

CONSULTANT SERVICES AGREEMENT

THIS CONTRACT SERVICES AGREEMENT (the "Agreement") is made and entered into as of _____, 2011, by and between the **GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT**, a public body, (the "Agency"), and **PHASE ONE, Inc.**, a California corporation (the "Consultant").

RECITALS

A. Agency is the fee simple owner of vacant land with Assessor's Parcel Numbers: 089-661-03, 089-661-04, 089-661-05, more particularly referred to as the Brookhurst Triangle in the City of Garden Grove (the "Property").

B. Agency desires to utilize the services of the Consultant to conduct environmental testing of dirt, debris, asphalt, and concrete at the Property.

NOW, THEREFORE, in consideration of the covenants and promises contained herein, the Agency and Consultant agree as follows:

1.0 SERVICES OF CONSULTANT

1.1 Scope of Services. In compliance with all terms and conditions of this Agreement, the Consultant shall provide: subsurface reconnaissance assessments with Geoprobe soil boring equipment, and environmental testing services in accordance with the Scope of Services attached as Exhibit A.

1.2 Consultant's Proposal. The Scope of Services shall include the Consultant's proposal or bid, if any, which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.

1.3 Compliance with Law. All services rendered hereunder shall be provided in accordance with all applicable ordinances, resolutions, statutes, rules, regulations and laws of the City of Garden Grove and any Federal, State or local governmental agency of competent jurisdiction.

1.4 Licenses, Permits, Fees and Assessments. Consultant shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the performance of the services required by this Agreement.

1.5 Familiarity with Work. By executing this Agreement, Consultant warrants that (a) it has thoroughly investigated and considered the work to be performed, (b) it has carefully considered how the work should be performed, and (c) it fully understands the facilities, difficulties and restrictions attending performance of the work under this Agreement. Should the Consultant discover any latent or unknown conditions materially differing from those inherent in the work or as represented by the Agency, it shall immediately inform Agency of such fact and shall not proceed except at Consultant's risk until written instructions are received from the Contract Officer (as defined in Section 4.2 hereof).

1.6 Care of Work. The Consultant shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers and other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by Agency, except such losses or damages as may be caused by Agency's own negligence. The performance of services by Consultant shall not relieve Consultant from any obligation to correct any incomplete, inaccurate or defective work at no further cost to the Agency, when such inaccuracies are due to the negligence of Consultant.

1.7 Additional Services. In accordance with the terms and conditions of this Agreement, the Consultant may perform services in addition to those specified in the Scope of Services (Exhibit "A") when directed to do so by the Contract Officer, provided that Consultant shall not be required to perform any additional services without compensation.

2.0 COMPENSATION

2.1 Contract Sum. For the services rendered pursuant to this Agreement, the Consultant shall be compensated in accordance with the "Schedule of Compensation" attached hereto as Exhibit "B" and incorporated herein by this reference:

a. Not to Exceed. Compensation under this Agreement shall not exceed **Thirty Three Thousand One Hundred Sixty Two Dollars and Twenty Eight Cents (\$33,162.28)** over one year.

b. Payment. For work under this Agreement, payment shall be made per the Schedule of Compensation. For extra work not part of this Agreement, a written authorization by Director will be required.

c. Records of Expense. The method of compensation set forth in the Schedule of Compensation, in the Agency's discretion, may include payment for time and materials based upon the Consultant's rates as specified in Exhibit "B." Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, transportation expense, telephone expense, premiums for bonds and insurance, and similar costs and expenses when and if specified in the Schedule of Compensation (Exhibit "B").

d. Termination. Agency and Consultant shall have the right to terminate this Agreement, without cause, by giving ten (10) days written notice of termination. If the project is terminated by Agency, then the provisions of Paragraph 3 would apply to that portion of the work completed.

2.2 Method of Payment. Any month in which Consultant wishes to receive payment, Consultant shall submit to the Agency no later than the tenth (10th) working day of such month, in the form approved by the Consultant Officer, an invoice for services rendered prior to the date of the invoice. Such invoice shall (1) describe in detail the services provided, including time and materials, and (2) indicate the total expenditures to date. Such invoice shall contain a certification by a principal member of Consultant specifying that the payment requested is for work performed in accordance with the terms of this Agreement. The Consultant may retain the sums due hereunder from program income received by the Consultant.

3.0 PERFORMANCE SCHEDULE

3.1 Time of Essence. Time is of the essence in the performance of each party's obligations under this Agreement, including without limitation the Consultant's performance of the services required hereunder and the Agency's payment of all sums due to Consultant.

3.2 Schedule of Performance. All services rendered pursuant to this Agreement shall be performed in a timely and diligent manner.

3.3 Force Majeure. The time period for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Consultant, including, but not restricted to, acts of God or of the public enemy, fires, earthquakes, floods, epidemic, quarantine restrictions, riots, strikes, freight embargoes, acts of any governmental agency other than Agency, and unusually severe weather, if the Consultant shall within ten (10) days of the commencement of such delay notify the Contracting Officer in writing of the causes of the delay. The Contracting Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the forced delay when and if in his judgment such delay is justified, and the Contracting Officer's determination shall be final and conclusive upon the parties to this Agreement.

3.4 Term. Unless earlier terminated in accordance with Section 7.8 of this Agreement, the term of this Agreement shall be two years from the date of this Agreement, and may be annually renewed for additional one year terms upon the mutual written agreement of the Director and the Consultant prior to the end of each one year term.

4.0 COORDINATION OF WORK

4.1 Representatives of Consultant. The following principals of the Consultant are hereby designated as being principals and representatives of the Consultant authorized to act in its behalf with respect to the work specified herein and make all decisions in connection with: Eric Exton and Eric Kieselbach. It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for Agency to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. Consultant may not change the foregoing principals and no other personnel may be assigned to perform the service required hereunder without the express written approval of Agency.

4.2 Contract Officer. The Contract Officer shall be Carlos Marquez or such other person as may be designated by the City Manager. It shall be the Consultant's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Consultant shall refer any decisions which must be made by Agency to the Contract Officer. Unless otherwise specified herein, any approval of Agency required hereunder shall mean the approval of the Contract Officer.

4.3 Transfer or Assignment; Successors and Assigns. Except as herein specifically permitted, neither party shall assign or transfer this Agreement, nor any of the rights or obligations hereunder, without the prior written consent of the other. All of the terms, conditions and provisions of this Agreement shall be binding on and inure to the benefit of the parties to this Agreement and any permitted successors and assigns.

4.4 Independent Consultant. Neither the Agency nor any of its employees shall have any control over the manner, mode or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth. Consultant shall perform all services required herein as an independent Consultant of Agency and shall remain at all times as to Agency a wholly independent Consultant with only such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of Agency.

4.5 Agency Cooperation. The Agency shall provide Consultant with any documents, records or other data or information pertinent to services to be performed hereunder which are reasonably available to the Agency. The Agency shall additionally provide Consultant staff assistance and shall take prompt and appropriate action when it will assist in ensuring and timely performance by Consultant hereunder.

5.0 INSURANCE, INDEMNIFICATION AND BONDS.

5.1 Insurance. The Consultant shall procure and maintain, at its cost, and submit concurrently with its execution of this Agreement, public liability and property damage insurance against all claims for injuries against persons or damages to property resulting from Consultant's acts or omissions rising out of or related to Consultant's performance under this Agreement in a policy amount of One Million Dollars (\$1,000,000) per occurrence, Consultant shall also carry Workers' Compensation Insurance in accordance with State Workers' Compensation laws and professional errors and omissions liability insurance in a policy amount of One Million Dollars (\$1,000,000) per occurrence. Such insurance shall be kept in effect during the term of this Agreement and shall not be cancelable without thirty (30) days' written notice of proposed cancellation to Agency. The insurance policy shall contain a severability of interest clause providing that the coverage shall be primary for losses arising out of Consultant's performance hereunder and neither the Agency nor its insurers shall be required to contribute to any such loss. A certificate evidencing the foregoing and naming the Agency and the City of Garden Grove, their officers and employees as additional insureds shall be delivered to and approved by the Agency and the City of Garden Grove, prior to commencement of the services hereunder. The procuring of such insurance or the delivery of policies or certificates evidencing the same shall not be construed as a limitation of Consultant's obligation to indemnify the Agency, the City of Garden Grove, its Consultants or employees.

a. Automobile liability in the amount of \$1,000,000 combined single limit; Insurance companies must be admitted and licensed in California and have a Best's Guide Rating of A-Class VII or better, as approved by the Agency.

b. Professional liability in the amount of \$1,000,000 per occurrence; insurance companies must be admitted and licensed in California and have a Best's Guide Rating of A-Class VII or better, as approved by the Agency.

5.2 Indemnification. To the fullest extent permitted by law, the Consultant agrees to protect, defend, and hold harmless the Agency and the City of Garden Grove, and its elected or appointed boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorney's fees, for injury or death of any person, or damages of any nature, including interference with use of property, arising out of, or in any way connected with negligence, recklessness and/or intentional wrongful conduct of Consultant, Consultant's agents, officers, employees, subcontractors, or independent contractors hired by Consultant in the performance of the Agreement. The only exception to Consultant's responsibility to protect, defend, and hold harmless

Agency and the City of Garden Grove, is due to the negligence, recklessness and/or wrongful conduct of Agency and the City of Grove, or any of its elective or appointive boards, officers, agents, or employees.

5.3 Remedies. In addition to any other remedies the Agency may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, subject to Consultant's right to provide evidence of self-insurance as set forth above, the Agency may, at its sole option:

a. Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under this Agreement.

b. Order the Consultant to stop work under this Agreement and/or withhold any payment(s) which become due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof.

c. Terminate this Agreement.

Exercise of any of the above remedies, however, is an alternative to any other remedies the Agency may have and are not the exclusive remedies for Consultant's failure to maintain or secure appropriate policies or endorsements. Nothing herein contained shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or property resulting from Consultant's or its subConsultants' performance of work under this Agreement.

6.0 RECORDS AND REPORTS.

6.1 Reports. Consultant shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require, including records indicating source and amounts of repayments, and interest thereon.

6.2 Records. Consultant shall keep such books and records as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the cost and the performance of such services. Books and records pertaining to costs shall be kept and prepared in accordance with generally accepted accounting principles. The Contract Officer shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit and make records and transcripts from such records. These records will be retained for three (3) years after the expiration of this Agreement, except for the following: if any litigation, claim, negotiation, audit or other action has been commenced before the expiration of such three (3) year period, the records shall be retained until completion of such action and resolution of all issues which arise from it, or until the end of three years, whichever is later.

6.3 Ownership of Documents. Originals of all drawings, specifications, reports, records, documents and other materials, whether in hard copy or electronic form, which are prepared by Consultant, its employees, subConsultants and agents in the performance of this Agreement, shall be the property of Agency and shall be delivered to Agency upon the termination of this Agreement or upon the earlier request of the Contract Officer, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by Agency of its full rights of ownership of the documents and materials hereunder. Consultant may retain copies of such documents for its own use. Consultant shall have an unrestricted right to use the concepts embodied herein. Consultant shall cause all subConsultants to assign to Agency any documents or materials prepared by them, and in the event

Consultant fails to secure such assignment, Consultant shall indemnify Agency for all damages suffered thereby.

6.4 Release of Documents. The drawings, specifications, reports, records, documents and other materials prepared by Consultant in the performance of services under this Agreement shall not be released publicly without the prior written approval of the Contract Officer or as required by law. Consultant shall not disclose to any other private entity or person any information regarding the activities of the Agency, except as required by law or as authorized by the Agency.

7.0 ENFORCEMENT OF AGREEMENT

7.1 California Law. This Agreement shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Orange, State of California, or any other appropriate court in such county, and Consultant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

7.2 Waiver. No delay or omission in the exercise of any right or remedy of a nondefaulting party on any default shall impair such right or remedy or be construed as a waiver. Agency's consent or approval of any act by Consultant requiring Agency's consent or approval shall not be deemed to waive or render unnecessary Agency's consent to or approval of any subsequent act of Consultant. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

7.3 Rights and Remedies are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

7.4 Termination Prior To Expiration Of Term. Either party may terminate this Agreement at any time, (i) without cause, upon ninety (90) days' written notice to the other party, or (ii) upon the default of the other party, upon thirty (30) days' written notice to the party alleged to be in default hereunder. Upon receipt or delivery of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Consultant shall be entitled to compensation for all services rendered prior to the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Consultants Proposal (Exhibit "A") or such as may be approved by the Contract Officer.

7.5 Attorneys' Fees. If either party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs of suit from the losing party.

8.0 OFFICERS AND EMPLOYEES; NON-DISCRIMINATION

8.1 Non-liability of Officers and Employees. No officer or employee of the Agency shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by the Agency or for any amount which may become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement. No officer or employee of the Consultant shall be personally liable to the Agency, or any successor in interest, in the event of any default or breach by the Consultant or for any amount which may become due to the Agency or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Conflict of Interest. No officer or employee of the Agency shall have any personal interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects his personal interest or the interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The Consultant warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

8.3 Covenant Against Discrimination. Consultant covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the performance of this Agreement. To the extent required by law, Consultant shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin or ancestry.

9.0 MISCELLANEOUS PROVISIONS

9.1 Notice. Any notice, demand, request, consent, approval, communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail to the address set forth below. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated by the third business day following mailing, or if notice is given in another manner, when received.

To Agency:

City of Garden Grove
Real Property Division
11222 Acacia Parkway
Garden Grove, California 92840
Attention: Carlos Marquez

To Consultant:

Phase One Inc.,
23282 Mill Creek Rd Suite 160
Laguna Hills, CA 92653
Attention: Eric Kieselbach

9.2 Integrated Agreement. This Agreement contains all of the agreements of the

forth above.

AGENCY:

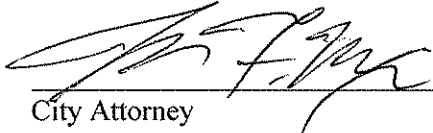
GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT, a public body

ATTEST:

By: _____
Director

Secretary

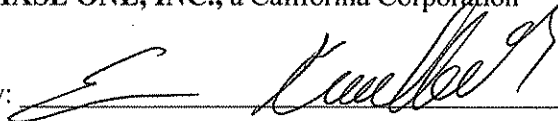
APPROVED AS TO FORM:



City Attorney

CONSULTANT:

PHASE ONE, INC., a California Corporation

By: 

Its: Eric Kieselbach, President

Date: 3/14/11

If Consultant is a corporation, a Corporate Resolution and/or Corporate Seal is required. If a partnership, a Statement of Partnership must be submitted to Agency.