

**CITY OF CHULA VISTA  
CONSULTANT SERVICES AGREEMENT  
WITH ENVIRONMENTAL SCIENCE ASSOCIATES (ESA) COMPANY  
TO PROVIDE BIOLOGICAL CONSULTANT SERVICES ASSOCIATED AS A PRESERVE  
STEWARD/BIOLOGIST FOR PRESERVE LANDS WITHIN THE CITY OF CHULA VISTA  
MULTIPLE SPECIES CONSERVATION PROGRAM SUBAREA PLAN**

This Agreement is entered into effective as of August 25, 2020 (“Effective Date”) by and between the City of Chula Vista, a chartered municipal corporation (“City”) and ENVIRONMENTAL SCIENCE ASSOCIATES (ESA) COMPANY, a California Corporation) (“Consultant”) (collectively, the “Parties” and, individually, a “Party”) with reference to the following facts:

**RECITALS**

WHEREAS, on March 2, 2020, a Request for Proposals was distributed to qualified biological consultants in order to solicit candidates interested in serving as the Multiple Species Conservation Program (MSCP) Preserve Lands and Implementing Resource Management Plans and Area Specific Management Directives Steward/Biologist; and

WHEREAS, the property which is the subject matter of this Agreement is commonly known as open space preserve lands within the City Multiple Species Conservation Program (MSCP) Planning Area identified in the City MSCP Subarea Plan;; and

WHEREAS, the City received proposals from four biological consultants in response to the formal Request for Proposals; and

WHEREAS, the City evaluated each submittal based on clarity, approach, cost, qualifications, and completeness; and

WHEREAS, through a competitive bid process, the Consultant ESA was selected based upon its proposed approach and demonstrated qualification to perform the services outlined in the detailed scope of work: 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 this Agreement.

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

## OBLIGATORY PROVISIONS

NOW, THEREFORE, in consideration of the above recitals, the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, City and Consultant hereby agree as follows:

### 1. SERVICES

1.1 Required Services. Consultant agrees to perform the services, and deliver to City the “Deliverables” (if any) described in the attached Exhibit A, incorporated into the Agreement by this reference, within the time frames set forth therein, time being of the essence for this Agreement. The services and/or Deliverables described in Exhibit A shall be referred to herein as the “Required Services.”

1.2 Reductions in Scope of Work. City may independently, or upon request from Consultant, from time to time, reduce the Required Services to be performed by the Consultant under this Agreement. Upon doing so, City and Consultant agree to meet and confer in good faith for the purpose of negotiating a corresponding reduction in the compensation associated with the reduction.

1.3 Additional Services. Subject to compliance with the City’s Charter, codes, policies, procedures and ordinances governing procurement and purchasing authority, City may request Consultant provide additional services related to the Required Services (“Additional Services”). If so, City and Consultant agree to meet and confer in good faith for the purpose of negotiating an amendment to Exhibit A, to add the Additional Services. Unless otherwise agreed, compensation for the Additional Services shall be charged and paid consistent with the rates and terms already provided therein. Once added to Exhibit A, “Additional Services” shall also become “Required Services” for purposes of this Agreement.

1.4 Standard of Care. Consultant expressly warrants and agrees that any and all Required Services hereunder shall be performed in accordance with the ordinary standard of care exercised by members of the profession currently practicing under similar conditions and in similar locations.

1.5 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.

1.6 Security for Performance. In the event that Exhibit A Section 4 indicates the need for Consultant to provide additional security for performance of its duties under this Agreement, Consultant shall provide such additional security prior to commencement of its Required Services in the form and on the terms prescribed on Exhibit A, or as otherwise prescribed by the City Attorney.

1.7 Compliance with Laws. In its performance of the Required Services, Consultant shall comply with any and all applicable federal, state and local laws, including the Chula Vista Municipal Code.

1.8 Business License. Prior to commencement of work, Consultant shall obtain a business license from City.

1.9 Subcontractors. Prior to commencement of any work, Consultant shall submit for City’s information and approval a list of any and all subcontractors to be used by Consultant in the performance of the Required

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

1.10 Term. This Agreement shall commence on the earlier to occur of the Effective Date or Consultant's commencement of the Required Services hereunder, and shall terminate when the Parties have complied with all their obligations hereunder; provided, however, provisions which expressly survive termination shall remain in effect.

## 2. COMPENSATION

2.1 General. For satisfactory performance of the Required Services, City agrees to compensate Consultant in the amount(s) and on the terms set forth in Exhibit A, Section 4. Standard terms for billing and payment are set forth in this Section 2.

2.2 Detailed Invoicing. Consultant agrees to provide City with a detailed invoice for services performed each month, within thirty (30) days of the end of the month in which the services were performed, unless otherwise specified in Exhibit A. Invoicing shall begin on the first of the month following the Effective Date of the Agreement. All charges must be presented in a line item format with each task separately explained in reasonable detail. Each invoice shall include the current monthly amount being billed, the amount invoiced to date, and the remaining amount available under any approved budget. Consultant must obtain prior written authorization from City for any fees or expenses that exceed the estimated budget.

2.3 Payment to Consultant. Upon receipt of a properly prepared invoice and confirmation that the Required Services detailed in the invoice have been satisfactorily performed, City shall pay Consultant for the invoice amount within thirty (30) days. Payment shall be made in accordance with the terms and conditions set forth in Exhibit A and section 2.4, below. At City's discretion, invoices not timely submitted may be subject to a penalty of up to five percent (5%) of the amount invoiced.

2.4 Retention Policy. City shall retain ten percent (10%) of the amount due for Required Services detailed on each invoice (the "holdback amount"). Upon City review and determination of Project Completion, the holdback amount will be issued to Consultant.

2.5 Reimbursement of Costs. City may reimburse Consultant's out-of-pocket costs incurred by Consultant in the performance of the Required Services if negotiated in advance and included in Exhibit A. Unless specifically provided in Exhibit A, Consultant shall be responsible for any and all out-of-pocket costs incurred by Consultant in the performance of the Required Services.

2.6 Exclusions. City shall not be responsible for payment to Consultant for any fees or costs in excess of any agreed upon budget, rate or other maximum amount(s) provided for in Exhibit A. City shall also not be responsible for any cost: (a) incurred prior to the Effective Date; or (b) arising out of or related to the errors, omissions, negligence or acts of willful misconduct of Consultant, its agents, employees, or subcontractors.

2.7 Payment Not Final Approval. Consultant understands and agrees that payment to the Consultant or reimbursement for any Consultant costs related to the performance of Required Services does not constitute

a City final decision regarding whether such payment or cost reimbursement is allowable and eligible for payment under this Agreement, nor does it constitute a waiver of any violation by Consultant of the terms of this Agreement. If City determines that Consultant is not entitled to receive any amount of compensation already paid, City will notify Consultant in writing and Consultant shall promptly return such amount.

### 3. INSURANCE

3.1 Required Insurance. Consultant must procure and maintain, during the period of performance of Required Services under this Agreement, and for twelve months after completion of Required Services, the policies of insurance described on the attached Exhibit B, incorporated into the Agreement by this reference (the "Required Insurance"). The Required Insurance shall also comply with all other terms of this Section.

3.2 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions relating to the Required Insurance must be disclosed to and approved by City in advance of the commencement of work.

3.3 Standards for Insurers. Required Insurance must be placed with licensed insurers admitted to transact business in the State of California with a current A.M. Best's rating of A V or better, or, 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. For Workers' Compensation Insurance, insurance issued by the State Compensation Fund is also acceptable.

3.4 Subcontractors. Consultant must include all sub-consultants/sub-contractors as insureds under its policies and/or furnish separate certificates and endorsements demonstrating separate coverage for those not under its policies. Any separate coverage for sub-consultants must also comply with the terms of this Agreement.

3.5 Additional Insureds. City, its officers, officials, employees, agents, and volunteers must be named as additional insureds with respect to any policy of general liability, automobile, or pollution insurance specified as required in Exhibit B or as may otherwise be specified by City's Risk Manager.. 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; such endorsement must not exclude Products/Completed Operations coverage.

3.6 General Liability Coverage to be "Primary." Consultant's general liability 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 provided by Consultant and in no way relieves Consultant from its responsibility to provide insurance.

3.7 No Cancellation. No Required Insurance policy may be canceled by either Party during the required insured period under this Agreement, except after thirty days' prior written notice to the City by certified mail, return receipt requested. Prior to the effective date of any such cancellation Consultant must procure and put into effect equivalent coverage(s).

3.8 Waiver of Subrogation. Consultant's insurer(s) will provide a Waiver of Subrogation in favor of the City for each Required Insurance policy under this Agreement. In addition, Consultant waives any right it may have or may obtain to subrogation for a claim against City.

3.9 Verification of Coverage. Prior to commencement of any work, Consultant shall furnish City with original certificates of insurance and any amendatory endorsements necessary to demonstrate to City that Consultant has obtained the Required Insurance in compliance with the terms of this Agreement. 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” or any similar language must be deleted from all certificates. The required certificates and endorsements should otherwise be on industry standard forms. 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.

3.10 Claims Made Policy Requirements. If General Liability, Pollution and/or Asbestos Pollution Liability and/or Errors & Omissions coverage are required and are provided on a claims-made form, the following requirements also apply:

a. The “Retro Date” must be shown, and must be before the date of this Agreement or the beginning of the work required by this Agreement.

b. Insurance must be maintained, and evidence of insurance must be provided, for at least five (5) years after completion of the work required by this Agreement.

c. 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 this Agreement, the Consultant must purchase “extended reporting” coverage for a minimum of five (5) years after completion of the work required by this Agreement.

d. A copy of the claims reporting requirements must be submitted to the City for review.

3.11 Not a Limitation of Other Obligations. Insurance provisions under this section shall not be construed to limit the Consultant’s obligations under this Agreement, including Indemnity.

3.12 Additional Coverage. To the extent that insurance coverage provided by Consultant maintains higher limits than the minimums appearing in Exhibit B, City requires and shall be entitled to coverage for higher limits maintained.

#### 4. INDEMNIFICATION

4.1. General. To the maximum extent allowed by law, Consultant shall protect, defend, indemnify and hold harmless City, its elected and appointed officers, agents, employees and volunteers (collectively, “Indemnified Parties”), from and against any and all claims, demands, causes of action, costs, expenses, (including reasonable attorneys’ fees and court 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 Required 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 willful misconduct of the Indemnified Parties. 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 Indemnified Parties 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.

4.2. Modified Indemnity Where Agreement Involves Design Professional Services. Notwithstanding the forgoing, if the services provided under this Agreement are design professional services, as defined by California Civil Code section 2782.8, 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.

4.3 Costs of Defense and Award. Included in Consultant's obligations under this Section 4 is 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 one or more of the Indemnified Parties. Subject to the limitations in this Section 4, Consultant shall pay and satisfy any judgment, award or decree that may be rendered against one or more of the Indemnified Parties for any and all related legal expenses and costs incurred by any of them.

4.4. Consultant's Obligations Not Limited or Modified. Consultant's obligations under this Section 4 shall not be limited to insurance proceeds, if any, received by the Indemnified Parties, or by any prior or subsequent declaration by the Consultant. Furthermore, Consultant's obligations under this Section 4 shall in no way limit, modify or excuse any of Consultant's other obligations or duties under this Agreement.

4.5. Enforcement Costs. Consultant agrees to pay any and all costs City incurs in enforcing Consultant's obligations under this Section 4.

4.6 Survival. Consultant's obligations under this Section 4 shall survive the termination of this Agreement.

## 5. FINANCIAL INTERESTS OF CONSULTANT.

5.1 Form 700 Filing. The California Political Reform Act and the Chula Vista Conflict of Interest Code require certain government officials and consultants performing work for government agencies to publicly disclose certain of their personal assets and income using a Statement of Economic Interests form (Form 700). In order to assure compliance with these requirements, Consultant shall comply with the disclosure requirements identified in the attached Exhibit C, incorporated into the Agreement by this reference.

5.2 Disclosures; Prohibited Interests. Independent of whether Consultant is required to file a Form 700, Consultant warrants and represents that it has disclosed to City any economic interests held by Consultant, or its employees or subcontractors who will be performing the Required Services, in any real property or project which is the subject of this Agreement. Consultant warrants and represents that it has not employed or retained any company or person, other than a bona fide employee or approved subcontractor working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants and represents that it has not paid or agreed to pay any company or person, other than a bona fide employee or approved subcontractor working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Consultant further warrants and represents that no officer or employee of City, has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, the proceeds hereof, or in the business of Consultant or Consultant's subcontractors. Consultant further agrees to notify City in the event any such interest is discovered whether or not such interest is prohibited by law or this Agreement. For breach or violation of any of these warranties, City shall have the right to rescind this Agreement without liability.

## 6. REMEDIES

6.1 Termination for Cause. If for any reason whatsoever Consultant shall fail to perform the Required Services under this Agreement, in a proper or timely manner, or if Consultant shall violate any of the other covenants, agreements or conditions of this Agreement (each a “Default”), in addition to any and all other rights and remedies City may have under this Agreement, at law or in equity, City shall have the right to terminate this Agreement by giving five (5) days written notice to Consultant. Such notice shall identify the Default and the Agreement termination date. If Consultant notifies City of its intent to cure such Default prior to City’s specified termination date, and City agrees that the specified Default is capable of being cured, City may grant Consultant up to ten (10) additional days after the designated termination date to effectuate such cure. In the event of a termination under this Section 6.1, Consultant shall immediately provide City any and all “Work Product” (defined in Section 7 below) prepared by Consultant as part of the Required Services. Such Work Product shall be City’s sole and exclusive property as provided in Section 7 hereof. Consultant may be entitled to compensation for work satisfactorily performed prior to Consultant’s receipt of the Default notice; provided, however, in no event shall such compensation exceed the amount that would have been payable under this Agreement for such work, and any such compensation shall be reduced by any costs incurred or projected to be incurred by City as a result of the Default.

6.2 Termination or Suspension for Convenience of City. City may suspend or terminate this Agreement, or any portion of the Required Services, at any time and for any reason, with or without cause, by giving specific written notice to Consultant of such termination or suspension at least fifteen (15) days prior to the effective date thereof. Upon receipt of such notice, Consultant shall immediately cease all work under the Agreement and promptly deliver all “Work Product” (defined in Section 7 below) to City. Such Work Product shall be City's sole and exclusive property as provided in Section 7 hereof. Consultant shall be entitled to receive just and equitable compensation for this Work Product in an amount equal to the amount due and payable under this Agreement for work satisfactorily performed as of the date of the termination/suspension notice plus any additional remaining Required Services requested or approved by City in advance that would maximize City’s value under the Agreement.

6.3 Waiver of Claims. In the event City terminates the Agreement in accordance with the terms of this Section, Consultant hereby expressly waives any and all claims for damages or compensation as a result of such termination except as expressly provided in this Section 6.

6.4 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 be amended, the provisions of which, including such policies and procedures used by City in the implementation of same, are incorporated herein by this reference. 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.

6.5 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 San Diego County, State of California.

6.6 Service of Process. Consultant agrees that it is subject to personal jurisdiction in California. If Consultant is a foreign corporation, limited liability company, or partnership that is not registered with the California Secretary of State, Consultant irrevocably consents to service of process on Consultant by first class mail directed to the individual and address listed under “For Legal Notice,” in section 1.B. of Exhibit A to this Agreement, and that such service shall be effective five days after mailing.

## 7. OWNERSHIP AND USE OF WORK PRODUCT

All reports, studies, information, data, statistics, forms, designs, plans, procedures, systems and any other materials or properties produced in whole or in part under this Agreement in connection with the performance of the Required Services (collectively "Work Product") shall be the sole and exclusive property of City. No such Work Product shall be subject to private use, copyrights or patent rights by Consultant in the United States or in any other country without the express, prior written consent of City. City shall have unrestricted authority to publish, disclose, distribute, and otherwise use, copyright or patent, in whole or in part, any such Work Product, without requiring any permission of Consultant, except as may be limited by the provisions of the Public Records Act or expressly prohibited by other applicable laws. With respect to computer files containing data generated as Work Product, Consultant shall make available to City, upon reasonable written request by City, the necessary functional computer software and hardware for purposes of accessing, compiling, transferring and printing computer files. City acknowledges that its alteration of Work Product without the consent of Consultant, or use of Work Product for any purpose other than that for which it was created is at City's sole risk and without liability to Consultant.

## 8. GENERAL PROVISIONS

8.1 Amendment. This Agreement may be amended, but only in writing signed by both Parties.

8.2 Assignment. City would not have entered into this Agreement but for Consultant's unique qualifications and traits. Consultant shall not assign any of its rights or responsibilities under this Agreement, nor any part hereof, without City's prior written consent, which City may grant, condition or deny in its sole discretion.

8.3 Authority. The person(s) executing this Agreement for Consultant warrants and represents that they have the authority to execute same on behalf of Consultant and to bind Consultant to its obligations hereunder without any further action or direction from Consultant or any board, principle or officer thereof.

8.4 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one Agreement after each Party has signed such a counterpart.

8.5 Entire Agreement. This Agreement together with all exhibits attached hereto and other agreements expressly referred to herein, constitutes the entire Agreement between the Parties with respect to the subject matter contained herein. All exhibits referenced herein shall be attached hereto and are incorporated herein by reference. All prior or contemporaneous agreements, understandings, representations, warranties and statements, oral or written, are superseded.

8.6 Record Retention. During the course of the Agreement and for three (3) years following completion of the Required Services, Consultant agrees to maintain, intact and readily accessible, all data, documents, reports, records, contracts, and supporting materials relating to the performance of the Agreement, including



accounting for costs and expenses charged to City, including such records in the possession of sub-contractors/sub-consultants.

8.7 Further Assurances. The Parties agree to perform such further acts and to execute and deliver such additional documents and instruments as may be reasonably required in order to carry out the provisions of this Agreement and the intentions of the Parties.

8.8 Independent Contractor. Consultant is and shall at all times remain as to City a wholly independent contractor. Neither City nor any of its officers, employees, agents or volunteers shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents ("Consultant Related Individuals"), except as set forth in this Agreement. No Consultant Related Individuals shall be deemed 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. Furthermore, City will not withhold state or federal income tax, social security tax or any other payroll tax with respect to any Consultant Related Individuals; instead, Consultant shall be solely responsible for the payment of same and shall hold the City harmless with respect to same. Consultant shall not at any time or in any manner represent that it or any of its Consultant Related Individuals are employees or agents of City. Consultant shall not incur or have the power to incur any debt, obligation or liability whatsoever against City, or bind City in any manner.

8.9 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 at the places of business for each of the designated Parties as indicated in Exhibit A, or otherwise provided in writing.


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**SIGNATURE PAGE  
CONSULTANT SERVICES AGREEMENT**

IN WITNESS WHEREOF, by executing this Agreement where indicated below, City and Consultant agree that they have read and understood all terms and conditions of the Agreement, that they fully agree and consent to bound by same, and that they are freely entering into this Agreement as of the Effective Date.

ENVIRONMENTAL SCIENCE  
ASSOCIATES (ESA) COMPANY

CITY OF CHULA VISTA

DocuSigned by:  
  
BY: \_\_\_\_\_  
BOBBETTE BIDDULPH\*  
SENIOR VICE PRESIDENT

BY: \_\_\_\_\_  
MARIA V. KACHADOORIAN  
CITY MANAGER

BY: \_\_\_\_\_  
Kerry K. Bigelow, MMC  
City Clerk

APPROVED AS TO FORM

BY: \_\_\_\_\_  
Glen R. Googins  
City Attorney

*\*Signatory to provide corporate signature authorization.*

**EXHIBIT A**  
**SCOPE OF WORK AND PAYMENT TERMS**

**1. Contact People for Contract Administration and Legal Notice**

A. City Contract Administration:

Cheryl Goddard  
276 Fourth Avenue, Chula Vista, CA 91910  
(619) 476-2329  
[cgoddard@chulavistaca.gov](mailto:cgoddard@chulavistaca.gov)

For Legal Notice Copy to:

City of Chula Vista  
City Attorney  
276 Fourth Avenue, Chula Vista, CA 91910  
619-691-5037  
[CityAttorney@chulavistaca.gov](mailto:CityAttorney@chulavistaca.gov)

B. Consultant Contract Administration:

**ENVIRONMENTAL SCIENCE ASSOCIATES (ESA) COMPANY**  
550 West C Street, Suite 750, San Diego, CA 92101  
(619) 719-4200  
[bbiddulph@esassoc.com](mailto:bbiddulph@esassoc.com)

For Legal Notice Copy to:

Bobbette Biddulph  
550 West C Street, Suite 750, San Diego, CA 92101  
(619) 719-4200  
[bbiddulph@esassoc.com](mailto:bbiddulph@esassoc.com)

**2. Required Services**

A. General Description:

Consultant shall provide a specific biologist as the preserve steward who will be expected to perform the majority of the monitoring and management tasks needed and will be responsible for subcontracting with biologists who have additional expertise as needed. Consultant must have the ability to manage subcontractors for management and monitoring tasks that the Consultant does not have the expertise to complete. The preserve steward shall:

- Implement the long-term management directives of the Multiple Species Conservation Program (MSCP) preserve lands including Resource Management Plans and Area Specific Management Directives;
- Prepare and implement habitat restoration plans;
- Assist in the preparation of grant proposals; and
- Have knowledge of the adopted Multiple Species Conservation Program (MSCP) Subregional Plan, MSCP Subarea Plans for the City and County. The preserve steward shall assist the City staff in ensuring compliance with these programs/plans.

**B. Detailed Description:**

The Preserve Steward/Biologist shall complete tasks within time and budget requirements. Consultant shall perform tasks that may be required, including but not limited to, the following:

**I. On-Going Services**

- A. Prepare Annual Work Plans for Sunbow II MSCP preserve lands and other preserve lands or programs at the request of the City, recommending management and monitoring tasks to be accomplished during the next two fiscal year. The work plans shall include, but is not limited to, the following:
1. Recommendation of tasks to be performed in priority order;
  2. Citations of how the tasks relate to Area Specific Management Directives (ASMD) or Resource Management Plans (RMP) (cite specific enabling ASMD/RMP goals, objectives, policies or implementation measure);
  3. Expected outcome including success criteria;
  4. Survey methodologies;
  5. Estimated costs;
  6. Recommendation of who will perform the task;
  7. Recommendation of timeframe; and
  8. Detailed budget summary tables by budget categories (i.e., Preserve Monitoring and Operation/Maintenance) and by task.
- B. Oversee and coordinate preserve management, monitoring, and reporting with the Wildlife Agencies, adjacent landowners, regional monitoring entities, interested public groups, and the general public.
- C. Provide science-based technical recommendations to City staff and any contractors retained to conduct specific management tasks, monitoring, data collection and analysis, and adaptive management programs.
- D. Perform biological monitoring as directed by City staff.
- E. Participate and represent the City in regional or sub regional meetings relating to preserve management and monitoring to ensure management and monitoring efforts within the Preserve are not being duplicated. Meetings may include:
1. San Diego Management and Monitoring Program (SDMMP) meetings
  2. SANDAG Environmental Mitigation Program Working Group meetings
  3. South County Land Manager meetings
- F. Implement basic stewardship including, but not limited to, the following:
1. Monitor existing fencing/gates and identify needs for additional access control; provide minor repairs and coordinate with appropriate contractor to repair or construct more significant fencing/gate needs;
  2. Remove minor amounts of trash, litter, and debris; monitor and report to appropriate contractor to remove significant amounts of trash, litter, and other debris;
  3. Remove small acreages of weeds and exotics that are found during routine patrols (significant eradication projects are covered under section III. Adaptive Management); and

4. Monitor and report enforcement issues, including off-road traffic, trespassing, grazing, shooting, and illegal dumping to enforcement agencies, such as, the City Police Department, County Sheriff's Department, U.S. Border Patrol, and property owners.

G. Participate in public hearings/meetings, Resource Agencies meetings, and field visits.

H. Review project proposals within the Preserve for access and provide the City with any related issues and recommendations.

I. Attend meetings as necessary to discuss resources as they relate to infrastructure within the preserve including public access.

J. Complete tasks within time and budget requirements.

## **II. Biological Surveys and On-Going Biological Monitoring**

Provide biological research, data collection and analyses including, but not limited to, the following.

A. As a part of the Annual Work Plans, determine the biological studies, reports, and focused surveys that need to be undertaken for Sunbow II MSCP preserve lands as provided in the Central City ASMDs and other preserve lands or programs at the request of the City.

B. Conduct biological reconnaissance and biological field surveys, including focused surveys for threatened or endangered species and/or monitoring of these species per USFWS monitoring protocols.

C. Assist in the preparation of biological resource reports meeting City, County, State and Federal criteria.

D. Provide science-based technical recommendations to City staff and any contractors hired for specific management tasks for survey design, monitoring protocols, data collection and analysis, and adaptive management programs.

E. Provide biological monitoring to avoid impacts to biological resources during ground disturbing activities such as, but not limited to, barrier/fence, gate, and sign installation.

## **III. Adaptive Management**

A. Prioritize threats to the preserve and provide guidance to City staff on direct management actions to deal with those threats.

B. Prepare and coordinate implementation of plans for comprehensive eradication and control of exotics. This may include mapping exotic species infestations and detailing methods to employ to remove such infestations.

C. Provide biological monitoring during invasive species treatment and plant installation to avoid impacts to biological resources.

D. Coordinate with appropriate contractor for brown-headed cowbird trapping.

- E. Develop and/or coordinate implementation of biological restoration programs, including ecological restoration/creation plans for any sensitive habitat, sensitive floral or faunal species, and erosion control plans.
  - 1. Provide specialized biological assistance required for the preparation of the restoration program, including wetland and sensitive habitat delineation, and vegetation and wildlife assessment.
  - 2. Develop revegetation plans, cost estimates, and specifications for plan implementation.
  - 3. Develop irrigation plans, cost estimates, and specifications for plan implementation.
  - 4. Develop and/or implement restoration monitoring plans and monitoring schedules.
  - 5. Perform restoration monitoring.
- F. Continuously evaluate the effectiveness and efficiency of preserve management activities in view of available resources and ensure consistent use of the most cost-effective methods for management.

#### **IV. Reporting**

- A. Prepare and submit monthly and/or annual reports to City staff. These reports shall summarize field observations including, but not limited to, the following:
  - 1. List of species observed during the observation period;
  - 2. Areas in need of invasive control, remediation, and/or restoration;
  - 3. Management and monitoring tasks recommended to be implemented;
  - 4. Prioritization of those management and monitoring tasks;
  - 5. Basic stewardship activities; and
  - 6. Progress towards completion of the annual Work Programs.
- B. Submit data to regional or subregional databases relating to preserve management and monitoring. Data shall be submitted to databases such as California Natural Diversity Database (CNDDB), San Diego Biological Information and Observation System (SanBIOS), and South Coast Multi-taxa Database (SC-MTX).

#### **V. Other services that may be required:**

- A. Assist in the preparation of grant proposals to apply for additional funding for Preserve management tasks beyond what is needed to be consistent with the RMP and MSCP.

**3. Term:** In accordance with Section 1.10 of this Agreement, the term of this Agreement shall begin August 25, 2020 and end on August 25, 2024 for completion of all Required Services.

#### **4. Compensation:**

##### **A. Form of Compensation**

- Time and Materials. For performance of the Required Services by Consultant as identified in Section 2.B., above, City shall pay Consultant for the productive hours of time spent by Consultant in the

performance of the Required Services, at the rates or amounts as indicated below. If the City chooses to exercise its option to renew the Agreement, the City and the Consultant may negotiate the rate schedule at the time of renewal.

#### ESA Team Hourly Rates

<i>Labor Category</i>	<i>ESA<sup>a</sup></i>	<i>Blackhawk<sup>b</sup></i>	<i>BSE<sup>c</sup></i>	<i>SDNHM BioServices</i>	<i>HRS</i>
Director	\$205.00	-	-	-	\$210.00
Project Manager	\$155.00	\$95.00	-	-	\$160.00
Principal Biologist/Scientist	\$160.00	\$110.00	-	\$120.00	\$200.00
Managing Principal/Scientist	\$135.00	\$100.00	-	\$110.00	-
Senior Biologist/Scientist	\$120.00	\$90.00	-	\$90.00	-
Biologist/Scientist	\$105.00	\$83.00	-	\$85.00	\$100.00
Technician	\$85.00	-	\$48.25	\$70.00	-
Senior GIS Specialist	\$140.00	-	-	\$90.00	-
GIS Specialist	\$120.00	-	-	\$85.00	-
Clerical/Production	\$90.00	-	-	\$80.00	\$65.00
Landscape Supervisor/Field Manager	-	-	-	-	\$135.00
Specialty Equipment Operator/Operating Engineer	-	-	-	-	\$135.00
Landscape Assistant Supervisor	-	-	-	-	\$110.00
Foreman	-	-	-	-	\$85.00
Assistant Foreman	-	-	-	-	\$70.00
Skilled Laborer	-	-	-	-	\$55.00
Maintenance Laborer	-	-	-	-	\$45.00

(a) *ESA's listed billing rates are open to negotiation.*

(b) *Blackhawk Environmental does not bill other direct costs; other direct costs have been incorporated into rates shown.*

(c) *BSE's security and patrol services are provided at \$48.25 an hour which includes patrol equipment and 4x4 vehicle.*

## B. Reimbursement of Costs

Invoiced or agreed-upon amounts as follows:

Enter or Attach And Reference Any Agreed-Upon Cost Reimbursements

Notwithstanding the foregoing, the maximum amount to be paid to the Consultant for services performed through August 25, 2024 shall not exceed \$500,000 per fiscal year including all Materials and other "reimbursables" (Maximum Compensation). Actual compensation for each fiscal year shall be determined through the Annual Work Plans, as approved by City staff. Notwithstanding the foregoing, the Maximum Compensation shall also not exceed the project funds available as determined by City's finance staff.

## 5. Special Provisions:

Permitted Sub-Consultants: "None"

Security for Performance: "None"

Notwithstanding the completion date set forth in Section 3 above, City has option to extend this Agreement for two (2) additional terms, defined as a one-year increment or . The City Manager or Director of

Finance/Treasurer shall be authorized to exercise the extensions on behalf of the City. If the City exercises an option to extend, each extension shall be on the same terms and conditions contained herein, provided the City and the Consultant may negotiate a new rate schedule at the time of each extension. The City shall give written notice to Consultant of the City's election to exercise the extension via the Notice of Exercise of Option to Extend document.

DIR/Prevailing Wages. Contractor and its subcontractors of every tier shall comply with all Federal and State law prevailing wage requirements for all persons employed to perform the Required Services, including but not limited to payment of prevailing wages at the specified rates. The prevailing wage rates are determined by the Department of Industrial Relations (DIR) and are available at the City and on the DIR's website.

Prior to commencing the Required Services, the Contractor shall provide the City with a list of its subcontractors and the classifications and wages of workers that will be employed to perform the Required Services. If Contractor desires to modify the list during the term of the Agreement, Contractor shall immediately provide an updated list to the City. To verify compliance with State prevailing wage requirements. Contractor shall be registered with the DIR's online registration of contractors and shall furnish and submit certified payrolls and other required documentation directly to the DIR. Contractor and its subcontractors of every tier shall comply with all requirements of Labor Code section 1776.

This Agreement is subject to compliance monitoring and enforcement by the DIR pursuant to Labor Code section 1771.4.

In addition to Federal and State law prevailing wage requirements, Contractor shall also comply with the following in its performance of the Required Services:

- Labor Code 1810: Hours in legal days' work;
- Labor Code 1813: Penalty for exceeding legal days' work: and
- Labor Code 1815: One and one-half time rate of pay.

Contractor acknowledges and agrees that a failure to comply with any requirements of this section authorizes the City to withhold payments under the Agreement. Nothing contained in, or not contained in, this section shall be construed to in any way limit Contractor's obligations to comply with any applicable Federal, State, or local law or regulation.

#### Employment of Apprentices

Contractor and its subcontractors of every tier shall comply with all requirements for employment of apprentices as provided by any applicable law or regulation, including but not limited to Labor Code sections 1777.5, 1777.6, and 1777.7. Information regarding apprenticeship standards, wage schedules, and other requirements may be obtained from the DIR.

#### Non-Collusion Affidavit

Prior to commencing the Required Services, Contractor shall provide a fully executed and properly notarized Non-Collusion Affidavit, in the form attached hereto and incorporated herein as Exhibit D.

#### Workers' Compensation Insurance Declaration

Prior to commencing the Required Services, Contractor shall provide a fully executed and properly notarized Worker's Compensation Insurance Declaration, in the form attached hereto and incorporated herein as Exhibit E.



**EXHIBIT B**  
**INSURANCE REQUIREMENTS**

Consultant shall adhere to all terms and conditions of Section 3 of the Agreement and agrees to provide the following types and minimum amounts of insurance, as indicated by checking the applicable boxes (x).

	Type of Insurance	Minimum Amount	Form
<input checked="" type="checkbox"/>	General Liability: Including products and completed operations, personal and advertising injury	\$2,000,000 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 Agreement or the general aggregate limit must be twice the required occurrence limit  Additional Insured Endorsement or Blanket AI Endorsement for City*  Waiver of Recovery Endorsement	Insurance Services Office Form CG 00 01  <i>*Must be primary and must not exclude Products/Completed Operations</i>
<input checked="" type="checkbox"/>	Automobile Liability	\$1,000,000 per accident for bodily injury, including death, and property damage	Insurance Services Office Form CA 00 01 Code 1-Any Auto Code 8-Hired Code 9-Non Owned
<input checked="" type="checkbox"/>	Workers' Compensation Employer's Liability	\$1,000,000 each accident \$1,000,000 disease policy limit \$1,000,000 disease each employee Waiver of Recovery Endorsement	
<input checked="" type="checkbox"/>	Professional Liability (Errors & Omissions)	\$1,000,000 each occurrence \$2,000,000 aggregate	

Other Negotiated Insurance Terms: "NONE"

## EXHIBIT C

### CONSULTANT CONFLICT OF INTEREST DESIGNATION

The Political Reform Act<sup>1</sup> and the Chula Vista Conflict of Interest Code<sup>2</sup> (“Code”) require designated state and local government officials, including some consultants, to make certain public disclosures using a Statement of Economic Interests form (Form 700). Once filed, a Form 700 is a public document, accessible to any member of the public. In addition, consultants designated to file the Form 700 are also required to comply with certain ethics training requirements.<sup>3</sup>

- A. Consultant IS a corporation or limited liability company and is therefore EXCLUDED<sup>4</sup> from disclosure.
- B. Consultant NOT a corporation or limited liability company and disclosure designation is as follows:

#### APPLICABLE DESIGNATIONS FOR INDIVIDUAL(S) ASSIGNED TO PROVIDE SERVICES

(Category descriptions available at [www.chulavistaca.gov/departments/city-clerk/conflict-of-interest-code](http://www.chulavistaca.gov/departments/city-clerk/conflict-of-interest-code).)

Name	Email Address	Applicable Designation
Enter Name of Each Individual Who Will Be Providing Service Under the Contract – <i>If individuals have different disclosure requirements, duplicate this row and complete separately for each individual</i>	Enter email address(es)	<input type="checkbox"/> <b>A. Full Disclosure</b> <input type="checkbox"/> <b>B. Limited Disclosure</b> ( <i>select one or more of the categories under which the consultant shall file</i> ): <input type="checkbox"/> 1. <input type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. Justification:  <input checked="" type="checkbox"/> <b>C. Excluded from Disclosure</b>

#### 1. Required Filers

Each individual who will be performing services for the City pursuant to the Agreement and who meets the definition of “Consultant,” pursuant to FPPC Regulation 18700.3, must file a Form 700.

#### 2. Required Filing Deadlines

Each initial Form 700 required under this Agreement shall be filed with the Office of the City Clerk via the City's online filing system, NetFile, within 30 days of the approval of the Agreement. Additional Form 700 filings will be required annually on April 1 during the term of the Agreement, and within 30 days of the termination of the Agreement.

#### 3. Filing Designation

The City Department Director will designate each individual who will be providing services to the City pursuant to the Agreement as *full disclosure*, *limited disclosure*, or *excluded from disclosure*, based on an analysis of the services the Consultant will provide. Notwithstanding this designation or anything in the Agreement, the Consultant is ultimately responsible for complying with FPPC regulations and filing requirements. If you have any questions regarding filing requirements, please do not hesitate to contact the City Clerk at (619)691-5041, or the FPPC at 1-866-ASK-FPPC, or (866) 275-3772 \*2.

Pursuant to the duly adopted City of Chula Vista Conflict of Interest Code, this document shall serve as the written determination of the consultant’s requirement to comply with the disclosure requirements set forth in the Code.

**Completed by: Cheryl Goddard**

1 Cal. Gov. Code §§81000 *et seq.*; FPPC Regs. 18700.3 and 18704.

2 Chula Vista Municipal Code §§2.02.010-2.02.040.

3 Cal. Gov. Code §§53234, *et seq.*

4 CA FPPC Adv. A-15-147 (*Chadwick*) (2015); *Davis v. Fresno Unified School District* (2015) 237 Cal.App.4<sup>th</sup> 261; FPPC Reg. 18700.3 (Consultant defined as an “individual” who participates in making a governmental decision; “individual” does not include corporation or limited liability company).