

AGENDA DESCRIPTION:

Consideration and possible action to approve Amendment No. 1 to the professional services agreement with Rincon Consultants, Inc. to complete an updated Environmental Impact Report associated with proposed code amendments to Zone 2 of the Landslide Moratorium Ordinance (Case No. PLCA2018-0004)

RECOMMENDED COUNCIL ACTION:

- (1) Approve Amendment No. 1 to the professional services agreement with Rincon Consultants, Inc. in an amount not to exceed \$18,325 to complete an updated Environmental Impact Report to update the Landslide Moratorium Ordinance pertaining to Zone 2, subject to approval as to form by the City Attorney.

FISCAL IMPACT: The recommended action will result in an additional City expenditure of \$18,325 from the General Fund to complete the Environmental Impact Report (EIR) for the Zone 2 code amendment. On September 18, 2018, the City Council approved the professional services agreement (PSA) with Rincon Consultants, Inc. (Rincon) for a contract sum not to exceed \$102,692 and a 10% contingency in the amount of \$10,269. Rincon has requested additional funds in the amount of \$18,325 to complete the EIR based on work directed by Staff but not covered in the scope of work under the original PSA. This amount includes the 10% contingency (\$10,269) and an additional increase of \$8,056 to the approved contract amount. The Community Development Department budgeted \$90,000 for professional and technical services as part of the City's Fiscal Year 2019-20 budget, which was intended to fund other departmental services. As the Community Development Department did not budget Rincon's request for additional funds in the amount of \$18,325, an appropriation from the City's General Fund is required at this time.

Amount Budgeted:	\$90,000
Additional Appropriation:	\$18,325 <i>OS</i>
Account Number(s):	101-400-4120-5101

ORIGINATED BY: Octavio Silva, Senior Planner *O.S.*
REVIEWED BY: Ara Mihranian, AICP, Director of Community Development *A*
APPROVED BY: Doug Willmore, City Manager *Doug Willmore*

ATTACHED SUPPORTING DOCUMENTS:

- A. Amendment No. 1 to the Professional Services Agreement with Rincon Consultants, Inc. (page A-1)
- B. Professional Services Agreement with Rincon Consultants, Inc. (page B-1)

- C. Rincon Consultants, Inc. contract amendment letter dated October 23, 2019 (page C-1)
-

BACKGROUND AND DISCUSSION:

On September 18, 2018, the City Council approved a two-year professional services agreement (PSA) (Attachment B) with Rincon Consultants, Inc. (Rincon) to complete an updated Environmental Impact Report (EIR) associated with proposed Code Amendments to Zone 2 of the Landslide Moratorium Ordinance. The approved PSA was for an amount not to exceed \$102,692 and included provisions authorizing the City Manager or Director of Finance to approve a contingency for an amount not to exceed 10% or \$10,269 of the project budget in the event that additional work was required in the preparation of the EIR. As part of this action, the City Council appropriated \$32,961 from the General Fund to the Planning Division's professional and technical services program as part of the FY 2018-19 budget. While the City Council approved a total contract sum of \$112,961, the executed PSA with Rincon did not include the 10% contingency and a purchase order was created by the Community Development Department for only \$102,692.

Soon after, Rincon began working on updating the Zone 2 EIR based on, among other things, public comments raised in 2014 on the circulated Final EIR. The work Rincon completed to date on the updated EIR includes new field observations and reconnaissance to verify biological conditions and updated analyses on traffic and circulation, geology, and utilities/infrastructure. Rincon also provided assistance with the AB 52 Native American consultation process that became a state requirement since the preparation of the original EIR.

On August 22, 2019, the Draft EIR was released to the public for a 45-day public comment period, which ended on October 7, 2019. As result of the public comment period, the City received a total of 65 comments from responsible agencies and the public. The submitted comments vary in scope and include the support of the EIR, as well as expressing concerns with, but not limited to, the studies pertaining to geology, traffic, hydrology and utilities.

On October 23, 2019, Rincon submitted a letter (Attachment C) requesting that the City Council-approved contingency funds of \$10,269 be made available and requesting an additional \$8,056 to cover additional costs to complete the EIR. The contract amendment request is attributed to additional analysis related to multiple rounds of review and engagement from the public in the Administrative Draft EIR preparation. Specifically, during this process, Staff requested Rincon to meet with certain members of the public who expressed concerns with the 2014 Final EIR and allow them to review certain sections of the Administrative Draft EIR in an effort to ensure that their concerns were adequately addressed in the update. This work was not described or included in the scope of work under the Council-approved PSA. In addition, the contract amendment is being requested to provide responses to specialized comments related to

traffic and geology, as well as to the preparation of a Statement of Overriding Consideration. Staff believes that the release of the previously approved contingency amount of \$10,269 and the additional amount of \$8,056 requested by Rincon are warranted to provide thorough and adequate responses to the public comments received as part of the Draft EIR review.

ADDITIONAL INFORMATION:

The Final EIR, which includes the Responses to Comments, was released to the public on November 1, 2019. The certification of the EIR, as well as introducing the associated ordinance amending Section 15.20.040(P) of the Rancho Palos Verdes Municipal Code will be considered by the City Council at its November 19, 2019 meeting.

ALTERNATIVES:

In addition to the Staff recommendation, the following alternative actions are available for the City Council's consideration:

1. Deny Amendment No. 1 to the PSA and the associated additional funding. If this alternative is considered, Rincon will not proceed with completing the Final EIR that is scheduled to be considered by the City Council at its November 19, 2019 meeting.
2. Identify any issues of concern that may require further study and direct Staff to provide additional information at a subsequent meeting.

AMENDMENT NO. 1

TO AGREEMENT FOR CONTRACT SERVICES

THIS AMENDMENT TO THE AGREEMENT FOR CONTRACT SERVICES (“Amendment No. 1”) by and between the **CITY OF RANCHO PALOS VERDES**, a California municipal corporation (“City”) and **RINCON CONSULTANTS, INC.**, a California corporation (“Consultant”) is effective as of the ____ day of _____, 2019.

RECITALS

A. City and Consultant entered into that certain Agreement for Contract Services dated September 18, 2018 (“Agreement”) whereby Consultant agreed to provide professional consulting services relating to preparation of the Draft Environmental Impact Report (“EIR”) associated with proposed revisions to Zone 2 of the Landslide Moratorium Ordinance (Case No. PLCA2018-0004) for a not-to-exceed Contract Sum of \$102,692, with an approved contingency amount of \$10,269.

B. Consultant has requested additional funding in the amount of \$18,325 due to Consultant’s need to perform additional work beyond the Scope of Services in the Agreement. Said additional work has been necessitated by the unanticipated EIR scoping, multiple rounds of reviews, and community engagement that Consultant has performed in preparing the Draft EIR. Furthermore, the City received a higher than anticipated number of comment letters on the Draft EIR, some of which require additional input from Consultant’s technical sub-consultants.

C. Consultant has submitted a letter requesting release of the full contingency amount of \$10,269 and additional funds in the amount of \$8,056, the sum of which equals the total requested increase in the amount of \$18,325 to the Contract Sum.

D. City and Consultant now desire to amend the Agreement to increase the Contract Sum by \$18,325 for a total Contract Sum of \$121,017

TERMS

1. **Contract Changes.** The Agreement is amended as provided herein. Deleted text is indicated in ~~strike through~~ and added text in ***bold italics***.

a. Section 2.1, Contract Sum, is amended to read:

“Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in the “Schedule of Compensation” attached hereto as Exhibit “B” and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed ~~One Hundred Two Thousand Six Hundred Ninety Two Dollars (\$102,692)~~ ***\$121,017 (One Hundred Twenty One Thousand Seventeen Dollars)*** (the “Contract Sum”), unless additional compensation is approved pursuant to Section 1.9. ”

b. The table in Section I of Exhibit “C”, Schedule of Compensation, is hereby replaced in its entirety with the following:

Zone 2 Landslide Moratorium Ordinance Revisions EIR
Cost Estimate

Task	Cost	Hours	Principal II \$235/hr	Principal I \$215/hr	Sr. Prof. I \$156/hr	Prof. II \$112/hr	GIS/CADD I \$108/hr	Production \$86/hr	Clerical \$75/hr
1. Revised ADEIR	\$688							8	
<i>Executive Summary</i>	\$610	4	1		1	2			
<i>Introduction/Environmental Setting</i>	\$1,166	9	1		1	6	1		
<i>Project Description</i>	\$1,050	8	1		1	4	2		
<i>Aesthetics</i>	\$1,206	9	1		2	4	2		
<i>Air Quality</i>	\$1,214	9	1		2	6			
<i>Biological Resources</i>	\$3,086	25	1		4	18	2		
<i>Cultural Resources</i>	\$990	7	1		2	4			
<i>Geology</i>	\$3,419	26	1	3	2	18	2		
<i>Greenhouse Gas Emissions/Global Climate Change</i>	\$1,214	9	1		2	6			
<i>Hydrology/Water Quality</i>	\$1,546	12	1		2	8	1		
<i>Noise</i>	\$1,654	13	1		2	8	2		
<i>Traffic/Circulation</i>	\$1,870	15	1		2	8	4		
<i>Utilities/Service Systems</i>	\$1,282	10	1		1	8			
<i>Other CEQA Discussions</i>	\$722	5	1		1	3			
<i>Alternatives</i>	\$1,776	13	2		2	8	1		
2. Draft EIR	\$6,284	48	4	4	8	16	4	12	
3. Final EIR (inc. Responses to Comments, MMRP)	\$8,788	62	8	4	16	24	2	8	
4. Public Hearings (4)	\$5,520	24	24						
Project Management	\$6,652	36	12	8	12				4
Subtotal Rincon Labor	\$50,737	344	64	19	63	151	23	28	4

OTHER COSTS	
Subconsultants:	
<i>LGC Valley, Inc. (geotechnical)</i>	\$6,000
<i>Hunsaker & Associates (hydrology)</i>	\$7,500
<i>LLG (traffic/parking)</i>	\$28,200
Printing (10 draft, 10 final)	\$2,000
Miscellaneous Expenses	\$2,000
General and Administrative	\$6,255
Subtotal Other Costs	\$51,955
TOTAL COST	\$102,692

Billing rates shown are for budgeting purposes. Actual rates may vary slightly depending on which staff are assigned to the project, but overall costs will not exceed the total shown herein.

	Additional Costs beyond Current Budget
Rincon	\$7,500
LLG	\$7,325
LGC Valley	\$3,500
Total	\$18,325
Funds Available from Contingency	\$10,269
Additional Funds Needed	\$8,056

Original Contract Sum	\$102,692
Funds Available from Contingency	\$10,269
Additional Funds Needed	\$8,056
AMENDED CONTRACT SUM	\$121,017

2. **Continuing Effect of Agreement.** Except as amended by this Amendment No. 1, all provisions of the Agreement shall remain unchanged and in full force and effect. From and after the date of this Amendment No. 1, whenever the term “Agreement” appears in the Agreement, it shall mean the Agreement, as amended by this Amendment No. 1 to the Agreement.

3. **Affirmation of Agreement; Warranty Re Absence of Defaults.** City and Consultant each ratify and reaffirm each and every one of the respective rights and obligations arising under the Agreement. Each party represents and warrants to the other that there have been no written or oral modifications to the Agreement other than as provided herein. Each party represents and warrants to the other that the Agreement is currently an effective, valid, and binding obligation.

Consultant represents and warrants to City that, as of the date of this Amendment No. 1, City is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

City represents and warrants to Consultant that, as of the date of this Amendment No. 1, Consultant is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

4. **Adequate Consideration.** The parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment No. 1.

5. **Authority.** The persons executing this Amendment No. 1 on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Amendment No. 1 on behalf of said party, (iii) by so executing this Amendment, such party is formally bound to the provisions of this Amendment No. 1, and (iv) the entering into this Amendment No. 1 does not violate any provision of any other agreement to which said party is bound.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first-above written.

CITY:

CITY OF RANCHO PALOS VERDES, a municipal corporation

Jerry V. Duhovic, Mayor

ATTEST:

Emily Colborn, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

William W. Wynder, City Attorney

CONSULTANT:

RINCON CONSULTANTS, INC., a California corporation

By: _____
Name: Joseph Power
Title: Principal / Vice President

By: _____
Name: Richard Daulton
Title: Secretary

Address: 180 North Ashwood Ave.
Ventura, CA 93003

Two corporate officer signatures required when Consultant is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. CONSULTANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONSULTANT'S BUSINESS ENTITY.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On _____, 2019 before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER		DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/>	INDIVIDUAL	_____
<input type="checkbox"/>	CORPORATE OFFICER	TITLE OR TYPE OF DOCUMENT

	TITLE(S)	
<input type="checkbox"/>	PARTNER(S)	_____
	<input type="checkbox"/> LIMITED	NUMBER OF PAGES
	<input type="checkbox"/> GENERAL	
<input type="checkbox"/>	ATTORNEY-IN-FACT	_____
<input type="checkbox"/>	TRUSTEE(S)	DATE OF DOCUMENT
<input type="checkbox"/>	GUARDIAN/CONSERVATOR	
<input type="checkbox"/>	OTHER _____	

SIGNER IS REPRESENTING:
 (NAME OF PERSON(S) OR ENTITY(IES))

 SIGNER(S) OTHER THAN NAMED ABOVE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On _____, 2019 before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER		DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/>	INDIVIDUAL	_____
<input type="checkbox"/>	CORPORATE OFFICER	TITLE OR TYPE OF DOCUMENT

	TITLE(S)	
<input type="checkbox"/>	PARTNER(S)	_____
	<input type="checkbox"/> LIMITED	
	<input type="checkbox"/> GENERAL	NUMBER OF PAGES
<input type="checkbox"/>	ATTORNEY-IN-FACT	_____
<input type="checkbox"/>	TRUSTEE(S)	
<input type="checkbox"/>	GUARDIAN/CONSERVATOR	DATE OF DOCUMENT
<input type="checkbox"/>	OTHER _____	

SIGNER IS REPRESENTING:
 (NAME OF PERSON(S) OR ENTITY(IES))

 SIGNER(S) OTHER THAN NAMED ABOVE

CONTRACT SERVICES AGREEMENT

By and Between

CITY OF RANCHO PALOS VERDES

and

RINCON CONSULTANTS, INC.

**AGREEMENT FOR CONTRACT SERVICES
BETWEEN THE CITY OF RANCHO PALOS VERDES AND
RINCON CONSULTANTS, INC.**

THIS AGREEMENT FOR CONTRACT SERVICES (herein "Agreement") is made and entered into this 18th day of September, 2018 by and between the City of Rancho Palos Verdes, a California municipal corporation ("City") and Rincon Consultants, Inc., a California corporation ("Consultant"). City and Consultant may be referred to, individually or collectively, as "Party" or "Parties."

RECITALS

A. Pursuant to Section 2.44.060 of the City of Rancho Palos Verdes' Municipal Code, City has authority to enter into and execute this Agreement.

B. The Parties desire to formalize the selection of Consultant for performance of those services defined and described particularly in Article 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1. SERVICES OF CONSULTANT

1.1 Scope of Services.

In compliance with all terms and conditions of this Agreement, the Consultant shall provide those services specified in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by this reference, which may be referred to herein as the "services" or "work" hereunder. As a material inducement to the City entering into this Agreement, Consultant represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, competent, and professional manner, and is experienced in performing the work and services contemplated herein. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Consultant covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be both of good quality as well as fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

1.2 Consultant's Proposal.

The Scope of Service shall include the Consultant's scope of work or bid 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.

Consultant shall keep itself informed concerning, and shall render all services hereunder in accordance with, all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

1.4 California Labor Law.

If the Scope of Services includes any "public work" or "maintenance work," as those terms are defined in California Labor Code section 1720 *et seq.* and California Code of Regulations, Title 8, Section 16000 *et seq.*, and if the total compensation is \$1,000 or more, Consultant shall pay prevailing wages for such work and comply with the requirements in California Labor Code section 1770 *et seq.* and 1810 *et seq.*, and all other applicable laws, including the following requirements:

(a) Public Work. The Parties acknowledge that some or all of the work to be performed under this Agreement is a "public work" as defined in Labor Code Section 1720 and that this Agreement is therefore subject to the requirements of Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code relating to public works contracts and the rules and regulations established by the Department of Industrial Relations ("DIR") implementing such statutes. The work performed under this Agreement is subject to compliance monitoring and enforcement by the DIR. Contractor shall post job site notices, as prescribed by regulation.

(b) Prevailing Wages. Contractor shall pay prevailing wages to the extent required by Labor Code Section 1771. Pursuant to Labor Code Section 1773.2, copies of the prevailing rate of per diem wages are on file at City Hall and will be made available to any interested party on request. By initiating any work under this Agreement, Contractor acknowledges receipt of a copy of the Department of Industrial Relations (DIR) determination of the prevailing rate of per diem wages, and Contractor shall post a copy of the same at each job site where work is performed under this Agreement.

(c) Penalty for Failure to Pay Prevailing Wages. Contractor shall comply with and be bound by the provisions of Labor Code Sections 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. The Contractor shall, as a penalty to the City, forfeit two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the DIR for the work or craft in which the worker is employed for any public work done pursuant to this Agreement by Contractor or by any subcontractor.

(d) Payroll Records. Contractor shall comply with and be bound by the provisions of Labor Code Section 1776, which requires Contractor and each subcontractor to: keep accurate payroll records and verify such records in writing under penalty of perjury, as specified in Section 1776; certify and make such payroll records available for inspection as provided by Section 1776; and inform the City of the location of the records.

(e) Apprentices. Contractor shall comply with and be bound by the provisions of Labor Code Sections 1777.5, 1777.6, and 1777.7 and California Code of Regulations Title 8, Section 200 *et seq.* concerning the employment of apprentices on public works projects. Contractor shall be responsible for compliance with these aforementioned Sections for all apprenticeable occupations. Prior to commencing work under this Agreement, Contractor shall provide City with a copy of the information submitted to any applicable apprenticeship program. Within sixty (60) days after concluding work pursuant to this Agreement, Contractor and each of its subcontractors shall submit to the City a verified statement of the journeyman and apprentice hours performed under this Agreement.

(f) Eight-Hour Work Day. Contractor acknowledges that eight (8) hours labor constitutes a legal day's work. Contractor shall comply with and be bound by Labor Code Section 1810.

(g) Penalties for Excess Hours. Contractor shall comply with and be bound by the provisions of Labor Code Section 1813 concerning penalties for workers who work excess hours. The Contractor shall, as a penalty to the City, forfeit twenty-five dollars (\$25) for each worker employed in the performance of this Agreement by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the Labor Code. Pursuant to Labor Code section 1815, work performed by employees of Contractor in excess of eight (8) hours per day, and forty (40) hours during any one week shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than one and one-half (1½) times the basic rate of pay.

(h) Workers' Compensation. California Labor Code Sections 1860 and 3700 provide that every employer will be required to secure the payment of compensation to its employees if it has employees. In accordance with the provisions of California Labor Code Section 1861, Contractor certifies as follows:

“I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.”

Contractor's Authorized Initials _____

(i) Contractor's Responsibility for Subcontractors. For every subcontractor who will perform work under this Agreement, Contractor shall be responsible for such

subcontractor's compliance with Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code, and shall make such compliance a requirement in any contract with any subcontractor for work under this Agreement. Contractor shall be required to take all actions necessary to enforce such contractual provisions and ensure subcontractor's compliance, including without limitation, conducting a review of the certified payroll records of the subcontractor on a periodic basis or upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages. Contractor shall diligently take corrective action to halt or rectify any such failure by any subcontractor.

1.5 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 Consultant's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes, penalties or interest levied, assessed or imposed against City hereunder.

1.6 Familiarity with Work.

By executing this Agreement, Consultant warrants that Consultant (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Consultant warrants that Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Consultant discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Consultant shall immediately inform the City of such fact and shall not proceed except at Consultant's risk until written instructions are received from the Contract Officer.

1.7 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, documents, plans, studies and/or 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 City, except such losses or damages as may be caused by City's own negligence.

1.8 Further Responsibilities of Parties.

Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry

out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other.

1.9 Additional Services.

City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Consultant, incorporating therein any adjustment in (i) the Contract Sum for the actual costs of the extra work, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Consultant. Any increase in compensation of up to ten percent (10%) of the Contract Sum or \$25,000, whichever is less; or, in the time to perform of up to one hundred eighty (180) days, may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively, must be approved by the City Council. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefor. City may in its sole and absolute discretion have similar work done by other contractors. No claims for an increase in the Contract Sum or time for performance shall be valid unless the procedures established in this Section are followed.

ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.

2.1 Contract Sum.

Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "B" and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed One Hundred Two Thousand Six Hundred Ninety Two Dollars (\$102,692) (the "Contract Sum"), unless additional compensation is approved pursuant to Section 1.9.

2.2 Method of Compensation.

The method of compensation may include: (i) a lump sum payment upon completion; (ii) payment in accordance with specified tasks or the percentage of completion of the services, less contract retention; (iii) payment for time and materials based upon the Consultant's rates as specified in the Schedule of Compensation, provided that (a) time estimates are provided for the performance of sub tasks, (b) contract retention is maintained, and (c) the Contract Sum is not exceeded; or (iv) such other methods as may be specified in the Schedule of Compensation.

2.3 Reimbursable Expenses.

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the Contract Officer in

advance, or actual subcontractor expenses of an approved subcontractor pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Consultant at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the work with City is a critical component of the services. If Consultant is required to attend additional meetings to facilitate such coordination, Consultant shall not be entitled to any additional compensation for attending said meetings.

2.4 Invoices.

Each month Consultant shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City's Director of Finance. By submitting an invoice for payment under this Agreement, Consultant is certifying compliance with all provisions of the Agreement. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-contractor contracts. Sub-contractor charges shall also be detailed by such categories. Consultant shall not invoice City for any duplicate services performed by more than one person.

City shall independently review each invoice submitted by the Consultant to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Consultant which are disputed by City, or as provided in Section 7.3, City will use its best efforts to cause Consultant to be paid within forty-five (45) days of receipt of Consultant's correct and undisputed invoice; however, Consultant acknowledges and agrees that due to City warrant run procedures, the City cannot guarantee that payment will occur within this time period. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission. Review and payment by City for any invoice provided by the Consultant shall not constitute a waiver of any rights or remedies provided herein or any applicable law.

2.5 Waiver.

Payment to Consultant for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Consultant.

ARTICLE 3. PERFORMANCE SCHEDULE

3.1 Time of Essence.

Time is of the essence in the performance of this Agreement.

3.2 Schedule of Performance.

Consultant shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "C" and incorporated herein by this reference. When requested by the Consultant, extensions to the time period(s) specified in the

Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively.

3.3 Force Majeure.

The time period(s) specified in the Schedule of Performance 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, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the Consultant shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Consultant be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant's sole remedy being extension of the Agreement pursuant to this Section.

3.4 Term.

Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding two years from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "C"). [The City may, in its sole discretion, extend the Term for one additional one-year terms.]

ARTICLE 4. COORDINATION OF WORK

4.1 Representatives and Personnel of Consultant.

The following principals of Consultant ("Principals") are hereby designated as being the principals and representatives of Consultant authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

<u>Joe Power, AICP, CE</u> (Name)	<u>Principal/ Vice President</u> (Title)
<u>Susanne Huerta, AICP</u> (Name)	<u>Project Manager</u> (Title)
<u>Abe Leider, AICP</u> (Name)	<u>Project Advisor</u> (Title)

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City 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. All personnel of Consultant, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the foregoing Principals may not be replaced nor may their responsibilities be substantially reduced by Consultant without the express written approval of City. Additionally, Consultant shall utilize only competent personnel to perform services pursuant to this Agreement. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and subcontractors, if any, assigned to perform the services required under this Agreement. Consultant shall notify City of any changes in Consultant's staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

4.2 Status of Consultant.

Consultant shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Consultant, nor any of Consultant's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim Consultant may have to any such rights.

4.3 Contract Officer.

The Contract Officer shall be Ara Mihranian or such 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 City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

4.4 Independent Consultant.

Neither the City 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 herein. City shall have no voice in the selection, discharge, supervision or control of Consultant's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Consultant shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor 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 City. City shall not in any way or for any purpose become or be deemed to be a partner of Consultant in its business or otherwise or a joint venturer or a member of any joint enterprise with Consultant.

4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Consultant shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Consultant, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Consultant or any surety of Consultant of any liability hereunder without the express consent of City.

ARTICLE 5. INSURANCE AND INDEMNIFICATION

5.1 Insurance Coverages.

Without limiting Consultant's indemnification of City, and prior to commencement of any services under this Agreement, 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.

(a) General liability insurance. Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

(b) 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 the Consultant arising out of or in connection with Services to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

(c) 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 \$1,000,000 per claim and 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 (3) years after completion of the services required by this Agreement.

(d) Workers' compensation insurance. Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).

(e) Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall include all of the requirements stated herein.

(f) Additional Insurance. Policies of such other insurance, as may be required in the Special Requirements in Exhibit "B".

5.2 General Insurance Requirements.

(a) Proof 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. Insurance certificates and endorsements 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) Duration of coverage. Consultant shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Services hereunder by Consultant, its agents, representatives, employees or subconsultants.

(c) Primary/noncontributing. Coverage provided by Consultant shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

(d) City's rights of enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

(e) Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or that is on the List of Approved Surplus Line Insurers in the State of California, with an

assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

(f) Waiver of subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications 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 and insurance clauses from each of its subconsultants.

(g) Enforcement of contract provisions (non-estoppel). Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

(h) 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 the 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.

(i) Notice of cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide to City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

(j) Additional insured status. General liability policies shall provide or be endorsed to provide that City and its officers, officials, employees, and agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.

(k) Prohibition of undisclosed coverage limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

(l) Separation of insureds. A severability of interests provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

(m) Pass through clause. Consultant agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by Consultant, provide the same minimum insurance coverage and endorsements required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to City for review.

(n) Agency's right to revise specifications. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the City and Consultant may renegotiate Consultant's compensation.

(o) 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 specifications unless approved by City.

(p) 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.

(q) Additional 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.

5.3 Indemnification.

To the full extent permitted by law, Consultant agrees to indemnify, defend and hold harmless the City, its officers, employees and agents ("Indemnified Parties") against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Consultant, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Consultant is legally liable ("indemnitors"), or arising from Consultant's or indemnitors' reckless or willful misconduct, or arising from Consultant's or indemnitors' negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

(a) Consultant will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Consultant will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Consultant hereunder; and Consultant agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Consultant for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Consultant hereunder, Consultant agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

Consultant shall incorporate similar indemnity agreements with its subcontractors and if it fails to do so Consultant shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Consultant in the performance of professional services hereunder. The provisions of this Section do not apply to claims or liabilities occurring as a result of City's sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City's negligence, except that design professionals' indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the design professional. The indemnity obligation shall be binding on successors and assigns of Consultant and shall survive termination of this Agreement.

ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION

6.1 Records.

Consultant shall keep, and require subcontractors to keep, such ledgers, books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of three (3) years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of Consultant's business, custody of the books and records may be given to City, and access shall be provided by Consultant's successor in interest. Notwithstanding the above, the Consultant shall fully cooperate with the City in providing access to the books and records if a public records request is made and disclosure is required by law including but not limited to the California Public Records Act.

6.2 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. Consultant hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Consultant agrees that if Consultant becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Consultant is providing design services, the cost of the project being designed, Consultant shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Consultant is providing design services, the estimated increased or decreased cost estimate for the project being designed.

6.3 Ownership of Documents.

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the "documents and materials") prepared by Consultant, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Consultant will be at the City's sole risk and without liability to Consultant, and Consultant's guarantee and warranties shall not extend to such use, reuse or assignment. Consultant may retain copies of such documents for its own use. Consultant shall have the right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom. Moreover, Consultant with respect to any documents and materials that may qualify as "works made for hire" as defined in 17 U.S.C. § 101, such documents and materials are hereby deemed "works made for hire" for the City.

6.4 Confidentiality and Release of Information.

(a) All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the Contract Officer.

(b) Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

(c) If Consultant, or any officer, employee, agent or subcontractor of Consultant, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorney's fees, caused by or incurred as a result of Consultant's conduct.

(d) Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION

7.1 California Law.

This Agreement shall be interpreted, construed and governed 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 Los Angeles, 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. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in the County of Los Angeles, State of California.

7.2 Disputes; Default.

In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, the City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Consultant is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Consultant does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Consultant's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

7.3 Retention of Funds.

Consultant hereby authorizes City to deduct from any amount payable to Consultant (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in

dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Consultant's acts or omissions in performing or failing to perform Consultant's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Consultant, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Consultant to insure, indemnify, and protect City as elsewhere provided herein.

7.4 Waiver.

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Consultant shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. 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.

7.5 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.

7.6 Legal Action.

In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding any contrary provision herein, Consultant shall file a statutory claim pursuant to Government Code Sections 905 et seq. and 910 et seq., in order to pursue a legal action under this Agreement.

7.7 Liquidated Damages.

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Contractor and its sureties shall be liable for and shall pay to the City the sum of _____ (\$ _____) as liquidated damages for each working day of delay in the performance of any service required hereunder. The City may

withhold from any monies payable on account of services performed by the Contractor any accrued liquidated damages.

7.8 Termination Prior to Expiration of Term.

This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to Consultant, except that where termination is due to the fault of the Consultant, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Consultant reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Consultant may determine. Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Consultant has initiated termination, the Consultant shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Consultant has initiated termination, the Consultant shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

7.9 Termination for Default of Consultant.

If termination is due to the failure of the Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Consultant shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Consultant for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

7.10 Attorneys' Fees.

If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

8.1 Non-liability of City Officers and Employees.

No officer or employee of the City shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by the City 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.

8.2 Conflict of Interest.

Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the Contract Officer. Consultant agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which affects her/his financial interest or the financial interest of any corporation, partnership or association in which (s)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, gender, sexual orientation, marital status, national origin, ancestry or other protected class in the performance of this Agreement. 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, gender, sexual orientation, marital status, national origin, ancestry or other protected class.

8.4 Unauthorized Aliens.

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq.*, as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Consultant hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

ARTICLE 9. MISCELLANEOUS PROVISIONS

9.1 Notices.

Any notice, demand, request, document, consent, approval, or 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, in the case of the City, to the City Manager and to the attention of the Contract Officer (with her/his name and City title), City of Rancho Palos Verdes, 30940 Hawthorne Blvd., Rancho Palos Verdes, California 90275 and in the case of the Consultant, to the person(s) at the address designated on the execution page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

9.2 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 this Agreement or any other rule of construction which might otherwise apply.

9.3 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

9.4 Integration; Amendment.

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the parties. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Consultant and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

9.5 Severability.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

9.6 Warranty & Representation of Non-Collusion.

No official, officer, or employee of City has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of City participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interests found to be "remote" or "noninterests" pursuant to Government Code Sections 1091 or 1091.5. Consultant warrants and represents that it has not paid or given, and will not pay or give, to any third party including, but not limited to, any City official, officer, or employee, any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded any agreement. Consultant further warrants and represents that (s)he/it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any City official, officer, or employee, as a result of consequence of obtaining or being awarded any agreement. Consultant is aware of and understands that any such act(s), omission(s) or other conduct resulting in such payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect.

Consultant's Authorized Initials



9.7 Corporate Authority.

The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) that entering into this Agreement does not violate any provision of any other Agreement to which said party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first-above written.

CITY:

CITY OF RANCHO PALOS VERDES, a municipal corporation

Susan Brooks
Mayor

ATTEST:

[Signature]
City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

W. Wynder
City Attorney

CONSULTANT:

RINCON CONSULTANTS, INC., a California corporation

By: *[Signature]*
Name: Joseph P. Power
Title: Vice President

By: *[Signature]*
Name: Jennifer Haddon
Title: Vice President

Address: 180 N. Ashwood Ave.
Ventura, CA 93003

Two corporate officer signatures required when Consultant is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. CONSULTANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONSULTANT'S BUSINESS ENTITY.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

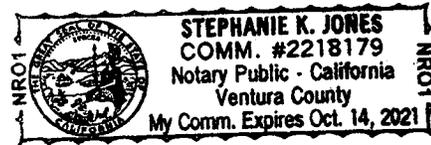
COUNTY OF LOS ANGELES

On 9/25, 2018 before me, Stephanie Jones, personally appeared Joseph Rover + Jennifer Hudson, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Stephanie K. Jones



OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER	DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> CORPORATE OFFICER _____ TITLE(S)	_____ TITLE OR TYPE OF DOCUMENT
<input type="checkbox"/> PARTNER(S) <input type="checkbox"/> LIMITED <input type="checkbox"/> GENERAL <input type="checkbox"/> ATTORNEY-IN-FACT <input type="checkbox"/> TRUSTEE(S) <input type="checkbox"/> GUARDIAN/CONSERVATOR <input type="checkbox"/> OTHER _____	_____ NUMBER OF PAGES
_____	_____ DATE OF DOCUMENT

SIGNER IS REPRESENTING:
 (NAME OF PERSON(S) OR ENTITY(IES))

 SIGNER(S) OTHER THAN NAMED ABOVE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

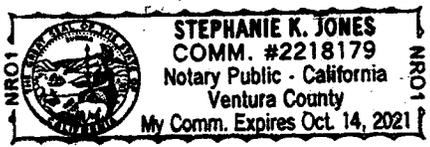
COUNTY OF LOS ANGELES

On 9/25, 2018 before me, Stephanie Jones, personally appeared Joseph Power + Jennifer Hudson, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Stephanie K. Jones



OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER	DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> CORPORATE OFFICER <hr/> TITLE(S)	<hr/> TITLE OR TYPE OF DOCUMENT
<input type="checkbox"/> PARTNER(S) <input type="checkbox"/> LIMITED <input type="checkbox"/> GENERAL <input type="checkbox"/> ATTORNEY-IN-FACT <input type="checkbox"/> TRUSTEE(S) <input type="checkbox"/> GUARDIAN/CONSERVATOR <input type="checkbox"/> OTHER _____	<hr/> NUMBER OF PAGES
<hr/>	<hr/> DATE OF DOCUMENT

SIGNER IS REPRESENTING:
 (NAME OF PERSON(S) OR ENTITY(IES))

SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT "A"

SCOPE OF SERVICES

I. Consultant shall perform the following environmental analysis services:

- A. Produce a new Zone 2 Landslide Moratorium Ordinance Administrative Draft Environmental Impact Report (EIR), which includes:
- ❖ Field Reconnaissance
 - ❖ Traffic impact assessment
 - ❖ Three new on-site noise measurements
 - ❖ Introduction/Environmental Setting will include the project location description and baseline.
 - ❖ The Geology discussion will include "Geotechnical" and a discussion of "Hazards" and landslides.
 - ❖ Hydrology/Water Quality will include Water Supply, Drainage and Flood Protection.
 - ❖ The EIR will discuss the following subjects: hazardous materials, native American cultural resources and burial sites, population and housing, public services, land use and planning, recreation, growth-inducing impacts, and any significant irreversible changes.

The EIR must describe existing environmental conditions in the vicinity of the proposed project, which is referred to as the "environmental setting" for the project. This description of existing environmental conditions ordinarily serves as the "baseline" for measuring the changes to the environment that will result from the project and for determining whether those environmental effects are significant. The EIR must delineate environmental conditions prevailing absent the project, defining a "baseline" against which predicted effects can be described and quantified. Almost all of the *Monks* properties have been built on or have obtained permits for construction. So, the number of developed lots in the project and location description in the new EIR and several appendices (such as the drainage, traffic during and post-construction, noise, air, and geotechnical appendices) will need to reflect that development. The project description, location, environmental setting and baselines must also be appropriate.

Since there have been varying opinions on the risk of landslides in the past, and what factor of safety should apply, the new EIR will address relevant reports by

geotechnical experts on this point. The EIR will summarize the main points of disagreement. The EIR must acknowledge the conflicting opinions and explain why any have been rejected, and state which approach is being adopted, supporting statements with data, including any recent monitoring data. The court of appeal discussed whether it would be speculative to state there will be harm or landslides if a factor of 1.5 is not required. (*Monks v. City of Rancho Palos Verdes* (2008) 167 Cal.App.4th 263, 309; see also unpublished *Monks v. City of Rancho Palos Verdes* 2013 Court of Appeal decision, Cal.Rptr.3d, 2013 WL 1248251.) To provide context, the Court of Appeal opinions would either be included as appendices, or at least cited in the footnotes to provide context. If any mitigation measures such as erosion control measures, groundwater control measures, drainage improvements, and limitations on earth grading are included, these will be analyzed.

The Biological Resources at Abalone Cove, including but not limited to impact to any endangered species, habitat, and any mitigation measures, will be discussed if Zone 2 construction may impact any. Fish and Game provided a list of species and proposed mitigation measures in its comment letter to the Initial Study. The new EIR will address these biological resources. This analysis will also include the Natural Communities Conservation Plan/Habitat Conservation Plan and related studies. On December 7, 2017, the City entered into a five-year long consent decree in the U.S. District Court case *California River Watch v. City of Rancho Palos Verdes*, U.S. District Court Central District Case No. 2:17-CV-05718JAK (PLAx). Development impacts must not interfere with continued compliance with this consent decree.

City's Municipal Code Section 15.20.050 contains several required landslide mitigation measures, which will be analyzed and included in the new EIR. This already applies to the *Monks* owners, so extending this to the rest of Zone 2 would be required. Almost all of the *Monks* properties have been built on or have obtained permits for construction. The new EIR will cover all of Zone 2. Therefore, the analysis of the impact of supplying water will be updated.

- B. Respond to comments from City's Contract Officer, or designee(s), on the new Administrative Draft EIR and produce and circulate a Draft EIR for public circulation.
- C. Respond to public comments on the new Draft EIR and update the mitigation monitoring and reporting plan (MMRP) as appropriate in light of same.
- D. Incorporate comments from City's Contract Officer, or designee(s), on the responses to comments and MMRP and produce a new Final EIR for consideration by the City Council.

- E. Prepare required CEQA notices and delivery of the required documents to the State Clearinghouse and County Clerk.
- F. Attend up to 4 public hearings on the project (each sub-consultant will attend one hearing) as directed by City's Contract Officer.

II. As part of the Services, Consultant shall prepare and deliver the following tangible work products to the City:

- A. Administrative Draft EIR
- B. Draft EIR
- C. Draft Responses to Comments/MMRP
- D. Final EIR

III. All work product is subject to review and acceptance by City's Contract Officer, and must be revised by Consultant without additional charge to City until found satisfactory and accepted by City's Contract Officer.

IV. Consultant shall utilize the following personnel to accomplish the Services:

- A. Joe Power, AICP CEP
- B. Susan Huerta, AICP
- C. Abe Leider, AICP

EXHIBIT “B”

(Superseding Contract Boiler Plate)

Added text is indicated in ***bold italics***, deleted text is indicated in ~~strikethrough~~.

I. Section 4.5, Prohibition Against Subcontracting or Assignment, is amended to read:

4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Consultant shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. ***The following subcontractors are approved by the City: Linscott, Law & Greenspan Engineers (transportation planning consulting services); LGC Valley, Inc. (geotechnical); and Hunsaker & Associates (hydrology).*** In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Consultant, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Consultant or any surety of Consultant of any liability hereunder without the express consent of City.

II. Section 7.7, Liquidated Damages, is deleted in its entirety.

EXHIBIT "C"

SCHEDULE OF COMPENSATION

- I. Consultant shall perform the following Services at the following rates (the rates include subcontractor work):**

Zone 2 Landslide Moratorium Ordinance Revisions EIR
Cost Estimate

Task	Cost	Hours	Principal II \$235/hr	Principal I \$215/hr	Sr. Prof. I \$156/hr	Prof. II \$112/hr	GIS/CADD I \$108/hr	Production \$86/hr	Clerical \$75/hr
1. Revised ADEIR	\$688								
<i>Executive Summary</i>	\$610	4	1		1	2		8	
<i>Introduction/Environmental Setting</i>	\$1,166	9	1		1	6	1		
<i>Project Description</i>	\$1,050	8	1		1	4	2		
<i>Aesthetics</i>	\$1,206	9	1		2	4	2		
<i>Air Quality</i>	\$1,214	9	1		2	6			
<i>Biological Resources</i>	\$3,086	25	1		4	18	2		
<i>Cultural Resources</i>	\$990	7	1		2	4			
<i>Geology</i>	\$3,419	26	1	3	2	18	2		
<i>Greenhouse Gas Emissions/Global Climate Change</i>	\$1,214	9	1		2	6			
<i>Hydrology/Water Quality</i>	\$1,546	12	1		2	8	1		
<i>Noise</i>	\$1,654	13	1		2	8	2		
<i>Traffic/Circulation</i>	\$1,870	15	1		2	8	4		
<i>Utilities/Service Systems</i>	\$1,282	10	1		1	8			
<i>Other CEQA Discussions</i>	\$722	5	1		1	3			
<i>Alternatives</i>	\$1,776	13	2		2	8	1		
2. Draft EIR	\$6,284	48	4	4	8	16	4	12	
3. Final EIR (inc. Responses to Comments, MMRP)	\$8,788	62	8	4	16	24	2	8	
4. Public Hearings (4)	\$5,520	24	24						
Project Management	\$6,652	36	12	8	12				4
Subtotal Rincon Labor	\$50,737	344	64	19	63	151	23	28	4

OTHER COSTS	
Subconsultants:	
LGC Valley, Inc. (geotechnical)	\$6,000
Hunsaker & Associates (hydrology)	\$7,500
LLG (traffic/parking)	\$28,200
Printing (10 draft, 10 final)	\$2,000
Miscellaneous Expenses	\$2,000
General and Administrative	\$6,255
Subtotal Other Costs	\$51,955
TOTAL COST	\$102,692

Billing rates shown are for budgeting purposes. Actual rates may vary slightly depending on which staff are assigned to the project, but overall costs will not exceed the total shown herein.

- II. A retention of ten percent (10%) shall be held from each payment as a contract retention to be paid as a part of the final payment upon satisfactory completion of services.**

NOT APPLICABLE

- III. Within the budgeted amounts for each Task, and with the approval of the Contract Officer, funds may be shifted from one Task subbudget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Services are approved per Section 2.3.**

- IV. The City will compensate Consultant for the Services performed upon monthly submission of a valid invoice. Each invoice is to include:**

- A. Line items for all the work performed, the number of hours worked, and the hourly rate.
 - B. Line items for all materials and equipment properly charged to the Services.
 - C. Line items for all other approved reimbursable expenses claimed, with supporting documentation.
 - D. Line items for all approved subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.
- V. The total compensation for the Services shall not exceed the Contract Sum as provided in Section 2.1 of this Agreement.**
- VI. Consultant's billing rates for all personnel are attached as Exhibit C-1.**

EXHIBIT "C-1"

PERSONNEL RATES

I. Consultant Personnel Rates: See Section I, Exhibit "C"

II. Linscott, Law & Greenspan Engineers (subcontractor):

<i>TITLE</i>	<i>PER HOUR</i>
<i>Principals</i>	
Principal.....	\$ 255.00
Associate Principal	\$ 229.00
Planning/Design Manager	\$ 213.00
<i>Transportation Engineers</i>	
Senior Transportation Engineer	\$ 189.00
Transportation Engineer III.....	\$ 167.00
Transportation Engineer II.....	\$ 141.00
Transportation Engineer I.....	\$ 121.00
<i>Transportation Planners</i>	
Senior Transportation Planner	\$ 167.00
Transportation Planner III.....	\$ 141.00
Transportation Planner II.....	\$ 121.00
Transportation Planner I.....	\$ 108.00
<i>Technical Support</i>	
Engineering Associate II.....	\$ 120.00
Engineering Associate I.....	\$ 116.00
Engineering Computer Analyst II.....	\$ 114.00
Engineering Computer Analyst I.....	\$ 90.00
Senior CADD Drafter.....	\$ 116.00
CADD Drafter III.....	\$ 108.00
CADD Drafter II.....	\$ 95.00
CADD Drafter I.....	\$ 82.00
Senior Engineering Technician.....	\$ 116.00
Engineering Technician II.....	\$ 108.00
Engineering Technician I.....	\$ 82.00
Word Processor/Secretary.....	\$ 76.00
Engineering Aide I.....	\$ 58.00

Public Hearing and litigation support may be charged at 125% of the base rate. Consultation in connection with litigation and Court appearances will be quoted separately.

Project-related mileage will be billed at the prevailing standard mileage rate as determined by the IRS. Subcontractors and other project-related expenses will be billed at cost plus 15%.

The above schedule is for straight time. Overtime will be charged at 1.50 times the standard hourly rates. Interim and/or monthly statements will be presented for completed work. These will be due and payable upon presentation unless prior arrangements are made. A finance charge of 1.5% may be charged each month on the unpaid balance.

II. LGC Valley, Inc. (subcontractor)

Billing Rate/Hour

Word Processing	\$50.00
Technician I	\$80.00
CAD Operator	\$70.00
Senior Field Technician	\$100.00
Staff Engineer/Geologist	\$100.00
Senior Staff Engineer/Geologist/Scientist	\$110.00
Operations Manager	\$115.00
Project Engineer/Geologist	\$120.00
Associate Engineer/Geologist	\$130.00
Principal Engineer/Geologist	\$175.00

III. Hunsaker & Associates (subcontractor)

Billing Rate/Hour

Technical Staff	\$120
Engineers	\$134
Senior Technical Staff and Project Engineers	\$142
Project Managers and Sr. Project Engineers	\$150
Senior Project Managers	\$160
Principals	\$200

EXHIBIT "D"

SCHEDULE OF PERFORMANCE

- I. Consultant shall perform all services timely in accordance with the following schedule. Services shall commence upon City's Notice to Proceed.**

Zone 2 Landslide Moratorium Ordinance Revisions Revised EIR

Estimated Schedule

Task	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7
1. New Administrative Draft EIR	Work in Progress	Work in Progress	Work in Progress				
2. Draft EIR			City Review	City Review	City Review		
3. Draft Responses to Comments/MMRP					Public Review	Public Review	
4. Final EIR							Public Review

 Work in Progress
 City Review
 Public Review

- II. Consultant shall deliver the following tangible work products to the City by the following dates.**

A. New Administrative Draft EIR- within 7 weeks of receipt of notice to proceed

B. Draft EIR- within 2 weeks of receipt of final City comments on the new Administrative Draft EIR

C. Draft Responses to Comments/ MMRP- submitted within 3 weeks of receipt of City comments on the Draft EIR

D. Final EIR- submitted within 2 weeks of receipt of the final City comments on the draft responses to Comments and MMRP

- III. The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.**

October 23, 2019
Job No. 18-06244

Octavio Silva
Senior Planner
City of Rancho Palos Verdes
30940 Hawthorne Blvd.
Rancho Palos Verdes, CA 90275

Re: Contract Amendment – Zone 2 Landslide Moratorium Ordinance Revisions EIR

Dear Mr. Silva:

This letter is a request to amend Rincon Consultants' contract to prepare the Zone 2 Landslide Moratorium Ordinance Revisions Environmental Impact Report (EIR). This is in addition to the request to release the entire EIR contingency. The same items that have created the need for the contingency funds also require funds beyond the contingency. These include: (1) the unanticipated EIR scoping; (2) multiple rounds of internal document reviews and engagement of members of the community in the administrative Draft EIR preparation; (3) the higher than anticipated number of comment letters on the Draft EIR, several of which require additional input from technical subconsultants; and (4) requested attendance by our traffic subconsultant LLG at two hearings when their scope only included one hearing.

Release of the \$10,269 in contingency funds as requested in a separate correspondence would bring the overall project budget to \$112,691. However, we have estimated the overall cost to complete the EIR and associated findings beyond what we have billed to date at \$18,325. This includes an additional \$7,500 for Rincon, \$7,325 for LLG, and \$3,500 for LGC Valley. Thus, we are requested augmentation of the \$112,691 budget with an additional \$8,056 (\$18,325 – \$10,269).

I appreciate your consideration of this request and look forward to continuing to work with the City on this project. If you have any questions regarding this request, please contact me at your convenience.

Sincerely,
Rincon Consultants, Inc.



Joe Power, AICP CEP
Principal/Vice President