

COUNTY OF SAN DIEGO

**MEMORANDUM OF UNDERSTANDING
ENVIRONMENTAL IMPACT REPORT / TECHNICAL STUDY PREPARATION
AND HANDLING OF _____; _____**

This AGREEMENT, hereinafter referred as the "MOU", is made and entered into by and between the **County of San Diego, ("COUNTY")**, _____ (**"APPLICANT"**), _____ (**"CONSULTANT"**), and _____ (**"FIRM"** which **employs the consultant, if applicable**) for the purpose of establishing rights and responsibilities of all undersigned parties hereto in relation to the preparation and handling of a TECHNICAL STUDY or ENVIRONMENTAL IMPACT REPORT ("EIR") for the above-referenced project ("PROJECT").

WHEREAS, the COUNTY is the Lead Agency with the land use and planning jurisdiction in the above-referenced PROJECT area of unincorporated San Diego County, as it pertains to the California Environmental Quality Act ("CEQA"); and

WHEREAS, the APPLICANT has submitted an application for development of the above-referenced PROJECT; and

WHEREAS, the COUNTY has determined that the PROJECT necessitates the preparation of a TECHNICAL STUDY / EIR; and

WHEREAS, the CONSULTANT is a professional environmental consultant included on the County official CEQA Consultant List for the applicable Subject Area (All CONSULTANT rights and responsibilities within this MOU extend to the FIRM, which employs the consultant (if applicable), and any consultant hired to assist with the preparation of the TECHNICAL STUDY / EIR); and

WHEREAS, the APPLICANT, CONSULTANT, and COUNTY understand and agree that CONSULTANT has the primary responsibility to ensure that the TECHNICAL STUDY / EIR is adequate and COUNTY review is for the benefit of the public generally and not for the benefit of the APPLICANT or CONSULTANT; and

WHEREAS, the APPLICANT, CONSULTANT, and COUNTY wish to define their relationships and areas of responsibility in the preparation and management of a TECHNICAL STUDY / EIR and the CEQA process.

NOW, THEREFORE, in view of the foregoing, and in consideration of the mutual covenants and agreements contained herein, the APPLICANT, CONSULTANT, and COUNTY do hereby agree as follows:

I. NECESSITY OF A TECHNICAL STUDY OR EIR

The COUNTY has determined that the PROJECT necessitates the preparation of a TECHNICAL STUDY / EIR.

II. SUBMISSION OF DOCUMENTS AND DISCLOSURE OF INFORMATION

The APPLICANT and CONSULTANT shall submit all environmental documents under this MOU pursuant to the terms and conditions set forth herein and in accordance with the “County of San Diego CEQA Guidelines.”

This MOU requires the disclosure of certain information by the APPLICANT and CONSULTANT to the COUNTY. Disclosure may initially be through verbal communication with the COUNTY Project Manager. The COUNTY maintains the right, upon reasonable notice to the APPLICANT and CONSULTANT, to: 1) review draft documents and relevant correspondence; 2) require that it be copied on correspondence subject to the disclosure requirements; and/or 3) require a written or emailed (instead of verbal) report of disclosures.

III. CERTIFICATIONS

By executing this MOU:

A. The APPLICANT certifies that it has an ongoing obligation and commitment to the COUNTY to disclose all information that is relevant to the environmental consequences of the PROJECT and the preparation of the TECHNICAL STUDY / EIR, and further certifies that no relevant information has been or will be omitted or withheld from the COUNTY, the CONSULTANT, or any sub-consultant(s).

B. The CONSULTANT certifies:

That it is included on the COUNTY official CEQA Consultant List for the applicable Subject Area (or the COUNTY official Environmental Consultants List if the list has not been reestablished pursuant to the February 28, 2006 COUNTY CEQA Guidelines) and it is prepared to undertake all necessary technical and analytical work required in conjunction with the TECHNICAL STUDY / EIR, either directly, under the CONSULTANT’s direct supervision and management, and/or through the use of any sub-consultant(s).

IV. APPLICANT’S RIGHTS AND RESPONSIBILITIES

- A. Subject to the terms and conditions of this MOU and County CEQA Guidelines, the COUNTY agrees to allow the APPLICANT to select and retain the undersigned CONSULTANT for preparation of the TECHNICAL STUDY / EIR. For this purpose, the APPLICANT shall enter into a direct agreement with the CONSULTANT, and such agreement shall govern the entire scope of their arrangement. Such agreement shall comply with all terms and conditions set forth in this MOU, and no term therein shall be inconsistent with any provision herein.

- B. The APPLICANT shall be responsible for one hundred-percent (100%) of all costs associated with the CONSULTANT’s work, including but not limited to, any sub-consultant(s) costs, TECHNICAL STUDY / EIR preparation and document circulation costs incurred by the APPLICANT or CONSULTANT, and all costs associated with participation in scoping meetings or community outreach meetings, as necessary. The APPLICANT shall also be responsible for one hundred-percent (100%) of all costs incurred by the COUNTY related to its independent review of the TECHNICAL STUDY / EIR.

- C. The APPLICANT shall ensure that any consultant(s) hired in conjunction with the preparation of the TECHNICAL STUDY / EIR and related to the PROJECT shall comply with the COUNTY CEQA Guidelines and all relevant terms and conditions set forth in this MOU.

- D. The APPLICANT shall not enter into any form of confidentiality agreement with the CONSULTANT or any other consultant hired to assist with the preparation of the TECHNICAL STUDY / EIR, which prohibits disclosure of information related to substantive land use or environmental issues to the COUNTY. This provision may be waived or modified at the discretion of the COUNTY, if such an agreement would reveal a trade secret as defined by Government Code Section 6254.7.

V. CONSULTANT’S RIGHTS AND RESPONSIBILITIES

- A. The CONSULTANT shall have an ongoing obligation and commitment to the COUNTY to disclose all information within its Subject Area that is relevant to the environmental consequences of the PROJECT and the preparation of the TECHNICAL

STUDIES / EIR. The CONSULTANT shall not omit or withhold any relevant information from the COUNTY at the request of the APPLICANT or for any other reason. The CONSULTANT shall require any CONSULTANT-hired sub-consultant(s) to certify these same obligations and commitments to the COUNTY as a condition of their contract or by signing a copy of this MOU and shall provide a copy of such certification to the COUNTY within ten (10) days of retaining such sub-consultant(s).

- B. The CONSULTANT shall enter into a direct agreement with the APPLICANT for purposes of preparing the TECHNICAL STUDY / EIR, and such agreement shall govern the entire scope of their arrangement. Such agreement shall comply with all terms and conditions set forth in this MOU, and no term therein shall be inconsistent with any provision herein.
- C. The CONSULTANT's responsibility is to provide a complete and accurate TECHNICAL STUDY / EIR. The CONSULTANT's accountability under this MOU shall be solely to the COUNTY, and not to the APPLICANT or to any other person or entity.
- D. The CONSULTANT shall ensure that any sub-consultant(s) hired by the CONSULTANT in conjunction with the preparation of the TECHNICAL STUDY / EIR shall comply with the COUNTY CEQA Guidelines and all relevant terms and conditions set forth in this MOU.
- E. The CONSULTANT shall draft the TECHNICAL STUDY / EIR for the PROJECT in accordance with CEQA, State CEQA Guidelines, COUNTY CEQA Guidelines, relevant COUNTY technical study and EIR content and report formats, and with the directions and specifications set forth by the COUNTY.
- F. The CONSULTANT shall verify and ensure that all TECHNICAL STUDY / EIR documents prepared under its contract utilize accurate and verifiable field techniques and professional work performance standards, and are in conformance with all applicable CEQA requirements, and all applicable County, State, and Federal rules, regulations and laws.
- G. The CONSULTANT shall verify and ensure that all TECHNICAL STUDY / EIR documents prepared under its contract, including the draft EIR, final EIR, TECHNICAL STUDIES, and response to comments (as applicable), represent its complete and independent professional judgment and provide an analysis of

the specific environmental issues, setting, potential impacts, and mitigation measures associated with the PROJECT. In addition the CONSULTANT shall verify and ensure that all TECHNICAL STUDY / EIR documents prepared under its contract include all changes provided by COUNTY and comply with all direction given by COUNTY irrespective of direction, changes or comments provided by the APPLICANT. Notwithstanding the above responsibility, all CEQA documents shall reflect the independent judgment of the COUNTY. The TECHNICAL STUDY / EIR shall be signed as true and accurate by CONSULTANT.

- H. The CONSULTANT shall disclose any revisions made to the draft TECHNICAL STUDY / EIR and specifically identify any revisions made at the request of the applicant. Unless waived by the COUNTY, all revisions to CEQA documents prior to submittal for public review shall be shown in strikeout/underline.
- I. The CONSULTANT shall maintain a record of communications with the APPLICANT related to substantive land use or environmental issues, and such record shall be submitted to the COUNTY for review upon request.
- J. The COUNTY shall retain the right to attend, or participate in, meetings (including conference calls) between the APPLICANT and the CONSULTANT when such meetings include discussion of substantive land use or environmental issues and has the right to request such meetings. The CONSULTANT shall provide the COUNTY with reasonable notice of all such meetings at the earliest time possible and no less than one business day. Upon the request of the COUNTY, the CONSULTANT shall disclose all substantive land use and environmental issues discussed at meetings the COUNTY does not attend. At the discretion of the COUNTY, notice of meetings may be waived in lieu of periodic summary reports disclosing issues discussed.
- K. The CONSULTANT may not be a subsidiary or division of the APPLICANT or have an ownership interest in the proposed PROJECT or any other property or development in which the APPLICANT has a financial interest. Additionally, the CONSULTANT shall not accept performance incentives associated with a certain density, intensity, or configuration of development. This prohibition does not preclude performance incentives related to project schedules.

- L. The CONSULTANT shall not enter into any form of confidentiality agreement with the APPLICANT or any sub-consultant(s), which prohibits disclosure of information related to substantive land use or environmental issues to the COUNTY. This provision may be waived or modified at the discretion of the COUNTY, if such an agreement would reveal a trade secret as defined by Government Code Section 6254.7.
- M. The CONSULTANT shall always disclose to the COUNTY Project Manager all project related emails and written correspondence between the APPLICANT and CONSULTANT regarding substantive land use or environmental issues, unless waived by the COUNTY.
- N. Upon request from the COUNTY, the CONSULTANT shall submit all field notes, resource documents and supplemental technical studies used in the preparation of the TECHNICAL STUDY / EIR to the COUNTY.
- O. Upon request from the COUNTY, the CONSULTANT shall allow the COUNTY to view its contract with the APPLICANT. The COUNTY maintains the right to require submittal of the contract to the COUNTY. Any cost estimates or hourly rates may be blacked out or omitted.

VI. COUNTY’S RIGHTS AND RESPONSIBILITIES

- A. In accordance with the Public Resources Code Section 21082.1, it is the responsibility of the COUNTY to provide its independent review and analysis of all documentation for the PROJECT prepared and submitted by the CONSULTANT, and sub-consultant(s), and the APPLICANT. This independent review is undertaken for the benefit of the general public and is not intended to relieve the consultant of any of its responsibilities.
- B. The COUNTY shall be responsible for evaluating the extent and detail of topic area discussions in the TECHNICAL STUDY / EIR. The COUNTY shall also be responsible for scheduling and providing the public notice for the public meetings and hearings related to the PROJECT, and for distributing the draft and final EIR or other applicable CEQA document.
- C. The COUNTY shall have the right to reasonable notice and to attend, or participate in, any and all meetings or conference calls as

described in paragraph V.J of this MOU, and has the right to request such meetings and be informed of the subject matter.

- D. The COUNTY shall have the right to request copies of any and all correspondence, meeting schedules, minutes, and draft documents generated by the CONSULTANT, any sub-consultant(s) and the APPLICANT, in connection with the preparation of the TECHNICAL STUDY / EIR. Upon request by the COUNTY, the CONSULTANT shall make available to the COUNTY any and all field notes, resource documents, and supplemental technical studies used in the preparation of the TECHNICAL STUDY / EIR.
- E. The COUNTY shall be responsible for reviewing the content of the draft TECHNICAL STUDY / EIR and providing clear and consistent comments on the scope and adequacy of the document in a timely manner. The COUNTY shall strive to provide thorough reviews and comments on initial reviews to avoid raising new issues that should have been known as the project progresses. The COUNTY shall always inform the APPLICANT of comments requiring additional information or substantive changes to the TECHNICAL STUDY / EIR.
- F. At the request of the APPLICANT or CONSULTANT and after completion of the PROJECT, the COUNTY shall provide an evaluation of the CONSULTANT's performance on the project.

VII. EXPIRATION

This MOU shall expire upon any of the following:

- A. The PROJECT and the TECHNICAL STUDY / EIR becomes final by decision of the authorized County decision-maker, all appeal timelines have expired, and all legal challenges associated with the PROJECT and the TECHNICAL STUDY / EIR have been finally adjudicated; or
- B. The PROJECT is withdrawn or denied and all appeal timelines have expired; or
- C. Written notice from the COUNTY, APPLICANT, or CONSULTANT to the other parties to this agreement terminating the MOU.

Notwithstanding expiration of the MOU, all information obtained prior to said expiration shall be disclosed to the COUNTY pursuant to the MOU disclosure requirements. Expiration of the MOU does not relieve the

Project #

Subject Area: _____

parties of their responsibilities under the MOU for activities that took place prior to the expiration date.

Project #

Subject Area: _____

IN WITNESS WHEREOF, the COUNTY, the APPLICANT and the CONSULTANT/FIRM have caused this agreement to be executed. Further, the APPLICANT and CONSULTANT, under penalty of perjury, agree that all documents submitted to the COUNTY are in conformance with all requirements set forth in this MOU.

ATTESTED:

COUNTY OF SAN DIEGO

APPLICANT

Director of Planning

Principal

Dated:_____

Company Name

Dated:_____

CONSULTANT

FIRM

Consultant

Firm Name

Dated:_____

Principal of Firm

Dated:_____

SUB-CONSULTANT

Sub-Consultant Firm Name

Principal of Firm

Dated:_____