AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES

THIS AGREEMENT is made and entered into as of the date of execution by the City of Encinitas, a municipal corporation, hereinafter referred to as "CITY", and National Conflict Resolution Center, hereinafter referred to as "CONSULTANT".

RECITALS

The CITY requires outside assistance to provide the following services:

Consultant and program coordinator to establish, administer and evaluate, in coordination with City staff, a one-year voluntary mediation program for general disputes and land use/development cases; to include mediation services, case coordination and program evaluation. CONSULTANT represents itself as possessing the necessary skills and qualifications to provide the services required by the CITY;

NOW THEREFORE, in consideration of these recitals and the mutual covenants contained herein, the CITY and CONSULTANT agree as follows:

1.0 TERM OF AGREEMENT

1.1 This AGREEMENT shall be effective on and from the day, month and year of the execution of this document by the CITY.

1.2 CONSULTANT shall commence the performance of the services in accordance with the Scope of Work section provided in Attachment "A" to this AGREEMENT and shall continue such services until all tasks to be performed are completed, or this AGREEMENT is otherwise terminated. CONSULTANT shall complete the services and provide final data and reports no later than March 1, 2017 unless an extension of time is mutually agreed to by both parties.

2.0 CONSULTANT'S OBLIGATIONS (ATTACHMENT A)

2.1 CONSULTANT shall provide the CITY with the following services:

The specific manner in which the services are to be performed is described in Attachment "A" which is attached hereto, and incorporated herein as though fully set forth at length, collectively hereinafter referred to as "DESCRIBED SERVICES".

2.2 CONSULTANT shall perform all work required to accomplish the DESCRIBED SERVICES in conformity with applicable requirements of law: Federal, State and Local.

2.3 CONSULTANT is hired to render the DESCRIBED SERVICES and any payments made to CONSULTANT are compensation fully for such services.

2.4 CONSULTANT shall maintain professional certifications as required in order to properly comply with all City, State, and Federal law.

3.0 PAYMENT FOR SERVICES (ATTACHMENT B)

Payment to CONSULTANT to render the DESCRIBED SERVICES hereunder shall be as set forth in Attachment "B" which is attached hereto and incorporated herein as though fully set forth at length.

4.0 SUBCONTRACTING (ATTACHMENT C)

4.1 If CONSULTANT subcontracts for any of the work to be performed under this AGREEMENT, CONSULTANT shall be as fully responsible to the CITY for the acts and omissions of consultant's subcontractors and for the persons either directly or indirectly employed by the subcontractors, as CONSULTANT is for the acts and omissions of persons directly employed by CONSULTANT. Nothing contained in the AGREEMENT shall create any contractual relationship between any subcontractor of CONSULTANT and the CITY. CONSULTANT shall bind every subcontractor to the terms of the AGREEMENT applicable to consultant's work unless specifically noted to the contrary in the subcontract in question and approved in writing by the CITY.

4.2 The name and location of the place of business of each subcontractor who will perform work or labor or render service to the CONSULTANT in performing this AGREEMENT are contained in Attachment "C" which is attached hereto and incorporated herein as though fully set forth at length.

5.0 EQUIVALENT ITEMS (ATTACHMENT D)

6.0 EXTRA WORK

CONSULTANT shall not perform work in excess of the DESCRIBED SERVICES without the prior, written approval of the CITY. All requests for extra work shall be by written Change Order submitted to the CITY prior to the commencement of such work.

7.0 VERBAL AGREEMENT OR CONVERSATION

No verbal agreement or conversation with any officer, agent or employee of the CITY, either before, during or after the execution of this AGREEMENT, shall effect or modify any of the terms or obligations herein contained nor shall such verbal agreement or conversation entitle CONSULTANT to any additional payment whatsoever.

8.0 TERMINATION OF AGREEMENT

8.1 In the event of CONSULTANT'S failure to prosecute, deliver, or perform the DESCRIBED SERVICES, the CITY may terminate this AGREEMENT by notifying CONSULTANT by certified mail of said termination. Thereupon, CONSULTANT shall cease work and within five (5) working days: (1) assemble all documents owned by the CITY and in consultant's possession and deliver said documents to the CITY and (2) place all work in progress in a safe and protected condition. The City Manager of the CITY shall make a determination of the percentage of work which CONSULTANT has performed which is usable and of worth to the CITY. Based upon that finding, the CITY shall determine any final payment due to CONSULTANT.

8.2 This AGREEMENT may be terminated by either party, without cause, upon the giving of ten (10) days written notice to the other party. Prior to the 10th day following the giving of the notice, the CONSULTANT shall: (1) assemble the completed work product to date, and put same in order for proper filing and closing, and deliver said product to the CITY and (2) place all work in progress in a safe and protected condition. The City Manager of the CITY shall make a determination of the percentage of work which CONSULTANT has performed which is usable and of worth to the CITY. Based upon that finding, the CITY shall determine any final payment due to CONSULTANT.

9.0 COVENANTS AGAINST CONTINGENT FEES

CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working for CONSULTANT, to solicit or secure this AGREEMENT, and that CONSULTANT has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this AGREEMENT. For breach or violation of this warranty, the CITY shall have the right to terminate this AGREEMENT without liability, or, at the CITY'S discretion to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

10.0 OWNERSHIP OF DOCUMENTS

10.1 All plans, studies, sketches, drawings, reports and specifications as herein required are the property of the CITY, whether or not the CITY proceeds with the project for which such documents are prepared.

10.2 If the CITY reuses such documents for any reason other than for the project for which they are prepared, without CONSULTANT'S prior written authorization which shall not be unreasonably withheld, the CITY waives any claim against CONSULTANT for such unauthorized use and will indemnify and hold CONSULTANT harmless from any claim or liability for injury or loss allegedly arising from the CITY'S unauthorized use of such documents.

11.0 STATUS OF CONSULTANT

CONSULTANT shall perform the services provided for herein in a manner of CONSULTANT'S own choice, as an independent contractor and in pursuit of CONSULTANT'S independent calling, and not as an employee of the CITY. CONSULTANT shall be under control of the CITY only as to the result to be accomplished and the personnel assigned to the project. However, CONSULTANT shall confer with the CITY.

12.0 HOLD HARMLESS

12.1 CONSULTANT agrees to indemnify and hold the CITY and CITY'S officers, officials, employees and agents harmless from, and against any and all liabilities, claims, demands, causes of action, losses, damages and costs, including all costs of defense thereof, arising out of, or in any manner connected directly or indirectly with, any acts or omissions of CONSULTANT or CONSULTANT'S agents, employees, subcontractors, officials, officers or representatives. Except

as otherwise provided in this Section, upon demand, CONSULTANT shall, at its own expense, defend CITY and CITY'S officers, officials, employees and agents, from and against any and all such liabilities, claims, demands, causes of action, losses, damages and costs.

12.2 CONSULTANT'S obligation herein does not extend to liabilities, claims, demands, causes of action, losses, damages or costs that arise out of the CITY'S intentional wrongful acts, CITY'S violations of law, or the CITY'S sole active negligence.

13.0 ASSIGNMENT OF CONTRACT

CONSULTANT is without right to and shall not assign this AGREEMENT or any part thereof or any monies due hereunder without the prior written consent of the CITY which shall not be unreasonably withheld.

14.0 INSURANCE

14.1 CONSULTANT shall obtain, and during the term of this AGREEMENT shall maintain insurance policies of general liability, automobile liability, and property damage insurance from an insurance company authorized to be in business in the State of California. Each such policy shall be in an amount of not less than one million dollars ($1,000,000) for each occurrence, and shall be endorsed with the following language:

A. The CITY and CITY's officers, elected officials, employees, agents and volunteers are to be covered as additional insured with respect to liability arising out of the acts and omissions by or on behalf of CONSULTANT.

B. The insured waives all rights of subrogation against the CITY and CITY's officers, officials, employees, agents and volunteers.

C. Provide that the policy shall remain in full force during the full term of this AGREEMENT and shall not be canceled, voided, terminated, reduced, or allowed to expire without thirty (30) days prior written notice from the issuance company being received by CITY.

14.2 CONSULTANT shall obtain, and during the term of this AGREEMENT shall maintain, a policy of professional liability insurance that shall:

A. Be from an insurance company authorized to be in business in the State of California;

B. Be in an insurable amount of not less than $l,000,000 for each occurrence; and

C. Provide that the policy shall remain in full force during the full term of this AGREEMENT and shall not be canceled, terminated, or allowed to expire without thirty (30) days prior written notice to the CITY from the insurance company.

14.3 Before CONSULTANT shall employ any person or persons in the performance of the AGREEMENT, CONSULTANT shall procure a policy of Worker's Compensation Insurance as required by the Labor Code of the State of California.

14.4 CONSULTANT shall provide certificates of insurance with original endorsements to CITY as evidence of the insurance coverage required herein. Certificates of such insurance shall be filed with the CITY on or before commencement of performance of this AGREEMENT. Current certification of insurance shall be kept on file with the CITY at all times during the term of this AGREEMENT.

15.0 DISPUTES

15.1 If a dispute should arise regarding the performance of this AGREEMENT, the following procedures shall be used to address any question of fact or interpretation not otherwise settled by agreement between the parties. Such questions, if they become identified as part of a dispute between persons operating under the provisions of the AGREEMENT, shall be reduced to writing by the complaining party. A copy of such documented dispute shall be forwarded to the other party involved along with recommended methods of resolution. The party receiving the letter shall reply to the letter along with a recommended method of resolution within ten (10) days of receipt of the letter.

15.2 If the dispute is not resolved, the aggrieved party shall send to the CITY'S Manager a letter outlining the dispute for Manager's resolution.

15.3 If the dispute remains unresolved and the parties have exhausted the procedures of this section, the parties may then seek remedies available to them at law.

16.0 NOTICES

16.1 Any notices to be given under this AGREEMENT, or otherwise, shall be served by certified mail.

16.2 For the purposes hereof, unless otherwise provided in writing by the parties hereto, the address of the CITY and the proper person to receive any notice on the CITY'S behalf is:

TO: City of Encinitas
Attn: Diane S. Langager, Principal Planner
505 South Vulcan Avenue
Encinitas, CA 92024
(760) 633-2600

16.3 For the purposes hereof, unless otherwise provided in writing by the parties hereto, the address of CONSULTANT and the proper person to receive any notice on the CONSULTANT'S behalf is:

Mr. Steve Dinkin
National Conflict Resolution Center
530 B Street, Suite 1700
San Diego, CA 92101

17.0 CONSULTANT'S CERTIFICATION OF AWARENESS OF IMMIGRATION REFORM AND CONTROL ACT OF 1986

CONSULTANT certifies that CONSULTANT is aware of the requirements of the Immigration Reform and Control Act of 1986 (8 USC §§ 1101-1525) and has complied and will comply with these requirements, including but not limited to verifying the eligibility for employment of all agents, employees, subcontractors and consultants that are included in this AGREEMENT.

18.0 CONSULTANT'S AWARENESS AND COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT OF 1990

CONSULTANT certifies that CONSULTANT is aware of the requirements of the Americans with Disabilities Act of 1990 (42 USC §§ 12101) and has complied with and will comply with these requirements, included but not limited to verifying compliance of their contractors, consultants, agents, and employees.

CONSULTANT

by _____ 1-11-16
Steven P. Dinkin — Date
President,
National Conflict Resolution Center

CITY

City of Encinitas

by _____ 2/2/16
Karen P. Brust — Date
City Manager

APPROVED AS TO FORM:

_____ 1/28/16
Glenn Sabine, City Attorney — Date

ATTACHMENT "A"

Case # 15-174 POD

Manner of Performing the Services

CONSULTANT shall perform the services in the following manner:

TASKS

1. **Program Development:** Set up policies and procedures and develop appropriate forms for the Encinitas Mediation Program to address both general dispute and land use/development cases.

2. **Mediation Case Coordination:**

   a. **General Dispute Cases** – General Dispute cases relate to issues such as, but not limited to, blocked views, property line location, overhanging trees and/or root damage, fencing or other structures not regulated by the City. CONSULTANT will hold initial discussions with disputing parties, identify appropriate mediator, schedule the mediations, maintain paperwork, and conduct a 60 day follow-up to ensure compliance. Mediations will be conducted by volunteer mediators arranged for and coordinated by CONSULTANT. Mediations will be held in the Encinitas City Hall, unless other arrangements are made by CONSULANT and the disputing parties for an alternate location. Cases shall be handled on an on call basis, not to exceed six (6) cases for the year unless otherwise authorized by the City.

   b. **Land Use/ Development Cases** – CONSULTANT will enter into an agreement with the applicant and the applicant will pay all costs associated with the mediation services. CONSULTANT will hold initial discussions with disputing parties, identify appropriate mediator, schedule the mediation, maintain paper work, and conduct a 60 day follow-up to ensure compliance. Mediations will be conducted by mediators that CONSULTANT already contracts with; the mediators will be arranged for and coordinated by CONSULTANT. Mediations will be held at Encinitas City Hall, unless other arrangements are made by CONSULTANT and the disputing parties for an alternate location.

3. **Program Evaluation and Reporting:** CONSULTANT will prepare a year-end evaluation report for the City to address the results and efficacy of the one year program (General Dispute and Land/Use Development cases) for the CITY.

ATTACHMENT "B"

Payment for Services

The CITY shall pay CONSULTANT for the DESCRIBED SERVICES as follows:

The CITY agrees to pay the CONSULTANT, as full compensation for the CONSULTANT'S services upon this project, a total amount not to exceed $7,750 which includes:

- $2,500 for Task 1/Program Development;
- $4,500 for Task 2a/Case Coordination for General Dispute Mediation Cases (at a fixed fee of $750.00 per case not to exceed six (6) cases); and
- $750 for Task 3/Program Evaluation and Reporting.

Additional fees for extra work, if any, shall be computed and paid as provided in Section 6.0 of this AGREEMENT.

Costs for Task 2b/Case Coordination for Land Use Development Cases shall be paid by the project applicant at a cost of $275 per hour; plus a $100 per applicant administrative fee. Applicants will contract with and pay CONSULTANT directly.

Method of Payment

The method of payment for those costs to be paid by the CITY shall be based on a time-and-materials, not-to-exceed basis, based on the budgets for the tasks identified above. CONSULTANT shall only be paid for work performed and may submit invoices upon completion of Tasks 1 and/or 3 and upon completion of each mediation general dispute case as set forth for Task 2a.

Payments shall be paid within 30 days from the date of CONSULTANTS invoice. Payment for the Task 1 shall not be authorized until the final work product is submitted and accepted by the City for program implementation. Payment for Task 2a shall not be authorized until the mediation case is completed and final written agreement accepted by the disputing parties. In those instances where a written agreement cannot be obtained a final written summary of the process shall be submitted prior to authorization of the invoice. Payment for Task 3 shall not be authorized until the final work product is submitted and accepted by the City as complete.

ATTACHMENT "C"
Case # 15-174 POD

Subcontractors

For the General Dispute cases, CONSULTANT will use volunteer mediators from their current roster.

For the Land Use cases, CONSULTANT will use consultant mediators who are affiliated with CONSULTANT. These mediators can be found at http://www.environmentalmediators.com/ .