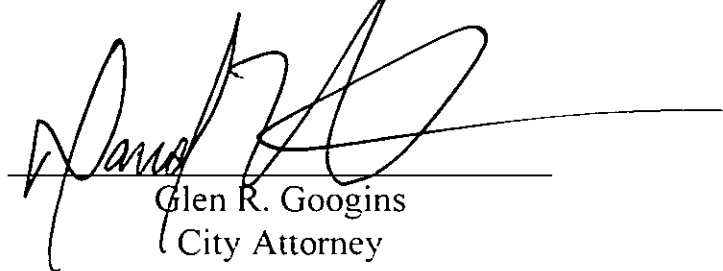


THE ATTACHED AGREEMENT HAS BEEN REVIEWED  
AND APPROVED AS TO FORM BY THE CITY  
ATTORNEY'S OFFICE AND WILL BE  
FORMALLY SIGNED UPON APPROVAL BY  
THE CITY COUNCIL

  
Glen R. Googins  
City Attorney

Dated: 8/6/15

AGREEMENT BETWEEN  
CITY OF CHULA VISTA AND  
ATKINS NORTH AMERICA, INC  
TO DEVELOP A TELEGRAPH CANYON CHANNEL NEXUS STUDY

**Agreement between  
City of Chula Vista  
and  
Atkins North America, Inc.  
To Develop A Telegraph Canyon Channel Nexus Study**

This agreement (Agreement), effective \_\_\_\_\_, is between the City-related entity whose name and business form is indicated on Exhibit A, Paragraph 2, (City), and the entity whose name, business form, place of business and telephone numbers are indicated on Exhibit A, Paragraphs 4 through 6, (Consultant), and is made with reference to the following facts:

**RECITALS**

WHEREAS, in 1990, the City established the Telegraph Canyon Drainage Development Impact Fee (DIF) by City Council Ordinance 2384 to fund the necessary improvements to the Telegraph Canyon Drainage Channel; and

WHEREAS, a new study is needed to determine the reasonable relationship between the use of the fee for the construction of the planned drainage facilities and the development of the property within the DIF basin; and

WHEREAS, on June 12, 2015, the City of Chula Vista's Engineering Division advertised the Request for Proposal (RFP) to provide consultant services necessary for developing a Telegraph Canyon Channel Nexus Study (Nexus Study); and

WHEREAS, on July 6, 2015, the City of Chula Vista's Engineering Division received six (6) proposals for developing a Nexus Study; and

WHEREAS, the consultant selection process has been conducted in accordance with Section 2.56.110 of the Chula Vista Municipal Code; and

WHEREAS, Consultant warrants and represents that it is experienced and staffed in a manner such that it can deliver the services required of Consultant to City in accordance with the time frames and the terms and conditions of the Agreement.

**[End of Recitals. Next Page Starts Obligatory Provisions.]**

## OBLIGATORY PROVISIONS PAGES

NOW, THEREFORE, for valuable consideration the City and Consultant do hereby mutually agree as follows:

All of the Recitals above are incorporated into this Agreement by this reference.

### ARTICLE I. CONSULTANT'S OBLIGATIONS

#### A. General

1. General Duties. Consultant shall perform all of the services described on Exhibit A, Paragraph 7 (General Duties).
2. Scope of Work and Schedule. In performing and delivering the General Duties, Consultant shall also perform the services, and deliver to City the "Deliverables" described in Exhibit A, Paragraph 8, entitled "Scope of Work and Schedule," according to, and within the time frames set forth in Exhibit A, Paragraph 8, time being of the essence of this agreement. The General Duties and the work and Deliverables required in the Scope of Work and Schedule shall be referred to as the "Defined Services." Failure to complete the Defined Services by the times indicated does not, except at the option of the City, terminate this Agreement.
  - a. *Reductions in Scope of Work.* City may independently, or upon request from Consultant, from time to time, reduce the Defined Services to be performed by the Consultant under this Agreement. Upon doing so, City and Consultant agree to meet in good faith and confer for the purpose of negotiating a corresponding reduction in the compensation associated with the reduction.
  - b. *Additional Services.* In addition to performing the Defined Services, City may require Consultant to perform additional consulting services related to the Defined Services (Additional Services), and upon doing so in writing, if they are within the scope of services offered by Consultant, Consultant shall perform same on a time and materials basis at the rates set forth in the "Rate Schedule" in Exhibit A, Paragraph 10(C), unless a separate fixed fee is otherwise agreed upon. All compensation for Additional Services shall be paid monthly as billed.
3. Standard of Care. The Consultant expressly warrants that the work to be performed pursuant to this Agreement, whether Defined Services or Additional Services, shall be performed in accordance with the standard of care ordinarily exercised by members of the profession currently practicing under similar conditions and in similar locations.
  - a. *No Waiver of Standard of Care.* Where approval by City is required, it is understood to be conceptual approval only and does not relieve the Consultant of responsibility for complying with all laws, codes, industry standards, and liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of the Consultant or its subcontractors.

**B. Application of Laws.** Should a federal or state law pre-empt a local law, or regulation, the Consultant must comply with the federal or state law and implementing regulations. No provision of this Agreement requires the Consultant to observe or enforce compliance with any provision, perform any other act, or do any other thing in contravention of federal, state, territorial, or local law, regulation, or ordinance. If compliance with any provision of this Agreement violates or would require the Consultant to violate any law, the Consultant agrees to notify City immediately in writing. Should this occur, the City and the Consultant agree that they will make appropriate arrangements to proceed with or, if necessary, amend or terminate this Agreement, or portions of it, expeditiously.

1. Subcontractors. Consultant agrees to take appropriate measures necessary to ensure that all participants utilized by the Consultant to complete its obligations under this Agreement, such as subcontractors, comply with all applicable laws, regulations, ordinances, and policies, whether federal, state, or local, affecting Project implementation. In addition, if a subcontractor is expected to fulfill any responsibilities of the Consultant under this Agreement, the Consultant shall ensure that the subcontractor carries out the Consultant's responsibilities as set forth in this Agreement.

### **C. Insurance**

1. General. Consultant must procure and maintain, during the period of performance of this Agreement, and for twelve months after completion, policies of insurance from insurance companies to protect against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work under this Agreement and the results of that work by the Consultant, his agents, representatives, employees or subcontractors, and provide documentation of same prior to commencement of work.
2. Minimum Scope of Insurance. Coverage must be at least as broad as:
  - a. *CGL.* Insurance Services Office Commercial General Liability coverage (occurrence Form CG0001).
  - b. *Auto.* Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).
  - c. *WC.* Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
  - d. *E&O.* Professional Liability or Errors & Omissions Liability insurance appropriate to the Consultant's profession. Architects' and Engineers' coverage is to be endorsed to include contractual liability.
3. Minimum Limits of Insurance. Consultant must maintain limits no less than those included in the table below:

i. General Liability: (Including operations, products and completed operations, as applicable)	\$1,000,000 per occurrence for bodily injury, personal injury, (including death), and property damage. If Commercial General Liability insurance with a general aggregate limit is used, either the general aggregate limit must apply separately to this Project/location or the general aggregate limit must be twice the required occurrence limit.
ii. Automobile Liability:	\$1,000,000 per accident for bodily injury, including death, and property damage.
iii. Workers' Compensation Employer's Liability:	Statutory \$1,000,000 each accident \$1,000,000 disease-policy limit \$1,000,000 disease-each employee
iv. Professional Liability or Errors & Omissions Liability:	\$1,000,000 each occurrence.

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.

4. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either the insurer will reduce or eliminate such deductibles or self-insured retentions as they pertain to the City, its officers, officials, employees and volunteers; or the Consultant will provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
5. Other Insurance Provisions. The general liability, automobile liability, and where appropriate, the worker's compensation policies are to contain, or be endorsed to contain, the following provisions:
  - a. *Additional Insureds.* City of Chula Vista, its officers, officials, employees, agents, and volunteers are to be named as additional insureds with respect to all policies of insurance, including those with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Consultant, where applicable, and, with respect to liability arising out of work or operations performed by or on behalf of the Consultant, including providing materials, parts or equipment furnished in connection with such work or operations. The general liability additional insured coverage must be provided in the form of an endorsement to the Consultant's insurance using ISO CG 2010 (11/85) or its equivalent. Specifically, the endorsement must not exclude Products/Completed Operations coverage.

- b. *Primary Insurance.* The Consultant's General Liability insurance coverage must be primary insurance as it pertains to the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers is wholly separate from the insurance of the Consultant and in no way relieves the Consultant from its responsibility to provide insurance.
  - c. *Cancellation.* The insurance policies required by this Agreement shall not be canceled by either party, except after thirty days' prior written notice to the City by certified mail, return receipt requested. The words "will endeavor" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents, or representatives" shall be deleted from all certificates.
  - d. *Waiver of Subrogation.* Consultant's insurer will provide a Waiver of Subrogation in favor of the City for each required policy providing coverage for the term required by this Agreement. In addition, Consultant waives any right it may have or may obtain to subrogation for a claim against the City.
6. Claims Forms. If General Liability, Pollution and/or Asbestos Pollution Liability and/or Errors & Omissions coverage are written on a claims-made form:
- a. *Retro Date.* The "Retro Date" must be shown, and must be before the date of the Agreement or the beginning of the work required by the Agreement.
  - b. *Maintenance and Evidence.* Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the work required by the Agreement.
  - c. *Cancellation.* If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the effective date of the Agreement, the Consultant must purchase "extended reporting" coverage for a minimum of five years after completion of the work required by the Agreement.
  - d. *Copies.* A copy of the claims reporting requirements must be submitted to the City for review.
7. Acceptability of Insurers. Insurance is to be placed with licensed insurers admitted to transact business in the State of California with a current A.M. Best's rating of no less than A V. If insurance is placed with a surplus lines insurer, insurer must be listed on the State of California List of Eligible Surplus Lines Insurers (LESLI) with a current A.M. Best's rating of no less than A X. Exception may be made for the State Compensation Fund when not specifically rated.
8. Verification of Coverage. Consultant shall furnish the City with original certificates and amendatory endorsements effecting coverage required by Section I.C. of this Agreement.

The endorsements should be on insurance industry forms, provided those endorsements or policies conform to the requirements of this Agreement. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require, at any time, complete, certified copies of all required insurance policies, including endorsements evidencing the coverage required by these specifications.

9. Subcontractors. Consultant must include all subconsultants as insureds under its policies or furnish separate certificates and endorsements for each subconsultant. All coverage for subconsultants is subject to all of the requirements included in these specifications.
10. Not a Limitation of Other Obligations. Insurance provisions under this Article shall not be construed to limit the Consultant's obligations under this Agreement, including Indemnity.
11. Additional Coverage. To the extent that Insurance coverage exceeds the minimums identified in section 3, recovery shall not be limited to the insurance minimums, but shall instead extend to the actual policy limits.

#### **D. Security for Performance**

1. Performance Bond. In the event that Exhibit A, at Paragraph 18, indicates the need for Consultant to provide a Performance Bond (indicated by a check mark in the parenthetical space immediately preceding the subparagraph entitled "Performance Bond"), then Consultant shall provide to the City a performance bond, in the amount indicated at Exhibit A, Paragraph 18, in the form prescribed by the City and by such sureties which are authorized to transact such business in the State of California, listed as approved by the United States Department of Treasury Circular 570, <http://www.fms.treas.gov/c570>, and whose underwriting limitation is sufficient to issue bonds in the amount required by the Agreement, and which also satisfy the requirements stated in Section 995.660 of the Code of Civil Procedure, except as provided otherwise by laws or regulations. All bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act. Surety companies must be duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds for the limits so required. Form must be satisfactory to the Risk Manager or City.
2. Letter of Credit. In the event that Exhibit A, at Paragraph 18, indicates the need for Consultant to provide a Letter of Credit (indicated by a check mark in the parenthetical space immediately preceding the subparagraph entitled "Letter of Credit"), then Consultant shall provide to the City an irrevocable letter of credit callable by the City at its unfettered discretion by submitting to the bank a letter, signed by the City Manager, stating that the Consultant is in breach of the terms of this Agreement. The letter of credit shall be issued by a bank, and be in a form and amount satisfactory to the Risk Manager or City Attorney which amount is indicated in the space adjacent to the term, "Letter of Credit," in Exhibit A, Paragraph 18.

3. Other Security. In the event that Exhibit A, at Paragraph 18, indicates the need for Consultant to provide security other than a Performance Bond or a Letter of Credit (indicated by a check mark in the parenthetical space immediately preceding the subparagraph entitled "Other Security"), then Consultant shall provide to the City such other security therein listed in a form and amount satisfactory to the Risk Manager or City Attorney.
- E. **Business License**. Consultant agrees to obtain a business license from the City and to otherwise comply with Title 5 of the Chula Vista Municipal Code.

## ARTICLE II. CITY OBLIGATIONS

- A. **Consultation and Cooperation**. City shall regularly consult the Consultant for the purpose of reviewing the progress of the Defined Services and Schedule, and to provide direction and guidance to achieve the objectives of this Agreement. The City shall allow Consultant access to its office facilities, files and records, as deemed necessary and appropriate by the City, throughout the term of this Agreement. In addition, City agrees to provide the materials identified at Exhibit A, Paragraph 9, with the understanding that delay in the provision of those materials beyond thirty days after authorization to proceed, shall constitute a basis for the justifiable delay in the Consultant's performance.
- B. **Compensation**.
1. Following Receipt of Billing. Upon receipt of a properly prepared bill from Consultant, submitted to the City as indicated in Exhibit A, Paragraph 17, but in no event more frequently than monthly, on the day of the period indicated in Exhibit A, Paragraph 17, City shall compensate Consultant for all services rendered by Consultant according to the terms and conditions set forth in Exhibit A, Paragraph 10, adjacent to the governing compensation relationship indicated by a "checkmark" next to the appropriate arrangement, subject to the requirements for retention set forth in Paragraph 18 of Exhibit A, and shall compensate Consultant for out of pocket expenses as provided in Exhibit A, Paragraph 11.
  2. Supporting Information. Any billing submitted by Consultant shall contain sufficient information as to the propriety of the billing, including properly executed payrolls, time records, invoices, contracts, or vouchers describing in detail the nature of the charges to the Project in order to permit the City to evaluate that the amount due and payable is proper, and such billing shall specifically contain the City's account number indicated on Exhibit A, Paragraph 17(C) to be charged upon making such payment.
  3. Exclusions. In determining the amount of the compensation City will exclude any cost: 1) incurred prior to the effective date of this Agreement; or 2) arising out of or related to the errors, omissions, negligence or acts of willful misconduct of the Consultant, its agents, employees, or subcontractors.



- a. *Errors and Omissions.* In the event that the City Administrator determines that the Consultant's negligence, errors, or omissions in the performance of work under this Agreement has resulted in expense to City greater than would have resulted if there were no such negligence, errors, omissions, Consultant shall reimburse City for any additional expenses incurred by the City. Nothing in this paragraph is intended to limit City's rights under other provisions of this Agreement.
4. Payment Not Final Approval. The Consultant understands and agrees that payment to the Consultant for any Project cost does not constitute a City final decision about whether that cost is allowable and eligible for payment under the Project and does not constitute a waiver of any violation of Consultant of the terms of the Agreement. The Consultant acknowledges that City will not make a final determination about the eligibility of any cost until the final payment has been made on the Project or the results of an audit of the Project requested by the City has been completed, whichever occurs latest. If City determines that the Consultant is not entitled to receive any portion of the compensation due or paid, City will notify the Consultant in writing, stating its reasons. The Consultant agrees that Project closeout will not alter the Consultant's responsibility to return any funds due City as a result of later refunds, corrections, or other similar transactions; nor will Project closeout alter the right of City to disallow costs and recover funds provided for the Project on the basis of a later audit or other review.
  - a. *Consultant's Obligation to Pay.* Upon notification to the Consultant that specific amounts are owed to City, whether for excess payments or disallowed costs, the Consultant agrees to remit to City promptly the amounts owed, including applicable interest.

### ARTICLE III. ETHICS

#### A. Financial Interests of Consultant

1. Consultant is Designated as an FPPC Filer. If Consultant is designated on Exhibit A, Paragraph 14, as an "FPPC filer," Consultant is deemed to be a "Consultant" for the purposes of the Political Reform Act conflict of interest and disclosure provisions, and shall report economic interests to the City Clerk on the required Statement of Economic Interests in such reporting categories as are specified in Paragraph 14 of Exhibit A, or if none are specified, then as determined by the City Attorney.
2. No Participation in Decision. Regardless of whether Consultant is designated as an FPPC Filer, Consultant shall not make, or participate in making or in any way attempt to use Consultant's position to influence a governmental decision in which Consultant knows or has reason to know Consultant has a financial interest other than the compensation promised by this Agreement.
3. Search to Determine Economic Interests. Regardless of whether Consultant is designated as an FPPC Filer, Consultant warrants and represents that Consultant has diligently

conducted a search and inventory of Consultant's economic interests, as the term is used in the regulations promulgated by the Fair Political Practices Commission, and has determined that Consultant does not, to the best of Consultant's knowledge, have an economic interest which would conflict with Consultant's duties under this Agreement.

4. Promise Not to Acquire Conflicting Interests. Regardless of whether Consultant is designated as an FPPC Filer, Consultant further warrants and represents that Consultant will not acquire, obtain, or assume an economic interest during the term of this Agreement which would constitute a conflict of interest as prohibited by the Fair Political Practices Act.
5. Duty to Advise of Conflicting Interests. Regardless of whether Consultant is designated as an FPPC Filer, Consultant further warrants and represents that Consultant will immediately advise the City Attorney if Consultant learns of an economic interest of Consultant's that may result in a conflict of interest for the purpose of the Fair Political Practices Act, and regulations promulgated thereunder.
6. Specific Warranties Against Economic Interests. Consultant warrants, represents and agrees that:
  - a. Neither Consultant, nor Consultant's immediate family members, nor Consultant's employees or agents (Consultant Associates) presently have any interest, directly or indirectly, whatsoever in any property which may be the subject matter of the Defined Services, or in any property within 2 radial miles from the exterior boundaries of any property which may be the subject matter of the Defined Services, (Prohibited Interest), other than as listed in Exhibit A, Paragraph 14.
  - b. No promise of future employment, remuneration, consideration, gratuity or other reward or gain has been made to Consultant or Consultant Associates in connection with Consultant's performance of this Agreement. Consultant promises to advise City of any such promise that may be made during the Term of this Agreement, or for twelve months thereafter.
  - c. Consultant Associates shall not acquire any such Prohibited Interest within the Term of this Agreement, or for twelve months after the expiration of this Agreement, except with the written permission of City.
  - d. Consultant may not conduct or solicit any business for any party to this Agreement, or for any third party that may be in conflict with Consultant's responsibilities under this Agreement, except with the written permission of City.

#### IV. LIQUIDATED DAMAGES

- A. **Application of Section.** The provisions of this section apply if a Liquidated Damages Rate is provided in Exhibit A, Paragraph 13.

1. Estimating Damages. It is acknowledged by both parties that time is of the essence in the completion of this Agreement. It is difficult to estimate the amount of damages resulting from delay in performance. The parties have used their judgment to arrive at a reasonable amount to compensate for delay.
2. Amount of Penalty. Failure to complete the Defined Services within the allotted time period specified in this Agreement shall result in the following penalty: For each consecutive calendar day in excess of the time specified for the completion of the respective work assignment or Deliverable, the Consultant shall pay to the City, or have withheld from monies due, the sum of Liquidated Damages Rate provided in Exhibit A, Paragraph 13 (Liquidated Damages Rate).
3. Request for Extension of Time. If the performance of any act required of Consultant is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the Consultant, as determined by the City, Consultant shall be excused from performing that act for the period of time equal to the period of time of the prevention or delay. In the event Consultant claims the existence of such a delay, the Consultant shall notify the City's Contract Administrator, or designee, in writing of that fact within ten calendar days after the beginning of any such claimed delay. Extensions of time will not be granted for delays to minor portions of work unless it can be shown that such delays did or will delay the progress of the work.

## ARTICLE V. INDEMNIFICATION

### A. **Defense, Indemnity, and Hold Harmless.**

1. General Requirement. To the maximum extent allowed by law, Consultant shall defend, indemnify, protect and hold harmless the City, its elected and appointed officers, agents and employees, from and against any and all claims, demands, causes of action, costs, expenses, (including reasonable attorney's fees and actual costs), liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions, negligence, or willful misconduct of Consultant, its officials, officers, employees, agents, and contractors, arising out of or in connection with the performance of the Defined Services, the results of such performance, or this Agreement. This indemnity provision does not include any claims, damages, liability, costs and expenses arising from the sole negligence or sole willful misconduct of the City, its officers, employees. Also covered is liability arising from, connected with, caused by or claimed to be caused by the active or passive negligent acts or omissions of the City, its agents, officers, or employees which may be in combination with the active or passive negligent acts or omissions of the Consultant, its employees, agents or officers, or any third party.
2. Design Professional Services. Notwithstanding the forgoing, if the services provided under this Agreement are design professional services, as defined by California Civil Code section 2782.5, as may be amended from time to time, the defense and indemnity

obligation under Section 1, above, shall be limited to the extent required by California Civil Code section 2782.8.

3. Costs of Defense and Award. Included in the obligations in Sections A.1 and A.2, above, is the Consultant's obligation to defend, at Consultant's own cost, expense and risk, any and all suits, actions or other legal proceedings, that may be brought or instituted against the City, its directors, officials, officers, employees, agents and/or volunteers, subject to the limitations in Sections A.1. and A.2. Subject to the limitations in Sections A.1. and A.2., Consultant shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, agents and/or volunteers, for any and all related legal expenses and costs incurred by each of them.
4. Insurance Proceeds. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials, officers, employees, agents, and/or volunteers.
5. Declarations. Consultant's obligations under Article V shall not be limited by any prior or subsequent declaration by the Consultant.
6. Enforcement Costs. Consultant agrees to pay any and all costs City incurs enforcing the indemnity and defense provisions set forth in Article V.
7. Survival. Consultant's obligations under Article V shall survive the termination of this Agreement.
8. No Alteration of Other Obligations. This Article V, shall in no way alter, affect or modify any of the Consultant's other obligations and duties under this Agreement.

## ARTICLE VI. TERMINATION OF AGREEMENT

- A. **Termination for Cause.** If, through any cause, Consultant shall fail to fulfill in a timely and proper manner Consultant's obligations under this Agreement, or if Consultant shall violate any of the covenants, agreements or stipulations of this Agreement, City shall have the right to terminate this Agreement by giving written notice to Consultant of such termination and specifying the effective date thereof at least five (5) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, reports and other materials prepared by Consultant shall, at the option of the City, become the property of the City, and Consultant shall be entitled to receive just and equitable compensation, in an amount not to exceed that payable under this Agreement and less any damages caused City by Consultant's breach, for any work satisfactorily completed on such documents and other materials up to the effective date of Notice of Termination.
- B. **Termination of Agreement for Convenience of City.** City may terminate this Agreement at any time and for any reason, by giving specific written notice to Consultant of such termination and specifying the effective date thereof, at least thirty (30) days before the

effective date of such termination. In that event, all finished and unfinished documents and other materials described hereinabove shall, at the option of the City, become City's sole and exclusive property. If the Agreement is terminated by City as provided in this paragraph, Consultant shall be entitled to receive just and equitable compensation, in an amount not to exceed that payable under this Agreement, for any satisfactory work completed on such documents and other materials to the effective date of such termination. Consultant hereby expressly waives any and all claims for damages or compensation arising under this Agreement except as set forth in this section.

#### ARTICLE VII. RECORD RETENTION AND ACCESS

- A. **Record Retention.** During the course of the Project and for three (3) years following completion, the Consultant agrees to maintain, intact and readily accessible, all data, documents, reports, records, contracts, and supporting materials relating to the Project as City may require.
- B. **Access to Records of Consultant and Subcontractors.** The Consultant agrees to permit, and require its subcontractors to permit City or its authorized representatives, upon request, to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Contractor and its subcontractors pertaining to the Project.
- C. **Project Closeout.** The Consultant agrees that Project closeout does not alter the reporting and record retention requirements of this Agreement.

#### ARTICLE VIII. PROJECT COMPLETION, AUDIT, AND CLOSEOUT

- A. **Project Completion.** Within ninety (90) calendar days following Project completion or termination by City, Consultant agrees to submit a final certification of Project expenses and audit reports, as applicable.
- B. **Audit of Consultants.** Consultant agrees to perform financial and compliance audits the City may require. The Consultant also agrees to obtain any other audits required by City. Consultant agrees that Project closeout will not alter Consultant's audit responsibilities. Audit costs are allowable Project costs.
- C. **Project Closeout.** Project closeout occurs when City notifies the Consultant that City has closed the Project, and either forwards the final payment or acknowledges that the Consultant has remitted the proper refund. The Consultant agrees that Project closeout by City does not invalidate any continuing requirements imposed by the Agreement or any unmet requirements set forth in a written notification from City

#### ARTICLE IX. MISCELLANEOUS PROVISIONS

- A. **Assignability.** The services of Consultant are personal to the City, and Consultant shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or notation), without prior written consent of City.

1. Limited Consent. City hereby consents to the assignment of the portions of the Defined Services identified in Exhibit A, Paragraph 16 to the subconsultants identified as "Permitted Subconsultants."
- B. Ownership, Publication, Reproduction and Use of Material.** All reports, studies, information, data, statistics, forms, designs, plans, procedures, systems and any other materials or properties produced under this Agreement shall be the sole and exclusive property of City. No such materials or properties produced in whole or in part under this Agreement shall be subject to private use, copyrights or patent rights by Consultant in the United States or in any other country without the express written consent of City. City shall have unrestricted authority to publish, disclose (except as may be limited by the provisions of the Public Records Act), distribute, and otherwise use, copyright or patent, in whole or in part, any such reports, studies, data, statistics, forms or other materials or properties produced under this Agreement.
- C. Independent Contractor.** City is interested only in the results obtained and Consultant shall perform as an independent contractor with sole control of the manner and means of performing the services required under this Agreement. City maintains the right only to reject or accept Consultant's work products. Consultant and any of the Consultant's agents, employees or representatives are, for all purposes under this Agreement, independent contractors and shall not be deemed to be employees of City, and none of them shall be entitled to any benefits to which City employees are entitled including but not limited to, overtime, retirement benefits, worker's compensation benefits, injury leave or other leave benefits. Therefore, City will not withhold state or federal income tax, social security tax or any other payroll tax, and Consultant shall be solely responsible for the payment of same and shall hold the City harmless with regard to them.
1. Actions on Behalf of City. Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever, as an agent or otherwise. Consultant shall have no authority, express or implied, to bind City or its members, agents, or employees, to any obligation whatsoever, unless expressly provided in this Agreement.
  2. No Obligations to Third Parties. In connection with the Project, Consultant agrees and shall require that its agents, employees, subcontractors agree that City shall not be responsible for any obligations or liabilities to any third party, including its agents, employees, subcontractors, or other person or entity that is not a party to this Agreement. Notwithstanding that City may have concurred in or approved any solicitation, subagreement, or third party contract at any tier, City shall have no obligation or liability to any person or entity not a party to this Agreement.
- D. Administrative Claims Requirements and Procedures.** No suit or arbitration shall be brought arising out of this Agreement, against City unless a claim has first been presented in writing and filed with City and acted upon by City in accordance with the procedures set forth in Chapter 1.34 of the Chula Vista Municipal Code, as same may from time to time be

amended, the provisions of which are incorporated by this reference as if fully set forth herein, and such policies and procedures used by City in the implementation of same. Upon request by City, Consultant shall meet and confer in good faith with City for the purpose of resolving any dispute over the terms of this Agreement.

- E. **Administration of Contract.** Each party designates the individuals (Contract Administrators) indicated on Exhibit A, Paragraph 12, as that party's contract administrator who is authorized by the party to represent it in the routine administration of this Agreement.
- F. **Term.** This Agreement shall terminate when the parties have complied with all executory provisions hereof.
- G. **Statement of Costs.** In the event that Consultant prepares a report or document, or participates in the preparation of a report or document in performing the Defined Services, Consultant shall include, or cause the inclusion of, in the report or document, a statement of the numbers and cost in dollar amounts of all contracts and subcontracts relating to the preparation of the report or document.
- H. **Consultant is Real Estate Broker and/or Salesman.** If the box on Exhibit A, Paragraph 15 is marked, the Consultant and/or its principals is/are licensed with the State of California or some other state as a real estate broker or salesperson. Otherwise, Consultant represents that neither Consultant, nor its principals are licensed real estate brokers or salespersons.
- I. **Notices.** All notices, demands or requests provided for or permitted to be given pursuant to this Agreement must be in writing. All notices, demands and requests to be sent to any party shall be deemed to have been properly given or served if personally served or deposited in the United States mail, addressed to such party, postage prepaid, registered or certified, with return receipt requested, at the addresses identified in this Agreement as the places of business for each of the designated parties.
- J. **Integration.** This Agreement, together with any other written document referred to or contemplated in it, embody the entire Agreement and understanding between the parties relating to the subject matter hereof. Neither this Agreement nor any provision of it may be amended, modified, waived or discharged except by an instrument in writing executed by the party against which enforcement of such amendment, waiver or discharge is sought.
- K. **Capacity of Parties.** Each signatory and party to this Agreement warrants and represents to the other party that it has legal authority and capacity and direction from its principal to enter into this Agreement, and that all necessary resolutions or other actions have been taken so as to enable it to enter into this Agreement.
- L. **Governing Law/Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action arising under or relating to this Agreement shall be brought only in the federal or state courts located in San Diego County, State of California, and if applicable, the City of Chula Vista, or as close thereto as possible. Venue for this Agreement, and performance under it, shall be the City of Chula Vista.

**M. Prevailing Wages**

The Consultant and its subcontractors are required by bid specifications to pay prevailing wage ("Prevailing Wage Rates") to persons employed by them for work in a covered work classification under this Contract. In accordance with the provisions of Section 1773 of the Labor Code of the State of CA, the City has ascertained the general prevailing wage scales applicable to the work to be done. The prevailing wage scales are those determined by the U.S. Federal Department of Labor Relations (Davis-Bacon) and those determined by the Director of Industrial Relations, State of California. The Consultant is obligated to pay the higher of the two wage determinations (hourly rate plus fringe benefits) for each applicable craft or classification. The Consultant who is awarded the contract and who intends to use a craft or classification not shown on the general prevailing wage rates determinations may be required to pay the wage rate of that craft or classification most closely related to it as shown in the general wage rates determinations effective at the time of the call for bids.

The Federal prevailing wage rates determination is available directly from Department of Labor home page under [www.wdol.gov](http://www.wdol.gov). Click on "Browse All Determinations by State" then click on "California." Federal Prevailing Wage Rate Determinations are subject to any "Modifications" to those wage determinations issued by the U.S. Department of Labor ten (10) working days before the Proposal due date.

The State prevailing wage rates determination is available directly from the Director of Industrial Relations, State of California home page under [www.dir.ca.gov/dlsr/](http://www.dir.ca.gov/dlsr/).

To verify compliance with State prevailing wage requirements, the State of California Department of Industrial Relations maintains an online registry of Consultants to which Consultants will be requirement to submit certified payrolls. In addition to Federal prevailing wage requirements, the following State requirements apply:

No contractor or subcontractor shall be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, unless currently registered with the Department of Industrial Relations and qualified to perform public work pursuant to Labor Code section 1725.5. [Labor Code section 1771.1(a)]

No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.

This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

Pursuant to California Public Contract Code Section 4104(a)(1), the person making the bid shall set forth the name and the location of the place of business of each subcontractor who will perform work or labor or render service to the prime contractor in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the prime contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of 1 percent of the prime contractor's



total bid or, in the case of bids or offers for the construction of streets or highways, including bridges, in excess of one-half of 1 percent of the prime contractor's total bid or ten thousand dollars (\$10,000), whichever is greater.

**In addition to the foregoing, the City requires that the prime contractor identify ALL subcontractors performing ANY work on the Project, regardless of the percentage of the total bid to be performed by the subcontractor. The City has included a form titled "LIST OF CONTRACTORS" (Attachment 8) on which the prime contractor shall identify all of the following:**

1. Name, Address, Telephone Number, and email address of Contractor/Subcontractor.
2. License Number(s) and class(es) of License(s) held by Contractor/Subcontractor.
3. Department of Industrial Relations Registration Number.
4. Description of Work to be performed by Contractor/Subcontractor.
5. Proposal tasks to which the Contractor/Subcontractor will contribute.
6. The Percentage of Each Task to be performed by Contractor/Subcontractor.
7. The Percentage of the Total Project bid by to be performed by the Contractor/Subcontractor.
8. Applicable Worker Classification Numbers used by Contractor/Subcontractor.

If the Contractor violates Public Contract Code § 4100 et seq., the City may exercise the remedies provided under Public Contract Code § 4110. The City may refer the violation to the Contractors State License Board as provided under Public Contract Code § 4111.

The bidder's attention is directed to the other provisions of said act related to penalties for failure to observe the provisions by using unauthorized subcontractors or by making unauthorized substitutions.

A sheet listing of subcontractors as required herein is included in these specifications. Each subcontractor must comply with the contract and must have an active and valid State contractor's license with a classification appropriate for the work to be performed (Business & Professional Code, § 7000 et seq.).

All subcontractors are required to have a valid City business license before a notice to proceed may be issued.

No subcontract releases the Contractor from the contract or relieves the Contractor of their responsibility for a subcontractor's work.

The Contractor shall comply with Section 2-3.1 of the Standard Specifications and Regional Supplement Amendments and shall perform at least forty percent (40%) of the contract work with his or her own organization.

Do not use a debarred contractor; a current list of debarred contractors is available at the Department of Industrial Relations web site at: <http://www.dir.ca.gov/dlse/debar.html>. Upon

request by the City, immediately remove and not again use a subcontractor who fails to prosecute the work satisfactorily.

**(End of page. Next page is signature page.)**

**Signature Page  
to  
Agreement between  
City of Chula Vista and  
Atkins North America, Inc.  
To Develop A Telegraph Canyon Channel Nexus Study**

IN WITNESS WHEREOF, City and Consultant have executed this Agreement, indicating that they have read and understood same, and indicate their full and complete consent to its terms:

City of Chula Vista

By: \_\_\_\_\_  
Mary Casillas Salas, Mayor

Attest:

\_\_\_\_\_  
Donna Norris, City Clerk

Approved as to form:

\_\_\_\_\_  
Glen R. Googins, City Attorney

Atkins North America, Inc.,

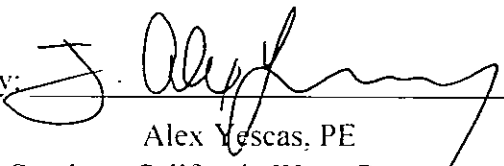
By: \_\_\_\_\_  
Alex Yescas, PE  
Southern California Water Resources  
Business Unit Lead

Exhibit List to Agreement: Exhibit A

**Exhibit A**  
**to**  
**Agreement between**  
**City of Chula Vista**  
**and**  
**Atkins North America, Inc.**

1. Effective Date: The Agreement shall take effect upon full execution of the Agreement, as of the effective date stated on page 1 of the Agreement.

2. City-Related Entity:

☒ City of Chula Vista, a municipal chartered corporation of the State of California

☐ The Chula Vista Public Financing Authority, a  
\_\_\_\_\_

☐ The Chula Vista Industrial Development Authority, a  
\_\_\_\_\_

☐ Other: \_\_\_\_\_, a [insert business form]

(City)

3. Place of Business for City:

City of Chula Vista  
276 Fourth Avenue  
Chula Vista, CA 91910

4. Consultant:  
Atkins North America, Inc.

5. Business Form of Consultant:

☐ Sole Proprietorship  
☐ Partnership  
☒ Corporation

6. Place of Business, Telephone and Fax Number of Consultant:  
3570 Carmel Mountain Road, Suite 300  
San Diego, CA 92130  
Phone: (858) 874-1810  
Fax: (858) 259-0741

7. General Duties:

The Consultant shall prepare a Telegraph Canyon Channel Nexus Study (Study) to the satisfaction of the City's Director of Public Works.

The Consultant shall prepare project hydrology and hydraulics engineering evaluation and preliminary environmental constraints assessment for flood control projects designed to alleviate flooding issues in two specific locations (Study Areas) of the Telegraph Canyon Channel. The first Study Area is for the stretch of the Telegraph Canyon channel between Apache Drive upstream and Pasco Ladera downstream. The second Study Area is for the stretch of the Telegraph Canyon Channel between east of Hilltop Drive, south of Telegraph Canyon Road upstream and east of Fourth Avenue downstream.

The Consultant shall coordinate with City staff the required services to update the Telegraph Canyon Drainage Basin Development Impact Fee (DIF). The determination of the financial position of the DIF is not part of this scope of work.

The intended Study will serve the City as an asset management document to determine the reasonable relationship between the use of the DIF for the construction of the planned drainage facilities and the development of the property within the DIF Study Areas. In addition, it will identify the need for additional facilities and long term maintenance of the Telegraph Canyon Channel. The objectives of the Study are as follows:

### Objectives

1. Identify Deficiencies: To identify recommended improvements within the Study Areas addressing deficiencies identified with respect to conveyance, flooding, erosion, sedimentation, and public health and safety. It is anticipated that the work will require advanced coordination with the US Army Corps of Engineers, and any other agencies such as FEMA, the Regional Water Quality Control Board, State Water Resource Control Board, US Fish and Wildlife Service and/or the California Department of Fish and Wildlife.
2. Environmental Assessment: To identify key environmental constraints likely to impact the feasibility of implementing the recommended improvements; and recommend mitigation measures for impacts to sensitive biological resources, if necessary.
3. CIP: To develop a capital improvement plan (CIP) by identifying existing drainage deficiencies and recommending facility improvements of the Study Areas.
4. Alternative Compliance Program: The consultant shall provide alternative compliance strategies recommendations for the Telegraph Canyon Channel.
5. Regulatory Requirements: To identify existing and pending regulations that impact the Study Areas.
6. AutoCAD Drawings: To deliver preliminary design plans compatible with AutoCAD Civil3D 2015. The City will provide all pertinent surveying and hydraulic input data.

All the engineering services shall be completed in accordance with this agreement as described in Paragraph 8, Scope of Work and Schedule.

### 8. Scope of Work and Schedule:

## A. Detailed Scope of Work:

### **I. Research**

The scope of work shall include reviewing readily available previous drainage studies, as-built plans for drainage structures and other documents and data pertinent to the Study Areas. The following documents and input data will be provided by the City:

- 1) Federal Emergency Management Agency (FEMA) Flood Insurance Study (FIS) and associated HEC-2/HEC RAS files;
- 2) GIS contours;
- 3) Aerial photograph of Telegraph Canyon Basin;
- 4) 2004 Drainage Master Plan;
- 5) 2007 Report on Drainage Deficiencies in Chula Vista;
- 6) 1964 Drainage Basin Maps;
- 7) Storm drain GIS data;
- 8) Drainage studies and improvement plans for recent or planned development areas for those areas included in the Study;
- 9) 2014 Telegraph Canyon Channel Erosion Assessment West of Paseo Ladera;
- 10) 2015 Telegraph Canyon Road Secant Wall Improvement Plans;
- 11) City's Alternative Compliance Strategy-Final Report, August 2014.

### **II. Engineering Field Investigation and Inventories**

Conduct field investigation and inventories of the Study Areas including bridges and culverts, and identify consistency with as-built plans, City records, drainage studies, and existing hydraulic models as well as assessing the physical condition and other constraints that could limit planned improvements. The City maintains a GIS database of both natural and storm drain improvements throughout the watershed. The specifications for the project database are to be coordinated and approved by City staff prior to commencement of work. The City will provide all pertinent topographic surveying or survey mapping.

### **III. Precipitation Technical Analysis**

Determine the most appropriate methodology with which to evaluate the watershed. Consultant shall analyze local precipitation gages and point precipitation frequency estimates from NOAA Atlas 14 to understand how the storms of historic significance to Chula Vista compare to the County's nested distribution, Type B, and to NRCS Type I distribution.

### **IV. Hydrology Study**

Consultant shall prepare a hydrology study of the Study Areas using the recommended design storms in Section 8.A-Scope of Work Task III above. The hydrology study will include maps showing the watershed delineations based on the City's topographic contours, drainage facility as-builts, and field investigation. The maps should include public facilities, drainage areas, watershed links and node locations. The hydrology study will quantify the existing conditions design flow rates for the required storm events at key locations throughout the watershed of the Study Areas.

The hydrology study shall also include long term continuous simulation of the Study Areas using historic rain gage data available from Project Clean Water website (<http://www.projectcleanwater.org/index.php>). The continuous simulation will evaluate runoff volume and flow duration from the study area in both the current and future/build out conditions to support the development of an Alternative Compliance program. The hydrology study shall identify opportunities to construct regional BMPs and/or channel stabilization projects within the context of the 2014 Regional Alternative Compliance framework.

## **V. Hydraulic Modeling**

Using the design flow rates developed in Section 8.A-Scope of Work Task IV above, Consultant shall build hydraulic model(s) to identify existing deficiencies in critical drainage infrastructure of the Study Areas. The hydraulic model(s) should determine the capacity and hydraulic grade line of major drainage facilities.

The primary purpose of the hydraulic modeling is to confirm deficiencies in existing drainage facilities identified as part of previous studies. Once the deficiencies are verified, the hydraulic models will be used to confirm the type and size of improvements necessary to correct flood control deficiencies. Recommended improvements shall also give consideration to, and incorporate wherever feasible, Alternative Compliance strategies and opportunities identified as part of Section 8.A-Scope of Work Task IV above.

It is also possible that the chosen improvements intended to alleviate flooding and incorporate Alternative Compliance strategies may alter the existing regulatory floodplain within the Telegraph Canyon basin. Using existing FIS hydraulic models (HEC-2 and/or HEC-RAS), consultant shall create duplicative effective, corrected effective, and future condition HEC-RAS model to re-establish limits of inundation that consider changes in watershed condition, new hydrology, and proposed improvements.

The hydraulic modeling will be documented in the Study and contain methodology, maps, and photos. The Study will also include tables and maps showing the deficiencies in drainage facilities. All models used to determine drainage deficiencies will become the property of Chula Vista and shall be coordinated with City staff for compatibility.

## **VI. Recommended Improvements to Integrate Flood Control and Alternative Compliance Benefit**

Consultant shall use the hydraulic deficiencies and Alternative Compliance opportunities identified in Section 8.A-Scope of Work Tasks IV and V above to evaluate future improvements options. The recommended improvements should include determination of whole-life cost for capital construction and long term maintenance. The maintenance costs are not DIF eligible expenditures. The recommendations should be based on a weighted scoring criteria that considers whole-life cost and the least environmental impacts to the Study Areas; the significance of improvement in addressing health and safety associated with the nature, location, and extent of existing flooding; permitting

requirements; available right-of-way and/or easements; utility relocation; and other relevant criteria. The weighted scoring criteria shall be used to develop a prioritized implementation plan. Consultant shall update or develop a fee schedule based upon the nature and extent of planned improvement. The Capital Improvement Program costs based on prevailing wage labor will be needed to determine a fee funding program for future improvements to the Telegraph Canyon Channel.

Consultant shall determine the reasonable relationship between the use of the DIF fee to fund for the construction of the recommended drainage improvements identified in the Study (including the Secant Wall project) and the development of the property within the Telegraph Canyon Channel DIF basin.

## **VII.Environmental Constraints Analysis**

Consultant shall survey the Study Areas of Impact in order to (1) describe the general existing conditions of biological resources within the two Study Areas in terms of vegetation, flora, wildlife and wildlife habitat; (2) quantify potential impacts to biological resources resulting from implementation of the proposed maintenance project(s) and describe those impacts in terms of biological significance in view of federal, state and local laws and policies; and (3) recommend mitigation measures for impacts to sensitive biological resources, if necessary.

## **VIII.Prepare Preliminary AutoCAD Drainage Improvement Plans**

Consultant shall prepare preliminary drainage improvement plans for the recommended improvements determined in Section 8.A-Scope of Work Tasks II to VII above using AutoCAD software for eventual implementation by the City's Capital Improvements Program.

Preliminary improvement plans shall indicate the following:

- General plan and flow-line profile of proposed improvements as well as pertinent cross-sections indicating both existing and proposed elevations and grades based on existing elevation data from resources provided by City such as as-built drawings and prior studies;
- Preliminary dimensions of conduits, conveyances, and drainage structures;
- Preliminary specifications for surface treatments such as concrete lining, turf reinforcement matting, rip rap (with size/gradation class), etc.;
- References to standard drainage structure specifications accepted by the City such as the San Diego Regional Standard Drawings;
- Relevant construction details and specifications for proposed non-standard drainage structures;
- Preliminary Engineer's Estimate (City's format); and
- The preliminary plans will need to provide sufficient information to demonstrate project disturbance limits, and an estimated work footprint, so that it can be overlaid on existing biology, sensitive habitat, etc. There would have to be some consideration of grading, permanent encroachment, easements, right of way, construction access, temporary lay down areas, etc. in order to make reliable CEQA determinations.



### **IX. Identify Potential Environmental Impact and Mitigation for Recommended Improvements**

Identify potential environmental impacts and mitigation obligations associated with review of the project in accordance with the California Environmental ACT (CEQA) and if necessary, the National Environmental Quality ACT (NEPA) for the proposed improvements. Make a preliminary assessment of required resource agency permits (i.e. SWRCB, RWQCB, USACOE, CDFW, and USFWS).

### **X. Alternative Compliance Program**

The City is developing an Alternative Compliance Program in conjunction with the Regional Water Quality Control Board Permit. The consultant shall provide alternative compliance strategies recommendations for the Telegraph Canyon Channel. For example, we are seeking improvements that 1) lower lifecycle operational costs; 2) provide the greatest opportunity for treating storm water (to be used as Alternative Compliance credits or not), and 3) provide for the safe passage of the largest storms without property damage, without having to upsize all segments. In addition, the Regional Water Quality Control Board has stated in their March 15, 2015 Basin Plan Triennial Review that a biological water quality objective for the protection of aquatic life beneficial uses is one of their top priorities.

The Alternative Compliance recommendations will be used as a tool for future development, or substantial near term redevelopment within other areas of the City that could potentially include a storm water component that would add to the Alternative Compliance "credit bank".

### **XI. Project Management and Meetings**

- 1) Provide project management tasks including staffing assignments, budget administration, and preparation of brief progress reports to be submitted to the City prior to attending progress meetings.
- 2) Prepare for and attend progress meetings with City staff to discuss overall progress and schedule of the Study. It is estimated that progress meetings will be scheduled monthly or bi-monthly through the course of the project (12 meetings have been assumed).
- 3) Coordinate project activities with City staff preparing the Telegraph Canyon Drainage DIF.
- 4) The Consultant shall meet with City staff and with the US Army Corps of Engineer to discuss project progress reports and the results of the Study.
- 5) Prepare and deliver Power Point format presentations (less than 10-minutes) to the City Council and the Developers Oversight Committee as part of adoption of the Study.

B. Date for Commencement of Consultant Services:

( X ) Same as Effective Date of Agreement

( ) Other: \_\_\_\_\_

C. Dates or Time Limits for Delivery of Deliverables:

Deliverable No. 1: Consultant shall deliver a Technical Memorandum herein required in Section 10.C, Phase 6 in chart below by November 15, 2015, as approved by the City.

Deliverable No. 2: \_\_\_\_\_.

Deliverable No. 3: \_\_\_\_\_.

D. Date for completion of all Consultant services: August 30, 2016.

9. Materials Required to be Supplied by City to Consultant:

10. Compensation:

A. ( ) Single Fixed Fee Arrangement.

For performance of all of the Defined Services by Consultant as herein required, City shall pay a single fixed fee in the amounts and at the times or milestones or for the Deliverables set forth below:

Single Fixed Fee Amount: \_\_\_\_\_, payable as follows:

Milestone or Event or Deliverable

Amount or Percent of Fixed Fee

( ) 1. Interim Monthly Advances. The City shall make interim monthly advances against the compensation due for each phase on a percentage of completion basis for each given phase such that, at the end of each phase only the compensation for that phase has been paid. Any payments made hereunder shall be considered as interest free loans that must be returned to the City if the Phase is not satisfactorily completed. If the Phase is satisfactorily completed, the City shall receive credit against the compensation due for that phase. The retention amount or percentage set forth in Paragraph 19 is to be applied to each interim payment such that, at the end of the phase, the full retention has been held back from the compensation due for that phase. Percentage of completion of a phase shall be assessed in the sole and unfettered discretion by the Contracts Administrator designated herein by the City, or such other person as the City Manager shall designate, but only upon such proof demanded by the City that has been provided, but in no event shall such interim advance payment be made unless the Consultant shall have represented in writing that said percentage of completion of the phase has been performed by the Consultant. The practice of making interim monthly advances shall not convert this agreement to a time and materials basis of payment.

B. ( ) Phased Fixed Fee Arrangement.

For the performance of each phase or portion of the Defined Services by Consultant as are separately identified below, City shall pay the fixed fee associated with each phase of Services, in the amounts and at the times or milestones or Deliverables set forth. Consultant shall not commence Services under any Phase, and shall not be entitled to the compensation for a Phase, unless City shall have issued a notice to proceed to Consultant as to said Phase.

<u>Phase</u>	<u>Fee for Said Phase</u>
1.	\$ _____
2.	\$ _____
3.	\$ _____

- ( ) 1. Interim Monthly Advances. The City shall make interim monthly advances against the compensation due for each phase on a percentage of completion basis for each given phase such that, at the end of each phase only the compensation for that phase has been paid. Any payments made hereunder shall be considered as interest free loans that must be returned to the City if the Phase is not satisfactorily completed. If the Phase is satisfactorily completed, the City shall receive credit against the compensation due for that phase. The retention amount or percentage set forth in Paragraph 18 is to be applied to each interim payment such that, at the end of the phase, the full retention has been held back from the compensation due for that phase. Percentage of completion of a phase shall be assessed in the sole and unfettered discretion by the Contracts Administrator designated herein by the City, or such other person as the City Manager shall designate, but only upon such proof demanded by the City that has been provided, but in no event shall such interim advance payment be made unless the Consultant shall have represented in writing that said percentage of completion of the phase has been performed by the Consultant. The practice of making interim monthly advances shall not convert this agreement to a time and materials basis of payment.

C. ( X ) Hourly Rate Arrangement Not to Exceed Limit Per Phase

For performance of the Defined Services by Consultant as herein required, City shall pay Consultant for the productive hours of time spent by Consultant in the performance of said Services, at the rates or amounts set forth in the Exhibit B-Wage Rates schedule herein below or the Maximum Fee per phase designated in chart below, whichever is less, according to the following terms and conditions:

<u>Phase</u>		<u>Maximum Fee per phase</u>
1.	Engineering Field Investigation and Inventories - Includes items in Section 8.A. II above, GIS Shape file(s) and Database file(s) of inventoried facilities	\$19,760
2.	Technical Memorandum of Precipitation Technical Analysis- Summarizing findings of the precipitation analysis including the recommended	\$25,300

	applicability of local storm distribution hyetographs. To be submitted as in "Draft" and "Final" versions.	
3.	Technical Memorandum of Hydrology Study-GIS layers of watershed boundaries, along with documentation of the methodology, watershed maps, and hydrology results. To be submitted as in "Draft" and "Final" versions.	\$28,700
4.	Technical Memorandum of Hydraulic Modeling- Methodology and hydraulic results. To be submitted as "Draft" and "Final" versions.	\$25,620
5.	Technical Memorandum of Recommended Improvements to Integrate Flood Control and Alternative Compliance Benefit- Excel summary table of prioritized projects with whole-life costs including maintenance costs. Recommendations shall be accompanied with scoring criteria and proposed fee schedule.	\$15,640
6.	Technical Memorandum of the recommended DIF facilities including the determination of the reasonable relationship between the use of the DIF fee to fund for the construction of the recommended drainage improvements identified in the Study (including the secant wall project) and the development of the property within the Telegraph Canyon Channel DIF basin. Maintenance costs are not DIF eligible expenditures. To be submitted as "Draft" and "Final" versions. Preliminary Engineer's Estimate to be provided in Xcel format.	\$6,760
7.	Technical Memorandum of Environmental Constraints Analysis- A complete biological constraints report that describes the results of the survey described above including maps of the resources, lists of resources and the extent of potential impact areas. To be submitted as a "Draft" and "Final" version.	\$15,780
8.	Prepare Preliminary AutoCAD Drainage Improvement Plans- Preliminary design plans provided in PDF format and AutoCAD ".dwg" format compatible with AutoCAD Civil3D 2015.	\$10,460
9.	Alternative Compliance Program- Recommend alternative compliance strategies for the Telegraph Canyon Channel.	\$8,830
10.	Final Report of Telegraph Canyon Channel Nexus Study. Includes Final Community Workshop, Workshop Preparation and City Council Presentation	\$18,150
11.	Project Management- Elements addressed in Section 8.A (I-XI) above are included in other tasks.	Included in other phases
	<b>For a total amount of:</b>	<b>\$175,000</b>

Upon mutual agreement, Consultant shall perform additional tasks, other than Defined Services by Consultant as shown in Section 8.A- Scope of Work Tasks I to XI, if requested in writing by the Director of Public Works and under the same terms and conditions (same Wage Rate Schedule herein) of this Agreement.

(I) (X ) Not-to-Exceed Limitation on Time and Materials Arrangement

Notwithstanding the expenditure by Consultant of time and materials in excess of said Maximum Compensation amount, Consultant agrees that Consultant will perform all of the Defined Services herein required of Consultant for \$175,000, including all Materials, and other "reimbursables" (Maximum Compensation).

(2) ( ) Limitation without Further Authorization on Time and Materials Arrangement

At such time as Consultant shall have incurred time and materials equal to \$\_\_\_\_\_ (Authorization Limit), Consultant shall not be entitled to any additional compensation without further authorization issued in writing and approved by the City. Nothing herein shall preclude Consultant from providing additional Services at Consultant's own cost and expense. See Exhibit B for wage rates.

**EXHIBIT B- WAGE RATES**

<b>ENGINEERING SERVICES</b>		<b>ENVIRONMENTAL SCIENCE</b>	
Engineer Aide - EA	\$70	Research Assistant - RA	\$60
Engineer I - EI	\$105	Assistant Scientist - AS	\$75
Engineer II - EII	\$115	Scientist I - SI	\$90
Engineer III - EIII	\$125	Scientist II - SII	\$110
Senior Engineer I - SEI	\$135	Scientist III - SIII	\$125
Senior Engineer II - SEII	\$145	Senior Scientist I - SSI	\$140
Senior Engineer III - SEIII	\$160	Senior Scientist II - SSII	\$165
Supervising Engineer I - SPEI	\$165	Senior Scientist III - SSIII	\$190
Supervising Engineer II - SPEII	\$180	Supervising Scientist - SSIV	\$225
Principal Engineer I - PRI	\$190		
Principal Engineer II - PRII	\$200	<b>CONSTRUCTION RELATED SERVICES</b>	
Principal Engineer III - PRIII	\$220	Contract Administrator - CA	\$85
Principal Engineer IV - PRIV	\$240	Construction Mgmt Rep. I* - CMI	\$90
Principal Engineer V - PRV	\$265	Construction Mgmt Rep. II* - CMII	\$100
		Senior Contract Administrator - CAS	\$100
<b>ADMINISTRATIVE SERVICES</b>		Senior Field Representative* - SFR	\$115
Admin Assistant I/Clerk - AI	\$60	Prevailing Wage Field Rep. - PWFR	\$125
Admin Assistant II - AII	\$65	Senior Project Engineer - SPEC	\$155
Admin Assistant III - AIII	\$75	Construction Manager - CM	\$140
Senior Admin Assistant I - OCI	\$80	Senior Construction Manager - SCM	\$175
Senior Admin Assistant II - OCII	\$85	(* non-prevailing wage)	
Senior Admin Assistant III - OCIII	\$95		
Senior Administrator I - SAI	\$115	<b>DESIGN &amp; GRAPHIC SERVICES</b>	
Senior Administrator II - SAII	\$135	CADD Technician I - CTI	\$70
<b>OTHER PROFESSIONAL SERVICES</b>		CADD Technician II - CTII	\$85
Professional I/GIS Analyst - PI	\$88	CADD Technician III - CTIII	\$95
Professional II/GIS Analyst - PII	\$101	Graphics Designer I - GDI	\$95
Senior Prof I/Senior GIS Analyst I - SPI	\$122	Graphics Designer II - GDII	\$100
Senior Prof II/Senior GIS Analyst II - SPII	\$135	Designer I - DI	\$100
Senior Prof III/Senior GIS Analyst III - SPIII	\$150	Designer II - DII	\$110
CASp/Access Specialist - CASp	\$150	Senior Designer I - SDI	\$120
Supervising Professional - SP	\$170	Senior Designer II - SDII	\$135
Principal Professional - PP	\$196	Senior Designer III - SDIII	\$140
		Senior Designer IV - SDIV	\$165
<b>PUBLIC AFFAIRS SERVICES</b>		<b>LANDSCAPE ARCHITECTURE</b>	
Project Manager - PM	\$170	Landscape Architect - LA	\$100
Comm Relations Specialist - CRS	\$140	Senior Landscape Architect II - SLAII	\$120
Assistant Project Manager - APM	\$125	Senior Landscape Architect III - SLAIII	\$180
Account Coordinator - AC	\$80		

- ( ) Hourly rates may increase by 6% for services rendered after [month], 20\_\_\_\_, if delay in providing services is caused by City.

#### 11. Materials Reimbursement Arrangement

For the cost of out of pocket expenses incurred by Consultant in the performance of services herein required, City shall pay Consultant at the rates or amounts set forth below:

- ( X ) None, the compensation includes all costs.

	Cost or Rate
( ) Reports, not to exceed \$_____:	\$_____
( ) Copies, not to exceed \$_____:	\$_____
( ) Travel, not to exceed \$_____:	\$_____
( ) Printing, not to exceed \$_____:	\$_____
( ) Postage, not to exceed \$_____:	\$_____
( ) Delivery, not to exceed \$_____:	\$_____
( ) Outside Services:	\$_____
( ) Other Actual Identifiable Direct Costs:	\$_____
_____, not to exceed \$_____:	\$_____
_____, not to exceed \$_____:	\$_____

#### 12. Contract Administrators:

City:

Luis Pelayo, Acting Senior Civil Engineer  
Public Services Building  
276 Fourth Avenue  
Chula Vista, CA 91910  
Phone: (619) 476-5387  
Fax: (619) 691-5171

Consultant:

Alex Yescas, Southern California Water Resources Business Unit Lead  
3570 Carmel Mountain Road, Suite 300  
San Diego, CA 92130  
Phone: (858) 874-1810  
Fax: (858) 259-0741

#### 13. Liquidated Damages Rate:

- ( ) \$\_\_\_\_\_ per day.  
( ) Other: \_\_\_\_\_

14. Statement of Economic Interests, Consultant Reporting Categories, per Conflict of Interest Code (Chula Vista Municipal Code chapter 2.02):

☒ (X ) Not Applicable. Not an FPPC Filer.

☐ ( ) FPPC Filer

☐ ( ) Category No. 1. Investments, sources of income and business interests.

☐ ( ) Category No. 2. Interests in real property.

☐ ( ) Category No. 3. Investments, business positions, interests in real property, and sources of income subject to the regulatory, permit or licensing authority of the department administering this Agreement.

☐ ( ) Category No. 4. Investments and business positions in business entities and sources of income that engage in land development, construction or the acquisition or sale of real property.

☐ ( ) Category No. 5. Investments and business positions in business entities and sources of income that, within the past two years, have contracted with the City of Chula Vista or the City's Redevelopment Agency to provide services, supplies, materials, machinery or equipment.

☐ ( ) Category No. 6. Investments and business positions in business entities and sources of income that, within the past two years, have contracted with the department administering this Agreement to provide services, supplies, materials, machinery or equipment.

☐ ( ) List Consultant Associates interests in real property within 2 radial miles of Project Property, if any:

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15. ☐ ( ) Consultant is Real Estate Broker and/or Salesman

16. Permitted Subconsultants:

17. Bill Processing:

A. Consultant's Billing to be submitted for the following period of time:

- (X ) Monthly  
 ( ) Quarterly  
 ( ) Other: \_\_\_\_\_

B. Day of the Period for submission of Consultant's Billing:

- ( X ) First of the Month  
 ( ) 15th Day of each Month  
 ( ) End of the Month  
 ( ) Other: \_\_\_\_\_

C. City's Account Number: 2656203542 (DR203)

#### 18. Security for Performance

- ( ) Performance Bond, \$ \_\_\_\_\_  
 ( ) Letter of Credit, \$ \_\_\_\_\_  
 ( ) Other Security:  
 Type: \_\_\_\_\_  
 Amount: \$ \_\_\_\_\_

- ( ) Retention. If this space is checked, then notwithstanding other provisions to the contrary requiring the payment of compensation to the Consultant sooner, the City shall be entitled to retain, at their option, either the following "Retention Percentage" or "Retention Amount" until the City determines that the Retention Release Event, listed below, has occurred:

- ( ) Retention Percentage: \_\_\_\_\_  
 ( ) Retention Amount: \$ \_\_\_\_\_

Retention Release Event:

- ( ) Completion of All Consultant Services  
 ( ) Other: \_\_\_\_\_

( ) Other: The Retention Amount may be released on a monthly basis provided that Consultant has performed said monthly services to the sole satisfaction of the Assistant City Manager/Director of Development Services or his designee.