

Attachment A

Professional Services Agreement with ESA

**PROFESSIONAL SERVICES AGREEMENT
WITH ENVIRONMENTAL SCIENCE ASSOCIATES FOR
NEWPORT DUNES RESORT HOTEL ENVIRONMENTAL IMPACT REPORT**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into as of this 12th day of June, 2018 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and ENVIRONMENTAL SCIENCE ASSOCIATES, a California corporation ("Consultant"), whose address is 2121 Alton Parkway, Suite 100, Irvine, California 92606, and is made with reference to the following:

RECITALS

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.
- B. City desires to engage Consultant to assess potential impacts and identify mitigation measures for the development of the Newport Dunes Resort Hotel by preparing an Environmental Impact Report ("EIR"). All work is to be prepared in accordance with the criteria, standards, and provisions of the California Environmental Quality Act ("CEQA") (California Public Resources Code, Section 21000, *et seq.*), California CEQA Guidelines (California Code of Regulations, Title 14, Section 15000, *et seq.*), the City of Newport Beach Environmental Guidelines, and the regulations, requirements, and procedures of any other responsible public agency with jurisdiction by law ("Project").
- C. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the professional services described in this Agreement.
- D. City has solicited and received a proposal from Consultant, has reviewed the previous experience and evaluated the expertise of Consultant, and desires to retain Consultant to render professional services under the terms and conditions set forth in this Agreement.

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

1. TERM

The term of this Agreement shall commence on the Effective Date, and shall terminate on May 8, 2020, unless terminated earlier as set forth herein.

2. SERVICES TO BE PERFORMED

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

3. TIME OF PERFORMANCE

3.1 Time is of the essence in the performance of Services under this Agreement and Consultant shall perform the Services in accordance with the schedule included in Exhibit A. In the absence of a specific schedule, the Services shall be performed to completion in a diligent and timely manner. The failure by Consultant to strictly adhere to the schedule set forth in Exhibit A, if any, or perform the Services in a diligent and timely manner may result in termination of this Agreement by City.

3.2 Notwithstanding the foregoing, Consultant shall not be responsible for delays due to causes beyond Consultant's reasonable control. However, in the case of any such delay in the Services to be provided for the Project, each party hereby agrees to provide notice within two (2) calendar days of the occurrence causing the delay to the other party so that all delays can be addressed.

3.3 Consultant shall submit all requests for extensions of time for performance in writing to the Project Administrator as defined herein not later than ten (10) calendar days after the start of the condition that purportedly causes a delay. The Project Administrator shall review all such requests and may grant reasonable time extensions for unforeseeable delays that are beyond Consultant's control.

3.4 For all time periods not specifically set forth herein, Consultant shall respond in the most expedient and appropriate manner under the circumstances, by hand-delivery or mail.

4. COMPENSATION TO CONSULTANT

4.1 City shall pay Consultant for the Services on a time and expense not-to-exceed basis in accordance with the provisions of this Section and the Schedule of Billing Rates attached hereto as Exhibit B and incorporated herein by reference. Consultant's compensation for all Work performed in accordance with this Agreement, including all reimbursable items and subconsultant fees, shall not exceed **Two Hundred Sixty One Thousand One Hundred Dollars and 00/100 (\$261,100.00)**. Additionally, the City has allocated a contingency amount of **Twenty Six Thousand One Hundred Dollars and 00/100 (\$26,100.00)** for unexpected costs, for a total not to exceed amount of **Two Hundred Eighty Seven Thousand Two Hundred Dollars and 00/100 (\$287,200.00)**. No portion of the contingency shall be expended without prior written approval of City's Project Administrator. No billing rate changes shall be made during the term of this Agreement without the prior written approval of City.

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

4.3 City shall reimburse Consultant only for those costs or expenses specifically identified in Exhibit B to this Agreement or specifically approved in writing in advance by City.

4.4 Consultant shall not receive any compensation for Extra Work performed without the prior written authorization of City. As used herein, "Extra Work" means any Work that is determined by City to be necessary for the proper completion of the Project, but which is not included within the Scope of Services and which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Compensation for any authorized Extra Work shall be paid in accordance with the Schedule of Billing Rates as set forth in Exhibit B.

5. PROJECT MANAGER

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

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

5.3 If Consultant is performing inspection services for City, the Project Manager and any other assigned staff shall be equipped with a cellular phone to communicate with City staff. The Project Manager's cellular phone number shall be provided to City.

6. ADMINISTRATION

This Agreement will be administered by the Community Development Department, Planning Division. City's Planning Program Manager or designee shall be the Project Administrator and shall have the authority to act for City under this Agreement. The Project Administrator shall represent City in all matters pertaining to the Services to be rendered pursuant to this Agreement.

7. CITY'S RESPONSIBILITIES

To assist Consultant in the execution of its responsibilities under this Agreement, City agrees to provide access to and upon request of Consultant, one copy of all existing relevant information on file at City. City will provide all such materials in a timely manner so as not to cause delays in Consultant's Work schedule.

8. STANDARD OF CARE

8.1 All of the Services shall be performed by Consultant or under Consultant's supervision. Consultant represents that it possesses the professional and technical personnel required to perform the Services required by this Agreement, and that it will perform all Services in a manner commensurate with community professional standards and with the ordinary degree of skill and care that would be used by other reasonably competent practitioners of the same discipline under similar circumstances. All Services shall be performed by qualified and experienced personnel who are not employed by City. By delivery of completed Work, Consultant certifies that the Work conforms to the requirements of this Agreement, all applicable federal, state and local laws, and legally recognized professional standards.

8.2 Consultant represents and warrants to City that it has, shall obtain, and shall keep in full force and effect during the term hereof, at its sole cost and expense, all licenses, permits, qualifications, insurance and approvals of whatsoever nature that is legally required of Consultant to practice its profession. Consultant shall maintain a City of Newport Beach business license during the term of this Agreement.

8.3 Consultant shall not be responsible for delay, nor shall Consultant be responsible for damages or be in default or deemed to be in default by reason of strikes, lockouts, accidents, acts of God, or the failure of City to furnish timely information or to approve or disapprove Consultant's Work promptly, or delay or faulty performance by City, contractors, or governmental agencies.

9. HOLD HARMLESS

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

9.2 Notwithstanding the foregoing, nothing herein shall be construed to require Consultant to indemnify the Indemnified Parties from any Claim arising from the sole negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorneys' fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all claims and liability

regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Consultant.

10. INDEPENDENT CONTRACTOR

It is understood that City retains Consultant on an independent contractor basis and Consultant is not an agent or employee of City. The manner and means of conducting the Work are under the control of Consultant, except to the extent they are limited by statute, rule or regulation and the expressed terms of this Agreement. No civil service status or other right of employment shall accrue to Consultant or its employees. Nothing in this Agreement shall be deemed to constitute approval for Consultant or any of Consultant's employees or agents, to be the agents or employees of City. Consultant shall have the responsibility for and control over the means of performing the Work, provided that Consultant is in compliance with the terms of this Agreement. Anything in this Agreement that may appear to give City the right to direct Consultant as to the details of the performance of the Work or to exercise a measure of control over Consultant shall mean only that Consultant shall follow the desires of City with respect to the results of the Services.

11. COOPERATION

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

12. CITY POLICY

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

13. PROGRESS

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

14. INSURANCE

Without limiting Consultant's indemnification of City, and prior to commencement of Work, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement or for other periods as specified in this Agreement, policies of insurance of the type, amounts, terms and conditions described in the Insurance Requirements attached hereto as Exhibit C, and incorporated herein by reference.

15. PROHIBITION AGAINST ASSIGNMENTS AND TRANSFERS

Except as specifically authorized under this Agreement, the Services to be provided under this Agreement shall not be assigned, transferred contracted or

subcontracted out without the prior written approval of City. Any of the following shall be construed as an assignment: The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Consultant, or of the interest of any general partner or joint venturer or syndicate member or cotenant if Consultant is a partnership or joint-venture or syndicate or co-tenancy, which shall result in changing the control of Consultant. Control means fifty percent (50%) or more of the voting power or twenty-five percent (25%) or more of the assets of the corporation, partnership or joint-venture.

16. SUBCONTRACTING

The subcontractors authorized by City, if any, to perform Work on this Project are identified in Exhibit A. Consultant shall be fully responsible to City for all acts and omissions of any subcontractor. Nothing in this Agreement shall create any contractual relationship between City and any subcontractor nor shall it create any obligation on the part of City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise required by law. City is an intended beneficiary of any Work performed by the subcontractor for purposes of establishing a duty of care between the subcontractor and City. Except as specifically authorized herein, the Services to be provided under this Agreement shall not be otherwise assigned, transferred, contracted or subcontracted out without the prior written approval of City.

17. OWNERSHIP OF DOCUMENTS

17.1 Each and every report, draft, map, record, plan, document and other writing produced, including but not limited to, websites, blogs, social media accounts and applications (hereinafter "Documents"), prepared or caused to be prepared by Consultant, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Consultant or any other party. Additionally, all material posted in cyberspace by Consultant, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Consultant or any other party. Consultant shall, at Consultant's expense, provide such Documents, including all logins and password information to City upon prior written request.

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

17.3 All written documents shall be transmitted to City in formats compatible with Microsoft Office and/or viewable with Adobe Acrobat.

18. CONFIDENTIALITY

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

19. INTELLECTUAL PROPERTY INDEMNITY

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

20. RECORDS

Consultant shall keep records and invoices in connection with the Services to be performed under this Agreement. Consultant shall maintain complete and accurate records with respect to the costs incurred under this Agreement and any Services, expenditures and disbursements charged to City, for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such records and invoices shall be clearly identifiable. Consultant shall allow a representative of City to examine, audit and make transcripts or copies of such records and invoices during regular business hours. Consultant shall allow inspection of all Work, data, Documents, proceedings and activities related to the Agreement for a period of three (3) years from the date of final payment to Consultant under this Agreement.

21. WITHHOLDINGS

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

22. ERRORS AND OMISSIONS

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

23. CITY'S RIGHT TO EMPLOY OTHER CONSULTANTS

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

24. CONFLICTS OF INTEREST

24.1 Consultant or its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "Act") and/or Government Code §§ 1090 et seq., which (1) require such persons to disclose any financial interest that may foreseeably be materially affected by the Work performed under this Agreement, and (2) prohibit such persons from making, or participating in making, decisions that will foreseeably financially affect such interest.

24.2 If subject to the Act and/or Government Code §§ 1090 et seq., Consultant shall conform to all requirements therein. Failure to do so constitutes a material breach and is grounds for immediate termination of this Agreement by City. Consultant shall indemnify and hold harmless City for any and all claims for damages resulting from Consultant's violation of this Section.

25. NOTICES

25.1 All notices, demands, requests or approvals, including any change in mailing address, to be given under the terms of this Agreement shall be given in writing, and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided.

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

Attn: Planning Program Manager
Community Development Department, Planning Division
City of Newport Beach
100 Civic Center Drive
PO Box 1768
Newport Beach, CA 92658

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

Attn: Michael Houlihan
Environmental Science Associates
2121 Alton Parkway, Suite 100
Irvine, California 92606

26. CLAIMS

Unless a shorter time is specified elsewhere in this Agreement, before making its final request for payment under this Agreement, Consultant shall submit to City, in writing,

all claims for compensation under or arising out of this Agreement. Consultant's acceptance of the final payment shall constitute a waiver of all claims for compensation under or arising out of this Agreement except those previously made in writing and identified by Consultant in writing as unsettled at the time of its final request for payment. Consultant and City expressly agree that in addition to any claims filing requirements set forth in the Agreement, Consultant shall be required to file any claim Consultant may have against City in strict conformance with the Government Claims Act (Government Code sections 900 *et seq.*).

27. TERMINATION

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

27.2 Notwithstanding the above provisions, City shall have the right, at its sole and absolute discretion and without cause, of terminating this Agreement at any time by giving no less than seven (7) calendar days' prior written notice to Consultant. In the event of termination under this Section, City shall pay Consultant for Services satisfactorily performed and costs incurred up to the effective date of termination for which Consultant has not been previously paid. On the effective date of termination, Consultant shall deliver to City all reports, Documents and other information developed or accumulated in the performance of this Agreement, whether in draft or final form.

28. STANDARD PROVISIONS

28.1 Recitals. City and Consultant acknowledge that the above Recitals are true and correct and are hereby incorporated by reference into this Agreement.

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

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

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

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

28.6 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

28.7 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.

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

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

28.10 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, sexual orientation, age or any other impermissible basis under law.

28.11 No Attorneys' Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorneys' fees.

28.12 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**

Date: JUNE 14, 2018

for By: 
Aaron C. Harp
City Attorney new 6.13.18

ATTEST:

Date: _____

By: _____
Leilani I. Brown
City Clerk

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: _____

By: _____
Marshall "Duffy" Duffield
Mayor

CONSULTANT: Environmental Science
Associates, a California corporation

Date: _____

By: _____
Bobbette Biddulph
Senior Vice President

Date: _____

By: _____
Steve Nelson
Vice President

[END OF SIGNATURES]

Attachments: Exhibit A – Scope of Services
 Exhibit B – Schedule of Billing Rates
 Exhibit C – Insurance Requirements

EXHIBIT A

SCOPE OF SERVICES

Section B

Methodology

The overall objective of the Newport Dunes Resort Hotel EIR, as outlined in the Request for Proposal (RFP), is to provide an environmental document consistent with the requirements of the State CEQA Guidelines and local applicable standards that will stand as a legally defensible document. To achieve this objective, ESA will provide the following approach to the project.



Project Approach

ESA has assembled a highly skilled project team, consisting of managers and technical analysts that will provide the intellectual capital required to seamlessly and systematically move this project forward through completion. The approach of the ESA project team is based on meeting the following objectives:

- > Accurately reviewing and integrating information and/or technical analyses prepared by others into the environmental document.
- > Serving as an extension of City staff to anticipate controversial issues, provide unbiased recommendations, devise solutions to potential impacts and/or other issues that may arise, and provide expert environmental compliance consultation.
- > Coordinating the preparation and compilation of the EIR.
- > Committing senior management to the project to ensure technical accuracy, document objectivity, and legal defensibility.
- > Complying with CEQA, the current State CEQA Guidelines, and current case law and serving as a public educator of CEQA and the CEQA process.
- > Complying with all City processing requirements.
- > Responding to all significant issues of concern raised by the various government agencies, private entities, individuals, and community groups.
- > Submitting all required deliverables within the mutually agreed-upon time frames.

It is assumed that a Project EIR will be completed for the proposed project. Data and/or analysis from the previous Newport Dunes Hotel EIR will be used, as applicable, as well as information contained in other recent relevant environmental and planning documents to inform the cumulative impact analysis and to determine whether there is utility in ensuring consistency with other approved analysis methodologies or impact conclusions.

ESA will take responsibility for project initiation and organization, data compilation, impact assessment, development of mitigation measures, report compilation, monitoring and review for CEQA adequacy, attendance at public meetings, response to public comments, coordination of the internal project team, preparation of a Mitigation Monitoring and Reporting Program (MMRP), and preparation of the Findings of Fact and Overriding Considerations, if necessary.

Report format and content will be in full compliance with CEQA (as in place on the date of submittal of this proposal), the State CEQA Guidelines (also as in place on the date of submittal of this proposal), and City environmental procedural requirements.

General EIR organization will include a discussion of existing conditions, potential direct and indirect/secondary environmental impacts, and the recommendation of mitigation measures for each affected issue area. To present information in a concise and easily understood format, text will be supplemented with graphics, charts, maps, and tables on 8½-in by 11-in paper, unless a larger format is critical to the readability of the document. Work products will consist of professionally photocopied reports in comb bindings, which will be printed on recycled paper and will include CDs for public review documents. The majority of graphics, charts, and maps will be presented in black ink, although some color graphics may be included to help convey necessary information. All work products will be prepared using Microsoft Word and other formats that are compatible with the City's software applications.

Project Work Plan

Task 1: Project Initiation

The ESA Project Manager and Deputy Project Manager will attend one kick-off meeting with the City of Newport Beach staff to obtain information necessary for the preparation of a complete project description, establish early communication among various project team members and discuss known environmental issues for analysis. The kick-off meeting will include a discussion of the scope of work, project schedule, project application information, and technical evaluations prepared by the project applicant. ESA will prepare an agenda for the meeting and distribute meeting minutes within two days following the meeting.

Deliverables:

- > Submit one electronic copy of the meeting agenda.
- > Attendance at one project kick-off meeting.
- > Submit one electronic copy of the meeting minutes.

Task 2: Project Description and EIR Outline

The formulation of a working description for the project is critical to a successful EIR process. ESA will work closely with City staff to prepare a clear and complete Project Description that articulates the components of the project as well as the project objectives. ESA will review the project application materials that were submitted by the project applicant to the City during the preparation of the project description.

The Project Description will include a regional and local setting, project history, project objectives of the City as well as the applicant, and project characteristics of the project features. The description will also include the intended uses of the EIR (as required by Section 15124(d) of the State CEQA Guidelines), including a list of responsible, trustee, and other agencies expected to use the EIR in decision making. A list of approvals for which the EIR will be used will also be provided.

A background discussion of the project history will also be included in the Project Description. This discussion will include a general overview of historical conditions of the project site.

This task will also include the preparation of the EIR Outline to clearly identify the components that will be included within the EIR.

Deliverables:

- > Two hard copies and one electronic copy of the Draft Project Description.
- > Two hard copies and one electronic copy of the Draft EIR Outline.

Task 3: Initial Study and Notice of Preparation

ESA will prepare an Initial Study (IS) and Notice of Preparation (NOP) for the proposed project that is consistent with the procedural and substantive provisions of CEQA Sections 15063 and 15082. The IS will include a description of the proposed project and will clearly identify those environmental issues that will be evaluated in the EIR and those that would be scoped out of the EIR. ESA will review the available site specific data, conduct a field visit, and interview relevant parties related to the project site. The IS will include a qualitative characterization of the site and area baseline conditions. ESA will review the data from the Initial Study that was prepared for The Residence at Newport Beach during the preparation of the IS for the proposed project. The NOP will provide sufficient information describing the project and the potential environmental effects to enable the responsible agencies, other agencies, and the public to provide meaningful input into the scoping process.

ESA will also prepare a Draft Notice of Completion (NOC)/Environmental Document Transmittal (EDT) and a draft distribution list.

Two hard copies and one electronic copy of the Draft IS and NOP and one electronic copy of the Draft NOC/EDT and draft distribution list will be provided to City staff for review. Based on one round of review and comments, ESA will revise the IS, NOP, NOC/EDT, and distribution list. Up to 20 hard copies and 20 CDs of the Final IS and NOP will be reproduced. One electronic version of the Final IS/NOP and distribution list in a PDF format will be provided to City staff. ESA will distribute 15 of the 20 hard copies of the Final IS and NOP to the State Clearinghouse along with one hard copy of the Final NOC/EDT. ESA will provide City staff with up to 5 hard copies and 5 CDs of the Final IS and NOP and the remaining 15 CDs will be distributed by certified mail with return receipt to a City-approved distribution list.

Deliverables:

- > Two hard copies and one electronic copy of the Draft IS and NOP.
- > One electronic copy of the Draft NOC/EDT and draft distribution list.
- > Twenty hard copies and 20 CDs of the Final IS/NOP.
- > One hard copy and one electronic copy in PDF format of the Final NOC/EDT and final distribution list.
- > Overnight delivery of 15 hard copies of the Final IS/NOP to the State Clearinghouse.
- > Overnight delivery of 5 hard copies and 5 CDs of the Final IS/NOP to the City.
- > Certified Mail Return Receipt delivery of 15 CDs of the Final IS/NOP to distribution list.

Task 4: Scoping Meeting

ESA will participate with the City of Newport Beach staff in a scoping meeting held for the proposed project. ESA will prepare a PowerPoint presentation for review by City staff and present and/or participate in an advisory capacity during the scoping meeting and respond to questions.

Deliverable:

- > Attend one scoping meeting.

Task 5: Technical Evaluations/Studies

CEQA Adequacy Review of Applicant's Technical Studies

ESA will conduct a CEQA adequacy review of the studies that will be submitted by the project applicant for the project. It is our understanding that the technical studies include the following:

- > **Visual Simulation** – ESA assumes that the Visual Simulations will be from significant vistas identified in the City's Local Coastal Program such as Back Bay Drive and Coast Highway from Jamboree Road to Bayside Drive.
- > **Biological Resource Assessment** – ESA assumes that the Biological Resource Assessment will conduct a review of the federal and state databases, field survey, evaluation of potential plant and wildlife impacts associated with project construction and operational activities, and appropriate mitigation measures.
- > **Wetlands Delineation** – ESA assumes that U.S. Army Corps of Engineers Waters of the U.S., and California Department of Fish and Wildlife Waters of the State jurisdictional areas will be delineated.
- > **Geotechnical Report** – ESA assumes that the geotechnical evaluation will address geo-hazards such as fault rupture, seismic ground shaking, lateral spreading, subsidence, liquefaction, collapse and expansive soil.
- > **Preliminary Grading and Drainage Plan** – ESA assumes that the grading information will identify the grading elevations on the project site and illustrate that the proposed earthwork will require approximately 3,975 cubic yards of export.
- > **Phase 1 Environmental Site Assessment** – ESA assumes that the Phase I Environmental Site Assessment will be conducted in accordance with current American Society for Testing and Materials (ASTM) standards. These standards include historical research of the project area, research of existing contamination, site reconnaissance, and documentation.
- > **Hydrology and Water Quality Assessment** – ESA assumes that the hydrology and drainage report will address existing drainage patterns and the project's effect of existing drainage infrastructure and facilities.
- > **Hazards and Hazardous Materials Assessment** – ESA is assuming that construction and operational hazards and the use, transport and disposal of hazardous materials will be evaluated.
- > **Preliminary Water Quality Management Plan** – ESA assumes that the PWQMP will address existing and project water quality as well as project surface water quality, groundwater quality and lagoon water quality.
- > **Sea Level Rise Study** – ESA assumes that a discussion of existing and projected sea level in the existing lagoon will be used to determine the potential effect of projected rising sea level due to project implementation.
- > **Cultural Resources Report** – ESA assumes that the Cultural Resources Report will address historical, archaeological, and paleontological resources.

Following completion of our CEQA Adequacy Review of each of the applicant's technical studies, we will prepare a letter that identifies the adequacy of the analyses. Depending on the timing of the applicant's technical studies, more than one letter may be prepared.

ESA Technical Evaluations

Air Quality

ESA will prepare an air quality impact assessment for the proposed project. The impact assessment will evaluate the potential air quality impacts that may arise from implementation of the proposed project. The proposed project consists of the construction of a 275-room hotel and ancillary facilities including a coffee shop, gift/laundry shop, business center, meeting space, spa/fitness facilities, restaurant, pool, tennis courts, sand volleyball courts, and picnic area. The construction activities at the project site along with long-term project operation would result in emissions of criteria air pollutants (such as particulate matter, and ozone precursors), toxic air contaminants (TACs), and odorous compounds. As the project site is located within the South Coast Air Basin (Basin), which is under the local jurisdiction of the South Coast Air Quality Management District (SCAQMD), the air quality analysis will be conducted in accordance with the procedures and methodologies set forth in the SCAQMD's *CEQA Air Quality Handbook* and supplemental guidance including the *Final Localized Significance Threshold (LST) Methodology*.

The air quality impact assessment will include an evaluation of the proposed project's conformance with the applicable control strategies and growth projections in the most recent air quality management plan for the Basin. The estimated construction and operational regional emissions for the project will be quantified using the most recent version of the California Emissions Estimator Model (CalEEMod) and evaluated against the applicable SCAQMD thresholds of significance to determine whether potential air quality impacts would result. The calculation of the project's construction emissions will be based on the amount and types of construction equipment that would be employed at the project site under each phase of the proposed construction scenario. ESA will work with the City and the Applicant to ensure that the maximum (worst-case) daily construction emissions under each construction

scenario is captured and presented in the air quality analysis. ESA assumes that the construction assumptions such as number and type of construction equipment, timing of construction phases as well as operating hours and duration will be provided by the project applicant. With regard to operational emissions, the project's mobile-source emissions will be estimated based, in part, on data provided in the traffic study that will be prepared for the project and provided by the City. Overall, the estimated construction and operational regional emissions for the project will be quantified and evaluated against the applicable SCAQMD thresholds of significance.

As recommended by SCAQMD, both the construction and operational impact analyses will include an assessment of the project's possible effect on local air quality (including localized carbon monoxide, nitrogen dioxide, and fine particulate matter) concentrations. The local air quality analysis will be conducted in accordance with SCAQMD's screening criteria in the LST Methodology. Furthermore, impacts associated with localized carbon monoxide hotspots at nearby study intersections to the project site will be assessed qualitatively. Potential odor emissions associated with the project, which would occur primarily during temporary construction activities at the site, will also be addressed qualitatively in the analysis. If it is determined that significant air quality impacts would occur, feasible mitigation measures will be identified to reduce the project's air quality impacts, as required.

ESA will prepare additional assessments of direct impacts from project construction and operation. Diesel particulate matter, recognized as a carcinogen and toxic air contaminant by the State of California, would be emitted directly from construction equipment exhaust. A construction health risk assessment (HRA) will focus on chronic carcinogenic and non-carcinogenic risks in accordance with guidance developed by the California Office of Environmental Health Hazard Assessment (OEHHA) and SCAQMD dispersion modeling and risk assessment procedures. Due to the nature of the proposed use, it is not anticipated that project operations could include sources of toxic air contaminants. Therefore, operational health risks would be analyzed qualitatively. If it is determined that significant air quality health risk impacts would occur at off-site sensitive receptor locations, ESA will identify feasible mitigation measures, including but not limited to performance standards to be met by the construction team to reduce the off-site health risks.

This scope assumes that a separate technical report will not be prepared. Project assumptions and model outputs will be attached as a part of the EIR appendix materials.

Greenhouse Gas Emissions

ESA will prepare a greenhouse gas (GHG) evaluation for the proposed project. The project would generate GHG emissions during construction and operations that could have an impact on the environment. The GHG assessment for the proposed project will evaluate the potential impacts associated with the project's generation of GHG emissions during construction and operations. GHG emissions attributable to the project will be estimated for the following sources: construction, area sources (e.g., landscaping equipment), mobile sources, energy consumption (electricity and natural gas), water consumption, wastewater generation, and solid waste generation, consistent with the recommendation by the Governor's Office of Planning and Research in its Technical Advisory: CEQA and Climate Change (2008). Construction- and operations-related GHG emissions will be quantified using the most recent version of the CalEEMod computer model. Since neither the City nor SCAQMD have adopted a numeric threshold of significance that would be applicable to the project, the GHG assessment will evaluate the project's emissions in the context of the state and local setting, and using draft thresholds proposed by the SCAQMD's GHG Working Group as appropriate for the project.

Furthermore, the project's GHG emissions will also be discussed with respect to the goals and recommended actions of the state's Climate Change Scoping Plan, the City's proposed Energy Action Plan (EAP), the City's Green Building Guidelines, and other applicable state regulations. If it is determined that the project would need to include design features/mitigation measures to reduce GHG emissions, ESA will work with the City and the Applicant to identify feasible measures.

This scope assumes that a separate technical report will not be prepared. Project assumptions and model outputs will be attached as a part of the EIR appendix materials.

Noise and Vibration

ESA will prepare a noise and vibration evaluation of the proposed project. Implementation of the proposed project could result in an increase in noise levels within the areas surrounding the project site during construction as well as during project operations. Additionally, potential vibration impacts on the immediate surrounding land uses may occur during project construction from the use of heavy-duty construction equipment. Nearby sensitive receptors (such as residential uses) may be adversely impacted by increased noise levels from project construction and operations. ESA will evaluate the potential construction and operational noise impacts on the nearby sensitive uses resulting from the project.

ESA will characterize the existing baseline noise conditions by conducting up to two long-term (24-hour) and two short-term (15-minute) ambient noise level measurements in the project site vicinity using sound level meters that satisfy the American National Standards Institute (ANSI) for general environmental noise measurement instrumentation.

Construction noise levels at the nearest sensitive receptors will be estimated using the Federal Highway Administration's (FHWA) Roadway Construction Noise Model (RCNM) and based on the type of construction equipment that will potentially be used, the amount of activity that would occur, and the distance that sensitive receptors are from the project site (information to be provided by the Applicant team). The potential construction noise impacts of the project will be evaluated against the applicable noise criteria established in the City of Newport Beach's General Plan Noise Element and Municipal Code. Potential vibration impacts associated with construction activities will also be analyzed using vibration data provided by the Federal Transit Administration (FTA) for different pieces of construction equipment. If it is determined that significant construction noise and vibration impacts on nearby sensitive land uses would occur, feasible mitigation measures will be identified to reduce these impacts.

During operation of the proposed project, increases in noise levels in the project site vicinity would result from vehicle trips traveling to and from the project site. As such, ESA's noise assessment will conduct traffic noise modeling using the Federal Highway Administration's (FHWA) Traffic Noise Model to estimate the future traffic noise levels on the nearby roadways to the project site to evaluate the noise impact on the existing land uses located in the project site vicinity. The future project-related traffic noise level increases at existing noise-sensitive uses fronting the local roadways in the project vicinity will then be reviewed against the applicable City noise exposure criteria to determine whether significant noise impacts would occur. Other project noise sources such as heating and ventilation, maintenance activities, parking lot activities and truck loading/unloading docks for the hotel uses will be evaluated. In addition, ESA understands that events may occur at the hotel that are similar to the existing events within Newport Dunes. According to City staff, specific noise attenuation measures as well as monitoring are implemented during the existing events to ensure that the City's noise standards are achieved. ESA will utilize the monitoring data to evaluate potential effects associated with similar events that could occur on the project site. ESA will incorporate these measures as applicable as well as any additional measures to reduce significant noise impacts.

This scope assumes that a separate technical report will not be prepared. Project assumptions and model outputs will be attached as a part of the EIR appendix materials.

Deliverables:

- > One electronic copy of the CEQA Adequacy Review Letter(s) of the Applicant's technical studies.
- > One electronic copy of a memorandum providing a brief summary of the findings of each ESA technical evaluation.

Task 6: First Administrative Draft EIR

The objective of this task is to prepare a comprehensive, accurate, and objective project-level EIR for the proposed project that fully complies with CEQA and the State CEQA Guidelines (both as in place on the date of submittal of this proposal) and all applicable guidance and procedures established by the City of Newport Beach for the purpose of environmental review.

The main purpose of the Administrative Draft EIR will be to thoroughly and accurately analyze the environmental impacts of the proposed project. The methodology and criteria used for determining the impacts of the project will

be clearly and explicitly described in each section of the EIR, including any assumptions, models, or modeling techniques used in the analysis.

The Administrative Draft EIR will include the following sections:

- > Table of Contents
- > Introduction
- > Executive Summary, including a comprehensive summary table of impacts and mitigation measures, areas of controversy, issues to be resolved, and a summary discussion of the proposed project and its alternatives
- > Project Description, including project objectives, purpose and need, project location, project characteristics, scope of project, project alternatives, and required approvals
- > Introduction to the Environmental Analysis
- > Environmental Topics (for each issue area evaluated):
 - Environmental Setting
 - Regulatory Framework (applicable federal, state, local, plans, policies, and standards)
 - Thresholds of Significance
 - Project Environmental Impacts (short-term, long-term, direct, and indirect)
 - Mitigation Measures (for potentially significant environmental issues)
 - Level of Significance After Mitigation
 - Cumulative Environmental Impacts (short-term, long-term, direct, and indirect)
- > Alternatives
- > Long-Term Implications, including growth-inducing impacts, a summary of project-related and cumulative significant unavoidable impacts, and significant irreversible environmental changes or commitments of resources
- > List of EIR Preparers
- > References
- > Appendices

The scope of work for each of the environmental issue areas is further described below and in the following pages, with an emphasis on unique and/or important components of the environmental analysis.

Introduction

A brief introduction to the EIR will be prepared to describe the purpose of the EIR to the reader. This section will also describe, in detail, how this EIR will be used. This chapter will also describe the background of the proposed project, purpose, and scope of the EIR; a summary of the environmental and public review process; and a brief outline of the document's organization. Cumulative impacts will be addressed within each of the environmental topics.

Executive Summary

The Executive Summary will include a brief synopsis of the proposed project and project objectives, necessary actions by the City of Newport Beach and the California Coastal Commission in order to approve the proposed project and issue discretionary permits, areas of controversy/issues to be resolved, a description of the intent of the MMRP, and an overview of project alternatives. This chapter will also summarize (in table format) environmental impacts that would result from implementation of the proposed project, including the level of significance of impacts prior to the incorporation of mitigation measures, if applicable; proposed mitigation measures that would avoid or reduce project-related impacts; and the level of significance of impacts after the incorporation of mitigation measures.

Project Description

The Project Description prepared as part of Task 2 will be updated based on City staff review as well as revisions that occur as a result of project scoping.

Cumulative Projects Identification

ESA will describe the reasonably foreseeable projects that have been identified in the City's traffic consultant's technical study. ESA will coordinate with City staff if additional descriptions are necessary to clearly identify the cumulative projects. Potential cumulative impacts will be discussed for each technical issue.

Environmental Analysis

This chapter is introduced by describing the scope and format of the environmental analysis, specifying that each environmental issue area will contain a description of the environmental setting (or existing conditions), regulatory framework, methodology, thresholds of significance used to determine the nature or magnitude of environmental impacts, project-related and cumulative impacts, and feasible mitigation measures that would avoid or minimize significant environmental impacts. ESA understands that an evaluation of environmental issues was conducted for the project site as part of the Newport Dunes Resort EIR and EIR Addendum. ESA will review the data and incorporate relevant and applicable data and discussions from this previous EIR and EIR Addendum into the EIR. Following are the topics that will be evaluated.



Aesthetics

ESA will document the existing aesthetic and visual character of the project area. Conceptual design elements are assumed to be provided by the applicant and will be incorporated into the aesthetic impact evaluation. The Visual Simulations prepared by the project applicant will be incorporated into the EIR evaluation to demonstrate the level of impact will project implementation. ESA assumes that visual simulations for up to 10 locations will be provided by the project applicant. ESA assumes that each visual simulation will provide two photographs; one illustrating the existing view and the second illustrating the view of the project superimposed on the existing view. In addition, ESA will evaluate the light and glare impacts associated with the project.



Air Quality

As identified above in Task 5, ESA will prepare an air quality impact assessment. Findings from our assessment will be incorporated into the EIR. The discussion will include the existing conditions, regulatory setting, thresholds of significance, the project and cumulative impacts, mitigation measures and the level of significance after the implementation of the recommended mitigation measures.



Biological Resources

After our CEQA Adequacy review, ESA will incorporate the findings from the Biological Resource Assessment and the Wetland Delineation into the EIR. Recommended mitigation measures will be review and incorporated, as appropriate. The Biological Resource Assessment and the Wetland Delineation will be included as an appendix to the EIR.



Cultural Resources/Tribal Cultural Resources

ESA understands that the project applicant will be preparing the Cultural Resources Assessment for the proposed project.

ESA will assist the City with Native American consultation as required by Assembly Bill 52 (AB 52) in order to identify tribal cultural resources (as defined by PRC Section 21074). ESA will draft initial consultation letters notifying California Native American Tribes that are traditionally and culturally affiliated with the geographic area of the project site (as defined in PRC Section 21073) and who have requested in writing to be informed by the City (in accordance with PRC Section 21080.3.1(b)). The letters will provide an overview of the project, a map depicting the project site (generated by ESA), and contact information for the primary City contact. The letters will indicate that the Tribe has 30 days from receipt of the letter to request consultation. ESA assumes that no more than five (5) Tribes will require notification, and that the letters will be sent out on City letterhead via certified mail with return receipt

requested (or another acceptable method to track date of receipt). This scope of work does not include our assistance with responding to requests for consultation, reviewing information provided by tribes, and attendance at tribal consultation meetings. ESA assumes that the City will provide the results of any AB 52 consultation efforts.

After our CEQA Adequacy Review, ESA will incorporate the findings from the applicant's Cultural Resources Assessment as well as the results from the City's AB 52 consultation process into the EIR. Mitigation measures will be identified, if necessary.



Geology and Soils

A geotechnical report for the proposed project is being prepared by the applicant. ESA will review the documentation of potential geologic hazards associated with the project site and incorporate the conclusions and findings into the EIR. The geotechnical report will be included as an appendix to the EIR.



Greenhouse Gas Emissions

As identified above in Task 5, ESA will prepare a greenhouse gas evaluation. Findings from our evaluation will be incorporated into the EIR. The discussion will include the existing conditions, regulatory setting, thresholds of significance, the project and cumulative impacts, mitigation measures and the level of significance after the implementation of the recommended mitigation measures.



Hazards and Hazardous Materials

The project applicant is preparing a Phase I Environmental Site Assessments and a Hazards and Hazardous Materials Assessment for the proposed project. ESA will review the documentation of potential hazards and hazardous materials impacts on and in the project vicinity and incorporate the conclusions and findings in the EIR. The Phase I Environmental Site Assessments and a Hazards and Hazardous Materials Assessment will be included as an appendix to the EIR.



Hydrology and Water Quality

A Preliminary Grading and Drainage Plan, Hydrology and Water Quality Assessment, Preliminary Water Quality Management Plan and Sea Level Rise Study will be prepared by the project applicant. ESA will review the documentation of potential drainage, water quality, and sea level rise impacts associated with the implementation of the proposed project and incorporate the conclusions and findings into the EIR.



Land Use and Planning

The land use section will include a description of the existing land uses, intensities, and land use patterns in the project vicinity as well as the compatibility of the project with the adjacent land uses. ESA understands that the existing uses within Newport Dunes include a 406-space recreational vehicle park, a 450-slip marina, a restaurant, dry boat storage, boat launching facilities, surface parking and beach day use facilities. ESA will review and evaluate the applicable regional and local land use plans, policies and regulations. These include the Southern California Association of Government's 2016-2040 Regional Transportation Plan/Sustainable Communities Strategy, City of Newport Beach General Plan, the City of Newport Beach Local Coastal Program, the City of Newport Beach Local Coastal Program Implementation Plan, the City of Newport Beach Municipal Code, and the 1983 Newport Dunes Settlement Agreement. This scope of work includes an evaluation of each applicable policy and regulation to determine the project's consistency/inconsistency. Mitigation measures will be provided, if necessary.



Noise and Vibration

As identified above in Task 5, ESA will prepare a noise and vibration evaluation. Findings from our evaluation will be incorporated into the EIR. The discussion will include the existing conditions, regulatory setting, thresholds of significance, the project and cumulative impacts, mitigation measures and the level of significance after the implementation of the recommended mitigation measures.



Population and Housing

The proposed project will increase long-term employment population on the project site and will not include housing. ESA will provide a discussion of the potential for the project to result in the inducement of population growth. Because the project site does not include existing or proposed housing, no housing impacts are expected to occur.



Public Services/Recreation

To determine whether adequate public services could be provided to serve the project site, letters describing the proposed project will be sent to the service providers. ESA will address potential impacts on fire protection services, police, schools, parks and recreation, and libraries by requesting current information on existing and planned service levels, staffing levels, and response times. The ability of existing public services to meet demands of the proposed project will be described. If required, any additional capacity, services, or personnel will be discussed. Further, any unique public service needs due to the proposed use of the site will be discussed. The impact of the project upon the ability of the service providers to maintain acceptable service levels will be discussed, anticipated impacts will be assessed, and mitigation measures, if necessary, will be provided.



Transportation/Traffic

The City requested Kunzman Associates to prepare a traffic study for the project under the supervision of the City Traffic Engineer. Kunzman Associates will be ESA's subconsultant. Kunzman Associates will prepare a traffic impact analysis that will comply with the Traffic Phasing Ordinance (TPO) Municipal Code Chapter 15.40 and appropriate sections of CEQA. A detailed scope of the traffic impact analysis is provided in Section E of this proposal. ESA will coordinate with Kunzman Associates and the City Traffic Engineer to obtain necessary traffic-related data for the preparation of the air quality/greenhouse gas analysis and the noise analysis. ESA will review the traffic study and incorporate the conclusions and findings into the EIR.



Utilities and Service Systems/Energy

ESA will consult with utility providers to determine the use of existing utilities as well as existing capacities. Service demands will be quantified, where possible, and the impact on existing utility systems will be described. The drainage information from the Preliminary Grading and Drainage Plan as well as the Hydrology and Water Quality Assessment prepared by the project applicant will be incorporated into this section of the EIR. Furthermore, ESA will incorporate wastewater treatment, water supply and landfill information based on review of existing documentation.

Furthermore, as required by Section 21100 (b) of the State CEQA Guidelines, ESA will address potential Energy impacts of the proposed project in accordance with Appendix F. ESA will provide a summary of the anticipated energy needs at full buildout conditions, impacts, and conservation measures, and potential electricity and natural gas demand. ESA will describe applicable policies and design standards that would reduce the project's wasteful, inefficient, and unnecessary consumption of energy. ESA will also discuss the project's potential impacts on the energy infrastructure. If potentially significant impacts are determined, feasible mitigation measure will be identified.

Other CEQA Sections

Effects Found Not to be Significant

ESA will describe effects found not to be significant, in accordance with State CEQA Guidelines Section 15128, by listing them with brief explanations of why they are not significant. Based on a review of the proposed project and conditions on- and off-site, ESA assumes the following environmental issues will result in no significant impacts and can be justifiably "scoped out" of the EIR:

- > Agriculture and Forestry Resources
- > Mineral Resources

Alternatives

The EIR will include an assessment of alternatives in light of CEQA's mandate to reduce significant project impacts while meeting the project's basic objectives. ESA proposes a two-tiered approach to the alternatives analysis, which

is to (1) describe the alternatives screening process; and (2) describe and analyze those alternatives selected for detailed study. This will allow the EIR to demonstrate the consideration given to a sufficiently broad range of alternatives. Based on the RFP, the EIR will include two alternatives to the proposed project: (1) no project, no construction, and (2) reduced intensity.

The alternatives will be provided in a sufficient level of detail for comparison with the proposed project. Each alternative will be evaluated with respect to each key impact category. The advantages and disadvantages of each alternative and the reasons for rejecting or recommending the alternative will also be discussed, and the environmentally superior alternative will be identified. During the course of the environmental analysis, minor variations to the proposed project that could have the effect of reducing or eliminating environmental concerns may become apparent. These variations will be recommended, where feasible.

Long-Term Implications

The EIR will discuss all significant unavoidable adverse impacts. Potential growth-inducing and irreversible impacts of the proposed project will also be discussed. Potential sources of growth inducement and their corresponding impacts, such as removal of obstacles to growth, will be qualitatively analyzed to the extent that they are applicable.

List of Report Preparers and References

This section will identify each individual who participated in preparation of the EIR. In addition, all references used in the EIR will be provided in each environmental topic identified under Environmental Analysis, above.

Appendices

All technical studies, survey results, data, and public and agency IS/NOP comments will be included as appendix material to the Draft EIR.

Deliverable:

- > Four hard copies of the First Administrative Draft EIR with technical appendices on CD.

Task 7: Second Administrative Draft EIR

ESA will respond to the City's comments on the First Administrative Draft EIR, complete necessary revisions, and provide the City with a Second Administrative Draft EIR for review and comment. ESA will coordinate with the City's project manager, who will assemble comments on, and suggested revisions to, the First Administrative Draft EIR. One set of unified City staff comments will be provided to ESA. The City will reconcile conflicting review comments, if needed, between City staff.

One complete set of revisions to the First Administrative Draft EIR, pursuant to review comments, will be completed. The revisions will be prepared in conformance with the scope of work. If additional revisions are required based on factors such as substantial changes to the proposed project, changes to the alternative project descriptions, or changes in report format, additional funds may be required.

This scope of work includes providing hard copies of the Second Administrative Draft EIR, which will show the revisions in "track changes" that have occurred from the First Administrative Draft EIR. This will allow City staff to focus on the revisions.

Deliverable:

- > Four hard copies of the Second Administrative Draft EIR with technical appendices on CD.

Task 8: Pre-Print Draft EIR

Upon receipt of the comments on the Second Administrative Draft EIR from the City, ESA will prepare the Pre-Print Draft EIR for circulation approval. In addition, ESA will prepare the Notice of Availability (NOA), Notice of Completion (NOC) and the Environmental Transmittal Form (ETF) for City review and approval.

Deliverable:

- > One hard copies of the Pre-Print Draft EIR with technical appendices on CD.

Task 9: Public Review Draft EIR

After City approval of the Pre-Print Draft EIR, ESA will prepare the Public Review Draft EIR. In addition, ESA will finalize the NOA, NOC and ETF based on comments received from the City. ESA will forward the NOA, NOC and ETF to the State Clearinghouse with 15 hard copies of the Executive Summary and 15 CDs of the entire EIR. ESA will also reproduce 10 hard copies of the Draft EIR with the appendices on a CD in PDF format on the back cover of the Draft EIR. An additional 40 CDs of the Draft EIR and appendices will be provided for distribution to the local agencies and interested persons on a City-approved distribution list. Each Draft EIR that is distributed will include a copy of the NOA.

One copy of the Draft EIR and technical appendices as well as the NOA will be provided to the City in an HTML, or other acceptable web-friendly format, so text and graphics can be easily placed on the City's website. ESA will provide an electronic version of the Public Review Draft EIR main document and appendices as well as provide separate Chapters and Sections of the EIR and individual appendices to allow easier downloading by the public from the City's website. After City approval, ESA will publish the NOA for one day in the local newspaper.

Deliverables:

- > Fifteen hard copies of the Executive Summary with Public Review Draft EIR on CD
- > Ten hard copies of the Public Review Draft EIR with technical appendices on CD
- > Fifty copies of the Public Review Draft EIR with technical appendices on CD
- > One copy of the Public Review Draft EIR with technical appendices in an HTML, or other acceptable web-friendly format
- > Publish the NOA for one day in the local newspaper

Task 10: Response to Comments/Errata

The objective of this task is to prepare written responses to comments received on the Draft EIR that raise significant environmental issues and submit them for City staff review after the close of the public comment period. The responses to comments will be prepared based on the State CEQA Guidelines.

ESA assumes that the City will compile and transmit all written comments on the Draft EIR throughout the public review period and as one unified set of comments following the close of the public review period. ESA will prepare a matrix of comments, which will include the comment letter, the comment number within the comment letter, the issue area of the Draft EIR to which it applies, and whether the response will be an individual response or a topical/master response. ESA assumes that the applicant's consultants who prepared the technical reports will be available to assist in responding to comments provided on their specific analysis, if needed.

ESA has budgeted 120 hours for the preparation of the Responses to Comments, both draft and final versions. The draft responses that are within this proposal's scope of work and budget consist of explanations, elaboration, or clarification of the data contained in the Draft EIR with a budgeted effort of up to 90 hours for ESA technical staff to prepare responses and the Errata. An electronic version of the draft version of the Responses to Comments/Errata in Word format will be provided for City staff review.

Based on one round of unified comments on draft version of the Responses to Comments/Errata, ESA will revise the document and prepare the final version of the Responses to Comments/Errata. The revisions will be prepared in conformance with the scope of work. If additional revisions are required based on factors such as substantive changes to the proposed project, changes to the alternative project descriptions, or changes in report format, additional funds may be required. ESA has budgeted up to 30 hours for technical staff to revise the responses and Errata based on City staff comments.

This scope of work includes distribution of the final version of the Responses to Comments/Errata to the commenting agencies and public. ESA assumes distribution of up to 40 copies of the CD to the commenting agencies and public.

Deliverables:

- > An electronic version of the draft Responses to Comments/Errata.
- > Ten hard copies of the final Responses to Comments/Errata.
- > Fifty copies of the final Responses to Comments/Errata on CD.

Task 11: Mitigation Monitoring and Reporting Program, Findings of Fact/Statement of Overriding Considerations

Pursuant to CEQA Guidelines Section 15097, ESA will prepare a comprehensive Mitigation Monitoring Reporting Program (MMRP) in compliance with State CEQA Guidelines Section 15097. The MMRP will contain all mitigation measures identified in the Draft EIR, as well as any text changes that are identified in the Final EIR, and it will provide columns for necessary actions, timing, and parties responsible for verification. The Draft MMRP will be provided with the draft Response to Comments/Errata submittal and the Final MMRP will be provided with the submittal of the Final EIR. The Draft and Final MMRP will be provided in an electronic version, including all exhibits and graphics, in a web-supportable format.

According to State CEQA Guidelines Section 15091, the lead agency must adopt findings for each of those significant effects identified in the EIR. The effects that were determined to be less than significant and no impacts will not be addressed. Accordingly, ESA will prepare the Findings of Fact necessary to allow for certification of the EIR. This task assumes one round of review/City comment on the Draft Findings of Fact. If the project results in a significant and unavoidable impact, ESA will prepare a Statement of Overriding Considerations that includes an outline of the project's economic, legal, social, technological, or other benefits that outweigh its environmental consequences if the decision makers elect to override significant and unavoidable adverse impacts and proceed with approval of the project. As such, ESA will prepare the Statement of Overriding Considerations with input from City staff regarding the benefits of the project. This task assumes one round of review/City comment on the Draft Statement of Overriding Considerations.

A draft version of the Findings of Fact (including the Statement of Overriding Considerations, if necessary) will be submitted with the draft Response to Comments. The final version of the Findings of Fact (including the Statement of Overriding Considerations) will be provided with the Final EIR. Both the draft and final versions will be submitted in a digital version including all exhibits and graphics, in a web-supportable format.

Deliverables:

- > Submit one electronic copy of the Draft MMRP in PDF format.
- > Submit one electronic copy of the Final MMRP in PDF format.
- > Submit one electronic copy of the Draft Findings of Fact/Overriding Considerations in PDF format.
- > Submit one electronic copy of the Final Draft Findings of Fact/Overriding Considerations in PDF format.

Task 12: Final EIR

Prior to the public hearings, ESA will prepare the Final EIR that will include the Draft EIR, Responses to Comments/Errata, and Mitigation Monitoring and Reporting Program (MMRP) with technical appendices in an electronic format delivered on CD or other suitable media.

Deliverables:

- > Ten hard copies of the Final EIR
- > Twenty-five copies of the Final EIR on CD

Task 13: Final Product

After certification of the Final EIR, ESA will produce a Final Product that will include one copy of the notices, Initial Study/NOP, Final EIR, Findings of Fact in Word format and appendices in an electronic format delivered on CD or other suitable media.

Deliverables:

- > NOD Posting at the County Recorder
- > One copy of the Notices, Initial Study/NOP, Final EIR and Findings of Fact in Word format and appendices in an electronic format delivered on CD or other suitable media.

Task 14: Staff/Applicant Meetings

The ESA Project Manager and Deputy Project Manager will attend up to six project meetings with City staff and the applicant to discuss project issues and analysis. A meeting agenda will be provided at least two days prior to each meeting and meeting minutes will be provided within two days following each meeting. In addition to the six project meetings, ESA will attend the project scoping meeting which identified in Task 4 above.

Deliverables:

- > Attend up to six project meetings with City staff and applicant by the ESA Project Manager and Deputy Project Manager.
- > Submit one electronic copy of the meeting agenda and meeting minutes for each project meeting.

Task 15: Public Hearing Meetings

The ESA Project Manager will attend up to four public hearing meetings and will be prepared to make presentations and/or participate in an advisory capacity during these meetings. ESA will also be available to respond to questions during the meetings.

Deliverables:

- > Attend up to four public hearing meetings by the ESA Project Manager.

Task 16: Project Management

This task includes standard project management responsibilities, such as quality assurance, budget and schedule controls, supervision of the ESA team, and communication/coordination with City staff. ESA will maintain frequent communication with City staff to ensure issues and schedule are communicated throughout the environmental process.

Deliverables:

- > Provide project management throughout the environmental process.

Anticipated Work Schedule

ESA is prepared to begin the Newport Dunes Resort Hotel EIR and attend the project initiation meeting with City staff and the project applicant immediately after receipt of an executed contract. The schedule below provides schedule assumptions for the completion of the applicant's technical studies as well as the traffic report. Our anticipated schedule for the completion of the Final EIR is approximately 12 months and then for the Planning Commission to deliberate in July/August 2019 and for the City Council to deliberate in August/September 2019. **Table B-1** shows each task and its milestone date.

TABLE B-1: ENVIRONMENTAL DOCUMENTATION SCHEDULE

Task	Milestone Date
Executed Contract	July 10, 2018
ESA Attends Project Initiation Meeting	July 17, 2018
ESA Submits Project Description and EIR Outline	July 30, 2018
City Submits Traffic Data to Kunzman Associates	July 31, 2018
City Submits Applicant's Technical Studies for CEQA Adequacy Review	July 31, 2018
ESA Submits Draft IS/NOP to City for Review	August 14, 2018
ESA Provides CEQA Adequacy Review Letter of Applicant's Technical Reports to City	August 16, 2018
City Provides Comments on Draft IS/NOP	August 21, 2018

Task	Milestone Date
ESA Submits Final IS/NOP to City for Distribution Approval	August 28, 2018
City Provides Approval to Distribute Final IS/NOP	August 31, 2018
ESA Reproduces and Distributes Final IS/NOP	September 5, 2018
Final IS/NOP 30-Day Public Review Period Begins	September 6, 2018
Kunzman Associates Submits 1 st Draft Traffic Study to City for Review	September 6, 2018
City Staff Reviews and Provides Comments on 1 st Draft Traffic Study	September 20, 2018
ESA Attends/Conducts Scoping Meeting	September 25, 2018
Kunzman Associates Submits 2 nd Draft Traffic Study to City for Review	September 27, 2018
Kunzman Associates Provides ESA with Roadway Segment ADT	October 1, 2018
City Staff Reviews and Provides Comments on 2 nd Draft Traffic Study	October 4, 2018
Final IS/NOP 30-Day Public Review Period Ends	October 8, 2018
Kunzman Associates Finalizes Draft Traffic Study for EIR Incorporation ¹	October 11, 2018
ESA Submits First Administrative Draft EIR to City for Review	December 7, 2018
City Provides Comments on First Administrative Draft EIR	December 31, 2018
ESA Submits Second Administrative Draft EIR to City for Review	January 16, 2019
City Provides Comments on Second Administrative Draft EIR	January 30, 2019
ESA Submits Pre-Print Draft EIR to City for Distribution Approval	February 13, 2019
City Provides Approval to Distribute Draft EIR	February 15, 2019
ESA Reproduces and Distributes Public Review Draft EIR	February 20, 2019
Draft EIR 45-Day Public Review Period Begins	February 21, 2019
Draft EIR 45-Day Public Review Period Ends	April 8, 2019
City Provides Comments Received on the Public Review Draft EIR	April 9, 2019
ESA Submits Draft Response to Comments/Errata Document, Draft Mitigation Monitoring and Reporting Program (MMRP), and Draft Findings of Fact/Overriding Considerations to City for Review	May 3, 2019
City Provides Comments on the Draft Response to Comments/Errata Document, Draft Mitigation Monitoring and Reporting Program (MMRP), and Draft Findings of Fact/Overriding Considerations	May 17, 2019
ESA Submits Final Response to Comments/Errata Document to City for Distribution approval	May 31, 2019
City Provides Approval to Distribute the Final Response to Comments/Errata	June 12, 2019
ESA Reproduces and Distributes the Final Response to Comments/Errata	June 19, 2019
ESA Submits Final EIR (includes MMRP and Findings/Overriding Considerations)	June 27, 2019
Planning Commission Hearings	July/August 2019
City Council Hearings	August/September 2019
ESA Submits Notice of Determination to County Recorder	September 2019
ESA Submits Final Product	September 2019

¹ Assumes that the Traffic Report will be reviewed and approved by the City Traffic Engineer prior to ESA incorporating the traffic study into the EIR.

EXHIBIT B

SCHEDULE OF BILLING RATES

TABLE 1: COSTS BY TASK AND DIRECT EXPENSES

ESA Professional Labor Costs	
Task 1: Project Initiation	\$1,640
Task 2: Project Description and EIR Outline	6,650
Task 3: Initial Study and Notice of Preparation	6,580
Task 4: Scoping Meeting	2,680
Task 5: Technical Evaluation/Studies	28,070
Task 6: First Administrative Draft EIR	81,985
Task 7: Second Administrative Draft EIR	10,510
Task 8: Pre-Print Draft EIR	6,240
Task 9: Public Review Draft EIR	1,690
Task 10: Response to Comments/Errata	20,150
Task 11: MMRP and Findings/Statement of Overriding Considerations	7,080
Task 12: Final EIR	2,240
Task 13: Final Product	1,520
Task 14: Staff/Applicant Meetings	7,380
Task 15: Public Hearing Meetings	8,200
Task 16: Project Management	12,040
Total Labor Costs	\$204,655
Direct Costs/Expenses	
Printing/Reproduction	\$6,745
Postage/Deliveries	2,370
Mileage	120
Noise Monitor	80
Publish NOA in Local Newspaper (Orange County Register/LA Times)	800
NOD Posting with County Clerk	3,218
Fee on Reimbursable Expense (15 Percent)	2,000
Total Direct Costs	\$15,333
Subconsultant Costs	
Kunzman Associates	\$35,750
Administrative Fee (15 Percent)	5,362
Total Subconsultant Costs	\$41,112
TOTAL EIR COST	\$261,100

Table 2: Cost Proposal

ESA Labor Detail and Expense Summary

Newport Dunes Resort Hotel EIR

		Employee Names															
		Labor Category															
		Director III															
		Managing Associate III															
		Managing Associate II															
		Managing Associate I															
		Senior Associate III															
		Senior Associate II															
		Senior Associate I															
		Associate II															
		Associate I															
		Subtotal															
		Project Technician III															
		Project Technician II															
		Subtotal															
		Total Hours															
		Labor Price															
Task #	Task Name/Description	\$ 240	\$ 205	\$ 190	\$ 175	\$ 170	\$ 160	\$ 150	\$ 125	\$ 105		\$ 120	\$ 100				
1	Project Initiation	4				4					\$ -			\$ -	-	\$ -	
2	Project Description and EIR Outline	6				18					\$ 1,640			\$ -	8.00	\$ 1,640	
3	Initial Study and Notice of Preparation	4				16					\$ 5,130	6	8	\$ 1,520	44.00	\$ 6,650	
4	Scoping Meeting	4				8					\$ 5,780	5	2	\$ 800	47.00	\$ 6,580	
5	Technical Evaluation/Studies										\$ 2,320	3		\$ 360	15.00	\$ 2,680	
	CEQA Adequacy Review of Applicant's Technical Studies	4	2	1	6	13	9		6		\$ 7,010	2		\$ 240	43.00	\$ 7,250	
	ESA Technical Evaluations										\$ -			\$ -	-	\$ -	
	Air Quality				10			48			\$ 8,950			\$ -	58.00	\$ 8,950	
	Greenhouse Gas Emissions				4			8			\$ 1,900			\$ -	12.00	\$ 1,900	
	Noise				10		42	10			\$ 9,970			\$ -	62.00	\$ 9,970	
6	First Administrative Draft EIR										\$ -			\$ -	-	\$ -	
	Aesthetics	7				28				20	\$ 8,540			\$ -	55.00	\$ 8,540	
	Air Quality	1			4			8			\$ 2,140			\$ -	13.00	\$ 2,140	
	Biological Resources	1	3				16				\$ 3,415			\$ -	20.00	\$ 3,415	
	Cultural and Paleontological Resources	1		6			10				\$ 2,980			\$ -	17.00	\$ 2,980	
	Geology and Soils	1				8				12	\$ 2,860			\$ -	21.00	\$ 2,860	
	Greenhouse Gas Emissions	1			4			10			\$ 2,440			\$ -	15.00	\$ 2,440	
	Hazards and Hazardous Materials	1			6					12	\$ 2,550			\$ -	19.00	\$ 2,550	
	Hydrology and Water Quality	1				4			14		\$ 2,670			\$ -	19.00	\$ 2,670	
	Land Use and Planning	10				20				8	\$ 6,640			\$ -	38.00	\$ 6,640	
	Noise	1			4			16			\$ 3,340			\$ -	21.00	\$ 3,340	
	Population and Housing	1				2				8	\$ 1,420			\$ -	11.00	\$ 1,420	
	Public Services	1				10				22	\$ 4,250			\$ -	33.00	\$ 4,250	
	Recreation	1				4				8	\$ 1,760			\$ -	13.00	\$ 1,760	
	Tribal Cultural Resources	8	30								\$ 8,070			\$ -	38.00	\$ 8,070	
	Utilities and Service Systems/Energy	1		8			8				\$ 3,040			\$ -	17.00	\$ 3,040	
	Executive Summary	8			10	6		8		20	\$ 6,310			\$ -	45.00	\$ 6,310	
	Other Sections	1				4				16	\$ 4,960			\$ -	32.00	\$ 4,960	
	Alternatives	10			10	10				6	\$ 1,550			\$ -	11.00	\$ 1,550	
	Complete Administrative Draft EIR										\$ 5,850			\$ -	30.00	\$ 5,850	
7	Second Administrative Draft EIR	12				26				18	\$ 9,190	6	6	\$ 7,200	64.00	\$ 7,200	
8	Pre-Print Draft EIR	4				16				12	\$ 4,940	10	1	\$ 1,300	43.00	\$ 6,240	
9	Public Review Draft EIR					2				6	\$ 970	6		\$ 720	14.00	\$ 1,690	
10	Response to Comments/Errata	22			26	40				16	\$ 18,310	12	4	\$ 1,840	120.00	\$ 20,150	
11	MMRP and Findings/Statement of Overriding Considerations	6			10	10				14	\$ 6,360	6		\$ 720	46.00	\$ 7,080	
12	Final EIR					4				8	\$ 1,520	6		\$ 720	18.00	\$ 2,240	
13	Final Product					1				6	\$ 800	6		\$ 720	13.00	\$ 1,520	
14	Staff/Applicant Meetings	18				18					\$ 7,380			\$ -	36.00	\$ 7,380	
15	Public Hearing Meetings	20				20					\$ 8,200			\$ -	40.00	\$ 8,200	
16	Project Management	36				20					\$ 12,040			\$ -	56.00	\$ 12,040	
											\$ -			\$ -	-	\$ -	
Total Hours		197	35	15	104	320	85	108	20	238	1122	108	45	153	1,275		
Total Labor Costs		\$ 47,280	\$ 7,175	\$ 2,850	\$ 18,200	\$ 54,400	\$ 13,600	\$ 16,200	\$ 2,500	\$ 24,990	\$ 187,195	\$ 12,960	\$ 4,500	\$ 17,460		\$ 204,655	
Percent of Effort - Labor Hours Only		15.5%	2.7%	1.2%	8.2%	25.1%	6.7%	8.5%	1.6%	18.7%	88.0%	8.5%	3.5%	12.0%	100.0%		
Percent of Effort - Total Project Cost		18.1%	2.7%	1.1%	7.0%	20.8%	5.2%	6.2%	1.0%	9.6%		5.0%	1.7%			78.4%	

Subtotal ESA Labor Cost \$ 204,655

Subtotal ESA Non-Labor Expenses (see Table 3 for detail) \$ 15,333

Subtotal Subconsultant + 15% Administrative Fee (see Table 4 for details) \$ 41,112

PROJECT TOTAL

\$ 261,100

Table 3: Expense Proposal
Cost Proposal: ESA Non-Labor Expenses Summary

Reimbursable Expenses

Project Supplies	\$	-
Printing/Reproduction/Miscellaneous Copying	\$	6,745
Document and Map Reproductions (CD + Digital Photo)	\$	-
Postage and Deliveries	\$	2,370
Mileage	\$	120
Vehicle Rental	\$	-
Lodging	\$	-
Airfare	\$	-
Other Travel Related	\$	-
Noise Monitor	\$	80
Publish NOA in Local Newspaper (Orange County Register or LA Times)	\$	800
NOD Posting with County Clerk	\$	3,218
Subtotal Reimbursable Expenses	\$	13,333
15% Fee on Reimbursable Expenses	\$	2,000
Total Reimbursable Expenses	\$	15,333

C

Table 4: Subconsultant Costs

Traffic Study (Kunzman Associates)	Cost
Traffic Impact Analysis	\$32,500
Optional Gate Stacking Analysis	800
Response to Comments	1,200
Meeting Attendance	1,250
Subtotal Subconsultant Cost	\$35,750
Administrative Cost (15 Percent)	5,362
Total Subconsultant Cost	\$41,112

EXHIBIT C

INSURANCE REQUIREMENTS – PROFESSIONAL SERVICES

1. Provision of Insurance. Without limiting Consultant's indemnification of City, and prior to commencement of Work, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City. Consultant agrees to provide insurance in accordance with requirements set forth here. If Consultant uses existing coverage to comply and that coverage does not meet these requirements, Consultant agrees to amend, supplement or endorse the existing coverage.
2. Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.
3. Coverage Requirements.
 - A. Workers' Compensation Insurance. Consultant shall maintain Workers' Compensation Insurance, statutory limits, and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000) each accident for bodily injury by accident and each employee for bodily injury by disease in accordance with the laws of the State of California, Section 3700 of the Labor Code.

Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its City Council, boards and commissions, officers, agents, volunteers and employees.
 - B. General Liability Insurance. Consultant shall maintain commercial general liability insurance, and if necessary umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) general aggregate. The policy shall cover liability arising from premises, operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
 - C. Automobile Liability Insurance. Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit each accident.

- D. Professional Liability (Errors & Omissions) Insurance. Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the Effective Date of this Agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the Services required by this Agreement.
4. Other Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:
- A. Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City, its City Council, boards and commissions, officers, agents, volunteers and employees or shall specifically allow Consultant or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers from each of its subconsultants.
- B. Additional Insured Status. All liability policies including general liability, excess liability, pollution liability, and automobile liability, if required, but not including professional liability, shall provide or be endorsed to provide that City, its City Council, boards and commissions, officers, agents, volunteers and employees shall be included as insureds under such policies.
- C. Primary and Non Contributory. All liability coverage shall apply on a primary basis and shall not require contribution from any insurance or self-insurance maintained by City.
- D. Notice of Cancellation. All policies shall provide City with thirty (30) calendar days' notice of cancellation (except for nonpayment for which ten (10) calendar days' notice is required) or nonrenewal of coverage for each required coverage.
5. Additional Agreements Between the Parties. The parties hereby agree to the following:
- A. Evidence of Insurance. Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

- B. City's Right to Revise Requirements. City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving Consultant sixty (60) calendar days' advance written notice of such change. If such change results in substantial additional cost to Consultant, City and Consultant may renegotiate Consultant's compensation.
- C. Enforcement of Agreement Provisions. Consultant acknowledges and agrees that any actual or alleged failure on the part of City to inform Consultant of non-compliance with any requirement imposes no additional obligations on City nor does it waive any rights hereunder.
- D. Requirements not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.
- E. Self-insured Retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these requirements unless approved by City.
- F. City Remedies for Non-Compliance. If Consultant or any subconsultant fails to provide and maintain insurance as required herein, then City shall have the right but not the obligation, to purchase such insurance, to terminate this Agreement, or to suspend Consultant's right to proceed until proper evidence of insurance is provided. Any amounts paid by City shall, at City's sole option, be deducted from amounts payable to Consultant or reimbursed by Consultant upon demand.
- G. Timely Notice of Claims. Consultant shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.
- H. Consultant's Insurance. Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own

judgment may be necessary for its proper protection and prosecution of the Work.