, 2023
Deadline for Questions from Respondents	March 31, 2023 (3:00 PM)
City Responses to Questions Posted	April 6, 2023
Deadline to Submit Proposals	April 14, 2023 (3:00 PM)
Tentative Award of Professional Services Agreement	May 15, 2023 (or soon thereafter)

III. RATE STUDY OBJECTIVES

The City desires to retain a qualified firm to prepare water and wastewater cost of service studies and make recommendations for implementing revised rate structures in compliance with California Proposition 218 (Prop 218) requirements. The City last set rates in 2019, which cover the period through Fiscal Year (FY) 2023-24. The new water and wastewater rates shall be ready for implementation July 1, 2024, which means the final recommendations should be presented to the City Council no later than February 2024, while the City is working on the FY 2024-2025 budget. The Scope of Work is provided in Attachment A.

The goals of the study are to:

- i) Propose water and wastewater rates in accordance with American Water Works Association (AWWA) guidelines, Water Environment Federation (WEF) methodologies, Prop 218, and all applicable laws and industry best practices, that are fair, objective and fiscally appropriate for the City of Del Mar, covering a five (5) fiscal year study period (FY 2024-2025 to FY 2028-2029), including, but not limited to:
 - Ongoing operations;
 - Planned capital improvements;
 - A prudent reserve program for operating;
 - Capital replacement and emergencies;
- ii) Evaluate the City's water and wastewater existing rate schedule;
- iii) Evaluate existing department operations and budgets and identify the current level of service and estimate the future level of service;
- iv) Evaluate existing and future department operations and budgets during drought conditions;
- v) Incorporate recommendations of water and wastewater system capital improvement plans to address infrastructure needs;
- vi) Identify potential funding mechanisms to finance department operations and capital improvements; and
- vii) Minimize rate impacts to customers to the greatest extent possible.

Several Key Issues that will impact the overall study are as follows:

- i) The City is "built out" with existing infrastructure expected to support the future population. It is anticipated that the only major development that may come will be from redevelopment.
- ii) Ongoing emerging contaminants of concern, new State Water Resources Control Board (SWRCB) regulations through the Division of Drinking Water, and the need to quickly pivot for treatment options.
- iii) Increases are expected for the costs of water supplied by the San Diego County Water Authority starting in Fiscal Year 2023-2024.

IV. PROPOSAL CONTENT REQUIREMENTS

To be considered, proposals submitted in response to this RFQ must include the following information. Omission of any of the requested information or misleading and incomplete information may be grounds for rejection.

1. **Cover letter** signed by an officer of the firm binding the firm to all of the commitments made in the submittal.

2. **Review of Scope of Services / Approach**

Describe the firm's ability to provide the services listed in the Scope of Work (Attachment A) and what makes the firm the best qualified to provide these services. Provide comments and suggest modifications, changes, and/or additions to the Scope of Work as appropriate. Indicate the firm's approach to achieve the City's Rate Study Objectives in Section III and what specialized services or unique insights the team will provide. Provide examples of the team's approach.

3. **Project Schedule**

Timing and schedule are critical for this project. Identify all significant milestone dates necessary to complete all tasks with a tentative Prop 218 Public Hearing date of June 3, 2024, or sooner. Indicate resources that will be allocated to each major task category to meet the schedule and discuss the firm's flexibility and record in "catching up" if milestone dates are not met. Discuss the firm's commitments to other projects in the time frame coinciding with this project.

4. **Related Experience**

Present a description of the firm's past performance on similar projects, emphasizing projects of similar scope and budget. Discuss the firm's experience in the accurate coordination of subconsultants and the quality control process. Address the firm's record of meeting schedules and controlling costs. Address the firm's record of accuracy on estimates.

5. **Subconsultants**

Identify any subconsultants the firm will utilize. Include resumes of key individuals who will be directly involved in this project, and briefly describe any past involvement in joint projects with these subconsultants. Indicate why the subconsultant has been selected to work on the project team. Indicate how the prime firm will ensure quality control and coordination of documents between the prime and the various subconsultants.

6. **Qualifications and Capabilities**

Provide a detailed discussion of the qualifications and experience of the Project Director that will have overall responsibility for the progress, supervision and execution of the services detailed in the Scope of Work. Provide additional information regarding the qualifications and experience of all key individuals that will be assigned to work on the project team. Please submit resumes of only those individuals that will actually be assigned to work on the project. **Confirm**

availability of staff to complete assigned tasks with highest priority and production. An organizational chart is recommended. Indicate how the firm's resources will work together to complete this project. Identify additional resources available in the firm.

7. Client References

Include the following information:

- A minimum of three (3) references from public agencies or similar government entities for which services like those required by this RFQ were performed.
- An emphasis should be placed on projects undertaken within the past five years and for public agencies located in similar size communities in Southern California.
- For each reference, include the name of the organization, dates for which the service(s) were provided, types of service(s) provided, and contact person (name, title, phone number, and email).

8. Fee Proposal

Provide a Fee Proposal (Attachment B) that includes the firm's proposed compensation (e.g., fee schedule) and costs for completing the Scope of Work (Attachment A) as a lump sum fixed fee for each of the Tasks 1 through 8. In addition, provide an itemized detail of the fee for each task showing the estimated hours of each staff member assigned and the associated fee for that staff member or subconsultant. Also include hourly rate schedules for all key personnel, including subconsultants. The itemized cost breakdown will assist in the project progress payments. The City will process invoices on a monthly basis for percentage of work completed per task.

9. Certificate of Insurance and Agreement Acknowledgement

Proof of liability insurance pursuant to the City's Professional Services Agreement (PSA) (Attachment C) is required to be submitted with the proposal. Respondents must acknowledge review of the City's PSA and provide a statement accepting the terms of the PSA as-is or include requested changes to the agreement as part of their submittal. Requested changes after the close of the RFQ solicitation period will not be considered.

V. EVALUATION AND AWARD

City staff will evaluate all proposals submitted and will develop a short-list of firms to be considered based on their ability to best meet the City's needs. Each proposal will be evaluated based on project approach and understanding; the firm's experience/qualifications; proposed project schedule; and fee proposal. During the evaluation period, the City may or may not interview some or all of the short-listed firms. The interview may consist of a short presentation by the firm, after which the committee may ask questions related to the firm's proposal and qualifications.

VI. MISCELLANEOUS

Reserved Rights by the City

The rights reserved by the City include, but are not limited to, the following:

- The City reserves the right to select, and subsequently recommend for award the firm that best meets the needs of the City and budget constraints.
- The City reserves the right to require further documentation or information prior to entering into an agreement for services.
- The City reserves the right to require the selected firm(s) including subconsultants to register for a City of Del Mar Business License and maintain an active status at all times during the duration of the Agreement. (www.delmar.ca.us/542/Business-License-Application-Form)
- The City reserves the right to reject any or all submittals. The City further reserves the right to waive technicality and formalities in submittals, as well as to accept in whole or part such submittals where it is deemed in the best interest of the City.

Incurred Costs

The City of Del Mar is not liable for any costs incurred by a respondent in the preparation and/or presentation of their submittal.

Public Record

All correspondence with the City, including responses to this RFQ, will become the property of the City and will become public records under the California Public Records Act.

Indemnification of the City

At its expense, respondent agrees to indemnify, defend, and hold harmless the City and its officers, agents, employees, and representatives from an against any and all liability, suits, actions, proceedings, judgements, claims, demands, liens, losses, damages, costs and expenses (including attorneys' fees, litigation, arbitration, mediation, appeal expenses) if a dispute, lawsuit, or other proceeding arises out of any one or more of the following: Respondent submitting the proposal; City accepting respondent's proposal; or City awarding an Agreement to a respondent.

Equal Opportunity

In connection with submittal pursuant to this RFQ, respondents shall not in any manner prohibited by law discriminate or permit discrimination against any person or group of persons on the ground of race, religion, color, national origin, age, ancestry, disability, medical condition, military or veteran status, marital status, sex, gender, sexual orientation, or any other category protected by Federal, State, or local laws. In the event of a respondent's noncompliance with this nondiscrimination clause or with any applicable

rules, regulations or orders, the respondent may be declared ineligible to enter into an agreement with the City.

VII. ATTACHMENTS

- A. Scope of Work
- B. Fee Proposal
- C. City of Del Mar Professional Services Agreement

**ATTACHMENT A
SCOPE OF WORK
WATER AND WASTEWATER UTILITY RATE STUDIES**

The following is an outline of work to be provided by the firm. While it is believed that this Scope of Work includes all elements essential to complete the project, respondents to the RFQ are advised to include any additional items that they believe have been omitted. As part of the proposal, include comments and suggest modifications, changes, and/or additions to the Scope of Work as appropriate.

Task 1 – Kick Off Meeting & Progress Meetings

The selected firm shall attend one (1) kick-off meeting at which City staff will share contact information, discuss scope of services, and implementation process.

The firm and City staff will hold bi-monthly meetings to discuss analysis findings, progress on tasks, schedule updates or other pertinent information related to the project. Assume six progress meetings and propose the schedule of meetings to ensure the City is sufficiently informed of the progress of the studies, which may be more frequent depending on the milestone.

Task 2 – Revenue Requirements Analysis

Firm shall review and become familiar with the fiscal policies for each of the utilities based on cash-on-hand and capital replacement needs. The analyses will focus primarily on revenue sufficiency over the next five (5) years based on the City's projected operating, capital, policy, regulatory and asset management needs. The financial forecasts will consider the overall funding strategy including near- and long-term capital and operational needs, as well as potential impacts on customer usage changes due to conservation. The results of the revenue requirement analysis for each utility will define the levels of rate increase necessary to fund ongoing expenditures and to meet the City's policy goals.

Firm shall prepare an "Existing Cost of Service Summary" technical memorandum or executive summary of the existing financial condition of the water and wastewater funds. This summary shall identify the cost of service gaps or discrepancies between the existing rate structures, the projected maintenance, operations and capital spending plans and the effects of drought and associated reduced water consumption demands. This summary will also identify the strategy the firm intends to use to close any cost of service gaps identified.

Deliverables: Existing Cost of Service Summary: digital copy (PDF)

Task 3 – Cost of Service Allocation Analysis and Rate Structure Design

As part of the work required to prepare comprehensive water and wastewater rate study reports, the firm shall develop cost of service allocation analyses, forecasting models, projections and rate adjustment scenarios for the City's consideration. The analyses must

ensure that rates are defensible and adhere to the requirements of Proposition 218, sound cost of service rate making principles and other regulations.

Firm shall perform at a minimum the following tasks for both the water and wastewater funds:

- a) A cost allocation analysis that shall fairly and equitably allocate costs across customer classes, while adequately funding revenue requirements for operations and maintenance, capital improvements, treatment and transportation costs and reserve funding;
- b) A rate structure design that considers and makes provisions for:
 - A review and analysis of current rate structure;
 - Current and future costs of providing utility service in accordance with established and anticipated standards and regulations.
 - Weigh the benefits of any proposed water and wastewater system improvements and replacements against the financial impacts on ratepayers;
 - The type and amount of reserves appropriate to the City's water and wastewater operations taking into consideration reserves for cash flow, catastrophes, infrastructure replacement and other appropriate purposes;
- c) A financial model that assesses the recommended rate structure and its impacts on the ability to fund utility current and future revenue requirements as well as its impact on the City's rate payers;
- d) Review and recommend changes to the City municipal code as a result of proposed rate changes.
- e) The benefits of any proposed rate modifications shall be weighed against the financial impacts on the rate payers. Analyze the proposed rates for customer impacts and develop alternative rates modeled to address financial impacts on rate payers. The analysis shall include:
 - Run sample bills, prepare bill comparisons and provide impact analysis for each proposed rate structure for representative customer classes using the current rate schedules as a baseline. Size of sample bills for each customer class must be a minimum of twenty-five percent (25%) of total customer accounts for each class. Representative sampling pool must include a wide range of low to high water use customers.
 - Provide a comparison of current and proposed rates to comparable surrounding water and wastewater utilities.

Deliverables

Firm shall provide a draft summary comparison of allocated costs and discuss with City staff the cost of service rate model development and various rate structure scenarios prior to preparing the final reports.

Task 4 – Drought Surcharge Rates

As California continues to experience dry to extreme drought throughout the state and with Water Conservation Regulations being implemented, the firm shall review the City's current drought surcharge rates and recommend any revisions.

Deliverables

Firm shall provide a draft summary of the drought surcharge rate analysis and discuss with City staff recommended revisions to the current rate schedule prior to preparing the final reports.

Task 5 – Rate Study Reports

The firm shall prepare comprehensive rate study reports that satisfy the City's stated goals and address key issues as described above in the Rate Study Objectives section of the RFQ. There shall be two separate rate study reports prepared, one for the Water Fund and one for the Wastewater Fund.

Tasks

Firm shall prepare comprehensive water and wastewater rate study reports for the City that details and documents the results and recommendations of the cost of service allocation to customer classes and rate structure design.

At a minimum, the reports shall be comprised of the following:

- a) Executive Summary
- b) Introduction/Background including discussions on:
 - Purpose and objectives of study
 - Applicable laws, compliance with Proposition 218 and regulatory framework
 - Methodology and Generally accepted rate setting standards
- c) Revenue Requirements
 - Key assumptions
- d) Cost of Service Allocation and Rate Design Methodology
- e) Recommendations
- f) Proposition 2018 Compliant Notices
 - Prepare rate adjustment notices compliant with Proposition 218 requirements. Notices will be prepared in English and Spanish.

Deliverables

Firm shall deliver at a minimum the following:

- a) Final Cost of Service Rate Study for Water - Digital Copy (PDF)
- b) Final Cost of Service Rate Study for Wastewater - Digital Copy (PDF)
- c) Proposition 218 Compliant Notice - Digital Copy (PDF and MS Word)

Task 6 – Public Meetings and Presentations

Firm shall participate, as requested by the City, at both staff and public meetings and make presentations regarding the results of the cost of service rate studies to City staff, City Council and the public. For purposes of this RFQ, assume attending six (6) meetings (excluding the kick-off meeting and project progress meetings).

Task 7 – Midterm Review (Optional)

The City may request the firm to perform a midterm review (at year 2 of implementation) of the adopted rate structure, revenues and expenditures and make recommendations/findings as to the need of any midterm rate adjustments to meet the City's stated goals. The Firm shall then deliver an addendum report to the initial study presenting said recommendations and shall provide an updated Proposition 218 notice if needed. Fee schedule for this task shall be proposed separately from other tasks. This service may or may not be incorporated in the agreement.

Task 8 – Additional Related Services

Firm may propose additional related services that have not specifically been identified to accomplish the stated goals of this RFQ. Additional related services will be considered by the City and may or may not be incorporated in the agreement.

**ATTACHMENT B
FEE PROPOSAL
WATER AND WASTEWATER UTILITY RATE STUDIES**

Task	Description	Fee
Task 1	Kickoff & Progress Meetings	
Task 2	Revenue Requirements Analysis	
Task 3	Cost of Service Allocation Analysis and Rate Structure Design	
Task 4	Drought Surcharge Rates	
Task 5	Rate Study Reports	
Task 6	Public Meetings and Presentations	
	Total Tasks 1-6	
Optional		
Task 7	Midterm Reviews (Optional)	
Task 8	Additional Related Services	

Include as Attachments:

- B.1 Fee Details itemized by task (key personnel, hours and fee per person)
- B.2 Key Personnel Rate Schedule

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF DEL MAR AND [NAME OF CONSULTANT]
FOR WATER AND WASTEWATER UTILITY RATE STUDIES**

This Professional Services Agreement (“Agreement”) is made and entered into this _____ day of _____, 2023 by and between the City of Del Mar, a Charter City and a municipal corporation (“City”), and [Name of Consultant] (“Consultant”) (collectively “Parties”).

WHEREAS, the City desires to employ a consultant to provide water and wastewater utility rate studies (“Consulting Services”). Said work is to be performed in accordance with the terms and conditions set forth below and as described in the scope of services, attached hereto as Exhibit “A” and incorporated herein; and

WHEREAS, the City has initially determined that Consultant is qualified by experience and ability to perform the services desired by City, and Consultant is willing to perform such services; and

WHEREAS, Consultant will conduct all the work as described and detailed in this Agreement to be provided to the City.

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 Consulting Services as set forth in the written Scope of Services, attached hereto as **Exhibit “A”** and incorporated herein. Such services shall be provided at the direction of the City.

1.2. Project Coordinator. The Public Works Management Analyst 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. [Name or title of consultant’s employee] 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. This Agreement shall be effective for a period from the date of execution through August 31, 2024.

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. Compensation to Consultant shall be provided in accordance with the rates described in the Fee Schedule contained in Exhibit "B". Consultant shall bill the City for work provided and shall present a written request for such payment monthly. City shall pay all invoices in arrears and shall in no event be required to pay for any services provided by Consultant in advance. Consultant acknowledges that it is not guaranteed any particular amount of work.

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.

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. STATEMENT OF EXPERIENCE. 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 and that such performance shall be in accordance with the standards customarily adhered to by an experienced and competent Consultant using the degree of care and skill ordinarily exercised by reputable Consultants practicing in the same field of service in the State of California. By executing this Agreement, Consultant represents that it has demonstrated trustworthiness and possesses the quality, fitness, and capacity to perform the Agreement in a manner satisfactory to City. Additionally, Consultant and all of Consultant's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this Agreement.

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, if applicable. 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 Consulting Liability. Consulting 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 Consultant agrees to indemnify, defend (with attorneys approved by City), and hold harmless the City, and its officers, officials, agents and employees (the "Indemnified Parties") from any and all claims, demands, costs or liability that arise out of, or pertain to, or relate to the Consultant, its employees, agents, and subcontractors performance of services under this Agreement. Consultant's duty to indemnify under this section shall not include liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense arising from the sole negligence or willful misconduct by the City or its elected officials, officers, agents, and employees. 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.

12.2 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.

12.3 Consultant agrees that its duty to defend 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.

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, national origin, ancestry, physical or mental disability, medical condition, genetic information, marital status, military or veteran status, gender, gender identity, gender expression, sexual orientation, or any other class protected under state, federal, or local law. Consultant shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to any class or category protected under state, federal, or local law 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.

If to City:
City of Del Mar
City Clerk
1050 Camino del Mar
Del Mar, CA 92014

If to Consultant

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 section 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, including California Labor Code section 1720, et seq., relating to payment of prevailing wages for public works projects, if applicable. Consultant shall indemnify and defend the Indemnified Parties from and against any liability incurred due to any failure on the part of Consultant to comply with any applicable Laws.

To the extent Consultant is required to comply with prevailing wage requirements, Consultant does hereby acknowledge that they are aware of, have read, and understand the terms and implications of SB 854 and Consultant and any subconsultants ensure that they are familiar with and comply with its requirements. Such requirements include, but are not limited to, the registration requirement with the Department of Industrial Relations, State of California (DIR), pursuant to Labor Code section 1725.5. As of March 1, 2015, in compliance with SB 854, the City requires all affected contractors and consultants to be registered with the DIR prior to submitting a bid or proposal on any eligible District project. As of April 1, 2015, failure to comply with the requirements of SB 854 by any contractor or consultant, including registration with the DIR pursuant to Labor Code section 1725.5, shall be a material breach of this Agreement which may be terminated by the City in its sole and absolute discretion. Where applicable, this project is subject to compliance monitoring and enforcement by the DIR.

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.

[SIGNATURES ON THE FOLLOWING PAGE]

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

CITY OF DEL MAR,
a municipal corporation

[INSERT CONSULTANT]

By: _____
Ashley Jones, City Manager

By: _____
Name, Title

ATTEST:

Nestor Machado, Acting City Clerk

APPROVED AS TO FORM:

Leslie E. Devaney, City Attorney

EXHIBIT "A"
SCOPE OF SERVICES

EXHIBIT "B"
FEE PROPOSAL