



CITY OF DEL MAR

REQUEST FOR QUALIFICATIONS No. 2024-07

ON-CALL SHORELINE MANAGEMENT SERVICES

I. INTRODUCTION

A. *General Information*

The City of Del Mar (City) is seeking Statements of Qualifications (SOQ/proposals) from qualified professional consulting firms (Consultants) to provide on-call shoreline management services including but not limited to environmental assessments, technical studies, vulnerability and risk assessments, adaptation planning for coastal hazards, sediment management and monitoring, flood management planning along the Pacific Ocean and San Dieguito River, and monitoring and implementation of projects related to dredging within the San Dieguito Lagoon, beach sand placement, and living levee project implementation.

Once established, the on-call consultant list will be relied upon to:

- Support implementation of the City's adopted [Sea Level Rise Adaptation Plan](#) including implementation of a potential beach nourishment project per the City's Sand Compatibility Opportunistic Use Program ([SCOUP](#)) and implementation of the [living levee conceptual plan](#);
- Support implementation of amendments to the Del Mar Community Plan (General Plan) and Local Coastal Program to demonstrate City compliance with State laws including but not limited to, Senate Bill 1425 requirement to update the City's Open Space Element of the Del Mar Community Plan and Senate Bill 272 requirements to update the Local Coastal Program to incorporate sea level rise adaptation policies and regulations; and
- Provide technical studies, assessments, and monitoring support related to other coastal development projects along the shoreline in the San Diego region (i.e., Adaptation Planning, Transportation Planning, and [Housing Element implementation](#)).

The City is seeking to create an on-call consultant list (up to three consultants) and enter into a three-year agreement with the selected Consultants, with the option of extending the agreement for an additional two-year period. A copy of the City's standard agreement is included with this Request For Qualifications (RFQ) as Attachment A.

B. *About the City*

Incorporated in 1959, the City of Del Mar is a Charter Law City with a Council-Manager form of government. The Del Mar City Council consists of five members, one of whom is chosen on a rotating basis for a one-year term as mayor. Del Mar is located just 20 minutes north of downtown San Diego on the southern California coast. Approximately 3,900 residents call this 2.2 square mile city their home. The famed horse racing and annual County Fair that take place at the State-owned Del Mar Fairgrounds and over two miles of white sandy beaches make Del Mar an inviting tourist destination. Residents and visitors enjoy excellent weather and a variety of outdoor activities at the City's parks and Downtown Village.

C. Inquiries

Questions and inquiries regarding this RFQ must be received by 4:30 p.m. PST on **Friday, September 13, 2024**, and directed in writing by email to Nestor Machado, Management Analyst at nmachado@delmar.ca.us. All inquiries must reference “RFQ 2024-07 Shoreline Management Services” in the title or subject line. Questions and inquiries submitted over the telephone will not be accepted.

D. Submittal Requirements

Proposals are due on or before **Friday, September 27, 2024**, no later than 4:30 p.m. PST. Your proposal should be submitted via email to Nestor Machado, Management Analyst at nmachado@delmar.ca.us. The submittal must reference “RFQ 2024-07 Shoreline Management Services” in the title or subject line. Facsimile submittals will not be accepted.

II. ANTICIPATED TIMELINE

Anticipated timeline for RFQ process is outlined below and is subject to change without notice:

Action	Tentative Timeline/Deadline
Notice of RFQ	August 29, 2024
Questions Due	September 13, 2024, by 4:30 PM
Responses to Questions Posted	September 18, 2024, by 12:30 PM
Deadline to Submit Proposals	September 27, 2024, by 4:30 PM
City Staff Review of Proposals	September 30 – October 4, 2024
Selected Firm Notified	October 7, 2024
Council Consideration of Agreement for Services	October 21, 2024
Agreement Start Date	October 21, 2024

III. SCOPE OF SERVICES REQUIRED

The Scope of Services is comprised of but not limited to:

1. Provide coastal engineering expertise, including ocean and river hydrology and geology studies.
2. Provide vulnerability assessment and adaptation planning for coastal hazards.
3. Manage shoreline monitoring (i.e., beach sand quality, beach profiles, turbidity, grunion).
4. Provide sediment management.
5. Organize and administer dredging within the ocean and/or lagoon for beach sand placement.
6. Organize monitoring and implementation of Sand Compatibility Opportunistic Use Program (SCOUP) plans and beach nourishment projects.
7. Manage implementation of flood management strategies (i.e., along ocean and/or river).
8. Provide assessment of habitat migration and rewilding opportunities per Senate Bill 1425.
9. Organize and administer technical studies related to sea level rise, coastal engineering or hydrology/geology.
10. Provide professional surveyor expertise for preparation of mean high tide line survey.
11. Grant writing and/or preparation of a financing plan to acquire project funding.
12. Prepares CEQA and NEPA pre-and post- Environmental Impact Report (EIR) documentation including Notices of Preparation, Notices of Determination, Requests for Proposal, Requests for Qualifications, Scopes of Work, and related documentation.
13. Manage the preparation of environmental documents such as biological assessment and sensitive habitat surveys.

14. Obtain Permits from State and Federal Resource Agencies (i.e., United States Army Corps of Engineers, California Coastal Commission, State Lands Commission, Regional Water Quality Control Board, California Department of Fish and Wildlife)

IV. PROPOSAL FORMAT AND REQUIREMENTS

To be considered, proposals submitted in response to this RFQ need to include the following content:

1. Title Page

The title page must show the RFQ number and subject, name of the firm, local address, telephone number; name, title, and email address of contact person; and date of proposal submission.

2. Table of Contents

Include a clear and complete identification of the materials submitted by section and page number.

3. Qualifications and Experience

The following information must be included to demonstrate qualifications and experience:

- An understanding of the work to be performed and why the firm believes itself to be the best qualified to perform the services requested.
- Number of years the firm has been in business.
- Description of the firm's experience providing the services listed above, examples of municipal projects that the firm worked on, and the outcomes of these projects/services.
- Anticipated organizational structure, core team that will be performing services, and brief summary of the qualifications and experience of each team member, including length of service with the company and resume. Also include an organization chart of senior and middle management.
- Provide name of contact person for the project, phone number and email address.
- Provide name, title, and contact information for the authorized contract signer.

4. Service Delivery and Quality Control

Describe the following components of service delivery:

- Technical review process.
- Approach to completing the project successfully; methodologies and technologies you would employ; key milestones and processes you would employ.
- Information you would expect the City to supply.
- Consultant's policies and procedures for assuring high quality work.
- Methods of communication with the City.

5. Conflict of Interest

Consultant is required to issue a brief statement disclosing potentially conflicting interests, including any litigation involving the Consultant or Consultant's personnel which is adverse to the City; and the listing of services currently being provided or provided within the last four years to any person, corporation, partnership, or other entity that made application to the City for a discretionary land use entitlement or City project.

6. Client References

List a minimum of three (3) references from California municipalities or other public sector clients for services provided by your firm. For each reference listed provide the name of the organization, dates for which the service(s) are being provided, type of service(s) being provided and the name, email, and telephone number of the responsible person within the

reference's organization. The City reserves the right to contact any or all the listed references regarding the services performed.

7. Cost and Fee Structure

Provide a detailed cost description and fee schedule for all applicable services, including all anticipated reimbursement costs.

8. Acceptance of or Requested Changes to the City's Standard Agreement

Proposing firm must acknowledge review of the City's standard agreement (**Attachment A**) and either expressly state their acceptance of the terms of the agreement 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.

9. Acceptance of RFQ Addendums

Proposing firm must expressly acknowledge review and acceptance of all addendums to the RFQ if any are issued before the close of the RFQ solicitation period.

10. Other Information

Respondents are invited to submit other optional information believed to be relevant to the selection process.

V. EVALUATION CRITERIA

Selection of the successful proposal shall be generally based on the information provided by the Consultant in response to the RFQ and any subsequent interviews that may be conducted. Respondent interviews will be held solely at the option and discretion of the City. At a minimum, proposals and firm selection will be evaluated based on the following criteria:

- A. Experience and history of the firm in providing the services identified in this RFQ.
- B. The character, integrity, reputation, judgment, experience, and efficiency of the proposing firm and assigned staff members.
- C. The quality of performance on previous contracts or services.
- D. Experience in meeting the needs of other governmental organizations or any organization that utilizes similar services.
- E. The ability, capacity, skills, and financial resources to perform the work or provide the required service promptly or within the time specified, without delay or interference.
- F. The degree of completeness of response to the specific requirements of this RFQ.
- G. The cost of the services to be provided.
- H. Other evaluation criteria described or included by reference in the solicitation.

VI. TERMS AND CONDITIONS

A. Reserved Rights by the City

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

- The City reserves the right to select, and subsequently recommend for award the firm(s) that best meets the needs of the City.
- 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 conduct interviews or require oral presentations of any selected or all Consultants. The City does not guarantee that an interview or an opportunity to demonstrate services will take place.
- 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.

- The City reserves the right to amend, alter, or revoke this RFQ at or before the due date and time of proposal. Any modifications, clarification, or additions will be posted on the City's website as an addendum.
- Under the City's best value evaluation method, the Respondent with the lowest rates may not necessarily be awarded this contract.

B. Proposal Withdrawal

Respondents may modify or withdraw their proposal, either personally or by written request, at any time prior to the scheduled closing time of proposals. Such requests should be directed to Nestor Machado at nmachado@delmar.ca.us.

C. Business License

Prior to the start of the Agreement, the selected firm shall obtain a City of Del Mar Business License.

D. 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 proposals.

E. Equal Opportunity

The City of Del Mar requires all proposers to comply with equal opportunity policies. Del Mar's programs, services, employment opportunities, and volunteer positions and contracts are open to all persons without regard to race, religion, color, national origin, sex, age, sexual orientation, marital status, disability, medical condition, genetic disability, military or veteran status, or political affiliation.

F. Public Information

All materials received relative to this RFQ will become public information and be available for public inspection. Any information deemed confidential or proprietary should be clearly identified by the Consultant as such. The City reserves the right to retain all proposals submitted, whether or not the proposal was selected or judged to be responsive. Companies submitting proposals which contain information deemed to be proprietary, may submit that information separately under closed cover so designated and clearly identified. Pricing information may not be so submitted and is non-privileged.

G. Inaccuracies or Misinterpretations

If, in the course of the RFQ process or in the administration of a resulting contract, the City determines that a Respondent has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the City, the Respondent may be terminated from the RFQ process or in the event a contract has been awarded, the contract may be immediately terminated.

H. Assignment of Rights or Obligations

Except as noted hereunder, Successful Respondent may not assign, transfer or sell any rights or obligations resulting from this solicitation without first obtaining the specific written consent of each City.

I. Representations

No representations or guarantees of any kind, made orally, expressed or implied, are made with regard to the matters contained in this document, including any attachments, letters of transmittal, or any other related documents including addendums. Respondents must rely solely on their own independent assessment as the basis for the submission of any offer made.

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF DEL MAR AND [NAME OF CONSULTANT]
FOR ON-CALL SHORELINE MANAGEMENT SERVICES**

This Professional Services Agreement (“Agreement”) is made and entered into this _____ day of _____, 2024 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 on-call shoreline management services (“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 [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. [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 of three (3) years from the date first written above. The agreement may be extended for an additional two (2) year period, upon written approval of both parties.

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"** and incorporated herein. 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
cityclerk@delmar.ca.us

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.

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:

Sarah Krietor, Administrative Services
Manager/City Clerk

APPROVED AS TO FORM:

Leslie E. Devaney, City Attorney