



STAFF REPORT

DATE: MAY 14, 2024

TO: MAYOR AND CITY COUNCIL

FROM: DAVID WAHBA, PUBLIC WORKS DIRECTOR

SUBJECT: REQUEST TO: 1) APPROVE AN AMENDMENT TO A PROFESSIONAL SERVICES AGREEMENT (PSA) FOR RNT ARCHITECTS TO PROVIDE ADDITIONAL ARCHITECTURAL SERVICES; 2) ENTER INTO AN AGREEMENT WITH KIZH NATION INDIAN TRIBE FOR NATIVE AMERICAN MONITORING SERVICES; AND, 3) APPROVE A PROFESSIONAL SERVICES AGREEMENT (PSA) FOR ULTRASYSTEMS ENVIRONMENTAL FOR BIOLOGICAL, CULTURAL AND PALEONTOLOGICAL MONITORING SERVICES.
PROJECT: GEORGE F CANYON NATURE CENTER REPLACEMENT.
LOCATION: SOUTHWEST CORNER OF PALOS VERDES DRIVE NORTH & PALOS VERDES DRIVE EAST (27305 PALOS VERDES DRIVE EAST).

OVERVIEW

For further consideration of the construction administration of the George F Canyon Nature Center Replacement Project, the following is a request for the City Council to: 1) Approve an amendment to the Professional Services Agreement (PSA) with Roesling, Nakamura, and Terada (RNT) Architects to provide additional services for project bid preparation and construction support; 2) Authorize the City Manager to enter into an agreement with the Kizh Nation Indian Tribe for Native American Monitoring Services during site grading and initial construction of the project; and, 3) Approve a Professional Services Agreement (PSA) for Ultrasystems Environmental to provide biological, cultural, and paleontological monitoring services.

BACKGROUND

On December 12, 2023, the City Council approved a Professional Services Agreement (PSA) with Transtech Engineers to provide Project bidding support and construction management services, for the George F Canyon Nature Center Project in the amount of \$249,700. Since December 2023, staff has been working closely with Transtech Engineers, RNT Architects, Willdan Engineering, Bolton Engineering and other project constituents to complete all the necessary requirements to place this project out to bid, which was posted on May 9, 2024. Sealed bids are due June 20, 2024.

As required in the Project's approved Mitigation Monitoring and Reporting Program (MMRP) (City Council Resolution No. 2522) under the California Environmental Quality Act (CEQA), the Project is subject to asbestos and lead testing (for the existing buildings and structures to be demolished), biological, geological, and cultural/Indian tribal monitoring requirements.

Staff completed the asbestos and lead-based paint testing requirements and found that the existing facility does not contain lead-based paint but does contain asbestos. As such, the contractor who is awarded the contract for construction of the project will be required to remove the asbestos per all environmental regulations.

As required under the Project's MMRP, biological resource testing is required prior to starting the project. More specifically, the project requires the City to conduct: 1) Preconstruction Botanical Clearance Surveys, Avoidance and Mitigation; 2) Workers Environmental Awareness Program (WEAP) Training; and 3) Preconstruction Nesting Bird and Coastal California Gnatcatcher (CAGN) Surveys. The project must also comply with Cultural Resources, in the event that there is an inadvertent discovery of archaeological resources during site excavation. Lastly, the project must comply with Geology and Soils for paleontological resources monitoring, during excavation.

As also required under the Project's MMRP, is compliance with cultural resources mitigation requirements. More specifically, under Mitigation Measure TCR-1, the City is required to retain a Native American monitor from (or approved by) the Gabrielino Band of Mission Indians—Kizh Nation, the direct descendants of the Project location. To that end, staff has been in contact with the Kizh Nation Indian Tribe, who has provided the City with a contract for their on-site observation services, in the event that human remains and/or historic/burial artifacts are discovered.

Lastly, in order to have the Project architect, RNT, assist in project bidding, and to respond to Requests for Information (RFIs) and provide general project oversight during construction, RNT has provided the City with a proposal for an amendment to their Professional Services Agreement (PSA), as further discussed below.

DISCUSSION

Proposals for Additional Project Services

Roesling, Nakamura, and Terada (RNT) Architects Amendment to PSA

In order to complete the necessary documents, plans and bid specifications, and to continue to provide architectural oversight of the project during construction, RNT Architects is proposing to amend their PSA. Attached, please find RNT's proposal (Amendment No. 1 to PSA) for additional project services in the amount of \$64,040. The previous PSA (entered into on October 25, 2021) was for \$234,895. With this proposed amendment, the new total for complete architectural services would be \$298,935.

In the proposed amendment to the PSA, the cost to provide final design and preconstruction coordination during the project bidding phase is \$24,930. The proposed cost for additional construction support (over the 100 hours in the current PSA) is estimated at \$39,110. More specifically, with the project construction duration of 12-18 months, it is anticipated that an additional 206 hours will be needed for architectural support services, which include weekly meetings, response to Requests for Information (RFIs), plan modification/clarification drafting services, site visits, etc.

Please refer to Amendment No. 1 of RNT's PSA attached for more information on the requested additional services and costs. The City Attorney has reviewed and approved as to form Amendment No. 1 to the PSA.

Proposal for Biological, Cultural, Geology/Soils Monitoring Services from UltraSystems Environmental

Staff has obtained a proposal from UltraSystems Environmental to assist staff in complying with the Project's required MMRP relative to biological resource testing, cultural resources, in the event that there is an inadvertent discovery of archaeological resources during site excavation, and, paleontological monitoring, also during the project's excavation activities.

Staff prepared a Professional Services Agreement (PSA) for UltraSystems, which includes their scope of services, totaling \$50,201. More specifically, the Biological Resources Measures are estimated at \$11,065, Cultural Resources Measures are \$5,028, and Paleontological Monitoring is \$34,109. Note that the Cultural Resources Measures Task is optional but would be required in the event that subsurface cultural resources are encountered during earth moving activities, so this task needs to be included in their scope of services but may not be ultimately used.

Please refer to UltraSystems Environmental PSA attached for more information on their proposal and costs. Note that UltraSystems was recommended by both Transtech Engineers and Willdan Engineering as a subconsultant that both companies use for these types of specialized services. Lastly, the City Attorney has reviewed and approved as to form the PSA.

Proposal from Kizh Nation for American Native Indian Resources Management

As required by the Project's MMRP, the City must adhere to cultural resources mitigation requirements. More specifically, under Mitigation Measure TCR-1, the City is required to retain a Native American monitor from (or approved by) the Gabrielino Band of Mission Indians—Kizh Nation, the direct descendants of the Project location. To that end, staff has been in contact with the Kizh Nation Indian Tribe, who has provided the City with a contract (attached) for their on-site observation services, in the event that human remains and/or historic/burial artifacts are discovered.

The contract that the City is required to enter into with the Kizh Nation Indian Tribe, is estimated to cost \$31,318.40, which is based on 30 working days of monitoring the site's

ground disturbance activities (i.e., site grading and excavation for foundations and footings). In the event that more working days are required for observation purposes, the daily cost will be \$800 plus mileage and other nominal incidental costs.

The Kizh Nation Indian Tribe Contract, including a listing of their services and costs, is attached for City Council review. Note that the City Attorney has also reviewed the contract, which includes insurance (naming the City as additionally insured) and finds it to be acceptable for approval.

Additional Project Costs for CEQA Mitigation Monitoring & Reporting Program (MMRP)

As summarized above, staff is presenting the City Council with three contracts and their associated costs to move the Nature Center Project forward towards construction.

The new additional costs for this Project are summarized in the table below:

Company	Proposed Contract Costs
RNT Architects	\$64,040
UltraSystems Environmental	\$50,201
Kizh Nation Indian Tribe	\$31,318.40
TOTAL:	\$145,559.40

As presented at the City Council Policy Development Session on March 14, 2023, the total cost of the Nature Center Project was estimated at \$3,996,000. Pre-construction costs (architect and engineering), and construction support services were budgeted at \$687,000. With the costs summarized above for these additional services, the construction design and support services would go up to approximately \$833,000.

Based upon estimated projected costs, the Nature Center construction and contractor costs, which include general conditions and requirements, contractor fee, bonds, and insurance, and escalation fees, are estimated at \$2,809,000. Furnishings, equipment, and interpretive design are expected to be approximately \$500,000, with the Palos Verdes Peninsula Land Conservancy (PVPLC) contributing a large portion toward the education component.

All in, the Nature Center Project is now estimated at a grand total of \$4,142,000, which is up from \$3.996M by approximately \$146,000 with these proposed new costs.

Revised Estimated Costs	Amount
Pre-construction and CM services during construction	\$833,000
Construction+contingency/escalation fee	\$2,809,000
Furnishings/education	\$500,000
Total Project Cost	\$4,142,000

Project Funding

In order to fund the George F Canyon Nature Center Replacement Project, the table below shows an up-to-date list of available funding sources. With a grand total estimated Project cost updated to approximately \$4.1M, the Project still requires approximately \$1M to be completely funded. This additional funding is expected from fundraising efforts and from available Park Facility Fees, which has a fund balance of just over \$1M, with more funds expected later in 2024, with the completion of the 927 Deep Valley Drive Mixed-Use Project, which will generate an additional \$1,184,775 in Park Facility Fees.

Project Grants/Funding Sources	Amount
City Park Facility Fees budgeted or expended to date	\$387,000
CA State Dept Parks & Rec (Senator Ben Allen)	\$1,200,000
LA County-Supervisor Hahn commitment	\$500,000
Prop 68 - Per Capita Program	\$177,952
Prop 68 - Urban Area	\$5,040
Outdoor Enviro Ed Grant	\$40,000
Measure A	\$267,863
Rolling Hills Partnership (Prop 68)	\$177,952
Rolling Hills Partnership (Prop 68-urban area)	\$1,156
Estimate PVPLC contribution	\$350,000
Total Funds Allocated/Granted	\$3,106,963

The additional required project funding as discussed in this report of \$145,559.40, would be budgeted over the next two fiscal years, under Account No. 5267-430.

PUBLIC OUTREACH

This item was posted on the City Council's Agenda; no further outreach is required.

RECOMMENDATION

Staff recommends that the City Council:

1. Authorize an amendment to the Professional Services Agreement (PSA) with Roesling, Nakamura, and Terada (RNT) Architects, in the amount of \$64,040, for additional architectural services during Project bidding and construction;
2. Award a Professional Services Agreement (PSA) to UltraSystems Environmental in the amount of \$50,201 to conduct studies/monitoring for the Project's Mitigation Monitoring and Reporting Program (MMRP); and

3. Direct the City Manager to enter into a contract with the Kizh Nation Indian Tribe for Native American Monitoring Services during site grading and initial construction in the amount of \$31,318.40.

Attachments

- A. Amendment No. 1 to Professional Services Agreement (PSA) with Roesling, Nakamura, and Terada (RNT) Architects
- B. Professional Services Agreement (PSA) for UltraSystems Environmental
- C. Kizh Nation Indian Tribe, Native American Monitoring Services Contract

**FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT
WITH ROESLING NAKAMURA TERADA (RNT) ARCHITECTS, INCORPORATED
(GEORGE F CANYON NATURE CENTER REPLACEMENT PROJECT)**

This First Amendment to Professional Services Agreement (“First Amendment”) is effective as of May 14, 2024 (“Effective Date”), and is between the City of Rolling Hills Estates, a California municipal corporation (“City”), and RNT Architects Inc., a California corporation (“Consultant”). Consultant and City are referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

A. Effective October 25, 2021, the City and Consultant entered into a Professional Services Agreement (“PSA”) related to performing architectural and engineering services for the design implementation for the George F Canyon Nature Center Replacement Project (“Project”).

B. Sections 3 and 5.1 of the PSA allows the parties to address additional services and compensation by written agreement.

C. The City desires to have RNT provide additional design coordination services, working with the City’s Construction Manager (CM) (Transtech Engineers) to provide additional support for the project’s bid preparation and award of bid. The City also desires RNT to provide additional time for project oversight during construction, beyond the 100 hours originally scoped in the PSA to construct the Project, which is expected to take 12-18 months. This First Amendment is intended to include such additional services and provide for additional compensation for such services, in writing, in accordance with the PSA.

TERMS OF AMENDMENT

1. **Amendment to Section 2.1 of the PSA.** Section 2.1 is amended and restated as follows:

“**2.1** Consultant agrees to perform the services set forth in Exhibits A [Scope of Services] and A-1 [Additional Scope of Services], which are both made a part of this Agreement.”

2. **Addition of Exhibit A-1 to the PSA.** The PSA is amended to add Exhibit A-1 [Additional Scope of Services] as set forth as in the attached Exhibit A-1.

3. **Addition of Exhibit B-1 to the PSA.** The PSA is amended to add Exhibit B-1 [Key Personnel & Compensation for Additional Scope of Services] as set forth as in the attached Exhibit B-1.

4. **Additional Compensation.** In accordance with Section 5.1 of the PSA, this First Amendment provides for approval of additional compensation in an amount not to exceed \$64,040 for the additional services set forth in this First Amendment.

5. **Remainder of the PSA’s Terms Unchanged.** Subject to the foregoing amendments, the remainder of the terms in the PSA will remain the same and are hereby ratified by the Parties.

6. **Authority to Execute.** Each Party represents and warrants that all necessary action has been taken by such Party to authorize the undersigned to execute this First Amendment and to bind the Parties to the performance of its obligations.

7. **Counterparts, Facsimile or other Electronic Signatures.** This First Amendment may be executed in several counterparts, each of which will be deemed an original, and all of which, when taken together, constitute one and the same instrument. The First Amendment will be considered executed when the signature of a party is delivered by facsimile or other electronic transmission. Such facsimile or other electronic signature will have the same effect as an original signature.

CITY OF ROLLING HILLS ESTATES

Greg Grammer, City Manager

CONSULTANT

ROESLING NAKAMURA TERADA (RNT) ARCHITECTS, INC.

Rick Espana, AICP
Principal

EXHIBIT A-1

[Additional Scope of Services]

I. Scope of Work: (see attached)

EXHIBIT B-1**[Key Personnel & Compensation for Additional Scope of Services]****I. Key Personnel:**

Consultant's designated representative(s) who are authorized to act on its behalf and to make all decisions in connection with the performance of services outlined in Exhibit A-1 is: Rick Espana, AICP (Principal).

II. Compensation:

Compensation for the additional work outlined in Exhibit A-1, including reimbursement for actual expenses, may not exceed: \$64,040.

III. Fee Schedule:**Hourly Rates:**

Hourly Rates are as follows:

- | | | |
|---|---------------------|----------|
| • | Principal Architect | \$285.00 |
| • | Project Manager | \$245.00 |
| • | Project Architect | \$210.00 |
| • | Drafting Support | \$160.00 |



City of Rolling Hills Estates

PROFESSIONAL SERVICES AGREEMENT

With

Roesling, Nakamura, Terada Architects, Inc.

Effective Date: October 25, 2021

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EXHIBIT A – SCOPE OF SERVICESA-1
EXHIBIT B – KEY PERSONNEL & COMPENSATION.....B-1
EXHIBIT C – INSURANCEC-1

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT ("Agreement") is effective as of October 25, 2021 ("Effective Date"), and is between the City of Rolling Hills Estates, a California municipal corporation and general law city ("City") and Roesling, Nakamura, Terada Architects, Inc., a California corporation ("Consultant").

Section 1. Term of Agreement.

Subject to the provisions of Section 20 ("Termination of Agreement"), the term of this Agreement will be for a period commencing on the Effective Date and will terminate upon the completion of Consultant's services.

Section 2. Scope and Performance of Services.

- 2.1** Consultant agrees to perform the services set forth in Exhibit A ("Scope of Services"), which is made a part of this Agreement.
- 2.2** Consultant will furnish all of the labor, technical, administrative, professional and other personnel, all supplies and materials, equipment, printing, vehicles, transportation, office space and facilities, and all tests, testing and analyses, calculations, and all other means whatsoever, except as otherwise expressly specified in this Agreement, necessary to perform the services required of Consultant under this Agreement.
- 2.3** Consultant's designated representative(s) who are authorized to act on its behalf and to make all decisions in connection with the performance of services under this Agreement are listed in Exhibit B ("Key Personnel & Compensation"), which is made a part of this Agreement.
- 2.4** Consultant must make every reasonable effort to maintain the stability and continuity of Consultant's key personnel and subcontractors, if any, listed in Exhibit B to perform the services required under this Agreement. Consultant must notify City and obtain City's written approval with respect of any changes in key personnel prior to the performance of any services by replacement personnel.
- 2.5** Consultant must obtain City's prior written approval before utilizing any subcontractors to perform any services under this Agreement. This written approval must include the identity of the subcontractor and the terms of compensation.
- 2.6** Consultant represents that it has the qualifications, experience and facilities necessary to properly perform the services required under this Agreement in a competent and professional manner. Consultant will at all times faithfully, competently perform all services described in this Agreement. In meeting its obligations under this Agreement, Consultant must employ generally accepted standards and practices utilized by persons engaged in providing services similar to those required of Consultant under this Agreement.
- 2.7** City may inspect and accept or reject any of Consultant's work under this Agreement, either during performance or when completed. Acceptance of any of Consultant's work by City will not constitute a waiver of any of the provisions of this Agreement.
- 2.8** The Consultant must maintain any work site in the City in a safe condition, free of hazards to persons and property resulting from its operations.

Section 3. Additional Services and Changes in Services.

- 3.1** Consultant will not be compensated for any services rendered in connection with its performance of this Agreement that are in addition to or outside of those set forth in the Scope of Services or otherwise required by this Agreement, unless such additional services are authorized in advance and in writing by City.
- 3.2** If Consultant believes that additional services are needed to complete the Scope of Services, including those resulting from changes in applicable laws, statutes, codes, ordinances, regulations and rules applicable after the execution of this Agreement through no fault of the Consultant, that will require changes to already completed services, Consultant will provide the City Manager with written notification describing the proposed additional services, the reasons for such services, and a detailed proposal regarding cost.
- 3.3** City may order changes to the Scope of Services, consisting of additions, deletions, or other revisions, and the compensation to be paid Consultant will be adjusted accordingly. All such changes must be authorized in writing, and executed by Consultant and City. The cost or credit to City resulting from changes in the services will be determined by the written agreement between the parties.

Section 4. Familiarity with Services and Site.

- 4.1** By executing this Agreement, Consultant represents that Consultant:
- (a) has investigated and considered the Scope of Services to be performed;
 - (b) has carefully considered how the services should be performed;
 - (c) understands the general facilities, difficulties, and restrictions attending performance of the services under this Agreement; and
 - (d) possesses all licenses required under local, state or federal law to perform the services contemplated by this Agreement, and will maintain all required licenses during the performance of this Agreement.
- 4.2** If services involve work upon any site, Consultant has or will investigate the site and is or will be acquainted with the conditions there existing, before commencing its services. Should Consultant discover any latent or unknown conditions that may materially affect the performance of services, Consultant will immediately inform City of such fact and will not proceed except at Consultant's own risk until written instructions are received from City.

Section 5. Compensation and Payment.

- 5.1** Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in Exhibit B ("Key Personnel & Compensation"). The total compensation, including reimbursement for actual expenses, may not exceed the amount set forth in Exhibit B, unless additional compensation is approved in writing by City.
- 5.2** The use of subconsultants will not be considered a reimbursable expense, and such costs must be applied towards the approved budgeted amount.
- 5.3** Upon completion of the Scope of Services, Consultant must furnish City with an original invoice. If applicable, the invoice must also provide a budget summary including the total amounts previously invoiced and paid, the current invoice amount and the budget remaining.

- 5.4** City will review the invoice submitted by Consultant to determine whether the work performed and expenses incurred are in compliance with this Agreement. In the event that no charges or expenses are disputed, the invoice will be approved and paid. In the event any charges or expenses are disputed by City, the invoice will be returned by City to Consultant for correction and resubmission.
- 5.5** Except as to any charges for work performed or expenses incurred by Consultant that are disputed by City, City will cause Consultant to be paid within 30 days of receipt of Consultant's invoice.
- 5.6** Payment to Consultant for services performed under this Agreement may not be deemed to waive any defects in the services performed by Consultant, even if such defects were known to City at the time of payment.

Section 6. Required Documentation Prior to Performance.

- 6.1** Consultant may not perform any services under this Agreement until:
- (a) Consultant furnishes proof of insurance as required under Exhibit C;
 - (b) Consultant provides City with a Taxpayer Identification Number;
 - (c) Consultant obtains a City business tax certificate and license, if applicable, and provides proof of compliance; and
 - (d) City gives Consultant a written notice to proceed.
- 6.2** The City will have no obligation to pay for any services rendered by Consultant in advance of receiving written authorization to proceed, and Consultant acknowledges that any such services are at Consultant's own risk.

Section 7. Time of Performance; Excusable Delays; Extensions.

- 7.1** In accordance with industry standard of care, Consultant must adhere to all schedules and deadlines set forth in this Agreement.
- 7.2** Consultant will not be liable for damages, including liquidated damages, if any, caused by delay in performance or failure to perform due to causes beyond the control of Consultant. Such causes include, but are not limited to, acts of God, acts of terrorism, acts of federal, state or local governments, acts of City, court orders, fires, floods, epidemics, strikes, embargoes, and unusually severe weather.
- 7.3** If Consultant is delayed by any cause beyond Consultant's control, City may grant, but is not required to, a time extension for the completion of services. If delay occurs, Consultant must notify City within 48 hours, in writing, of the cause and the extent of the delay and how such delay interferes with Consultant's performance of services.

Section 8. Cooperation by City.

All public information, data, reports, records, and maps as are existing and available to City as public records, and which are necessary for carrying out the Scope of Services will be furnished to Consultant in every reasonable way to facilitate, without undue delay, the services to be performed under this Agreement.

Section 9. Project Documents.

- 9.1** Only upon full payment to Consultant, all original computer programs, data, designs, drawings, files, maps, memoranda, models, notes, photographs, reports, studies, surveys and other documents (collectively, "Project Documents") prepared, developed or discovered by Consultant in the course of providing services under this Agreement will become the sole property of City and may be used, reused or otherwise disposed of by City without the permission of Consultant. Consultant will take such steps as are necessary to perfect or protect the ownership interest of City in such Project Documents. Upon completion, expiration or termination of this Agreement or upon request by City, Consultant must turn over to City all such original Project Documents in its possession; provided, however, that Consultant may retain copies of Project Documents. City acknowledges and agrees that use of Consultant's completed work product without involvement of the Consultant or for purposes other than identified in this Agreement, or use of incomplete work product, is at City's own risk. If necessary, Consultant agrees to execute all appropriate documents to assign to City the copyright or intellectual property rights to the Project Documents created pursuant to this Agreement. Except as necessary for the performance of services under this Agreement, no Project Documents prepared under this Agreement, will be released by Consultant to any other person or entity without City's prior written approval.

Section 10. Confidential Information; Release of Information.

- 10.1** Except as needed to establish a defense against City, all information gained or work product produced by Consultant in performance of this Agreement will be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant may not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the City Manager, except as may be required by law.
- 10.2** Consultant, its officers, employees, or agents, may not, without prior written authorization from the City Manager or unless requested by the City Attorney of City, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the services performed under this Agreement. Response to a subpoena or court order will not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.
- 10.3** If Consultant, or any officer, employee, or agent of Consultant, provides any information or work product (including Project Documents) in violation of this Agreement, then City will have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including reasonable attorneys' fees, to the extent caused by or incurred as a result of Consultant's conduct.
- 10.4** Consultant must promptly notify City should Consultant, its officers, or employees be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the services performed under this Agreement. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite such response.
- 10.5** All media and press releases, including graphic display information, must be approved and distributed solely by City, unless otherwise agreed to in writing by City. All media interviews

regarding the performance of services under this Agreement are prohibited unless expressly authorized by City.

Section 11. Consultant's Books and Records.

- 11.1** Consultant must maintain all documents and records demonstrating or relating to Consultant's performance of services under this Agreement, including ledgers, books of account, invoices, vouchers, canceled checks, or other documents or records evidencing or relating to work, services, expenditures and disbursements charged to City under this Agreement. All financial documents or records must be maintained in accordance with generally accepted accounting principles and all other documents must be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by Consultant under this Agreement. All such documents or records must be maintained for at least three years following the final payment under this Agreement.
- 11.2** Any and all records or documents required to be maintained by this section must be made available for inspection, audit and copying, at any time during regular business hours, upon written request by City or its designated representative. Copies of such documents or records must be provided directly to City for inspection, audit and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, such documents and records must be made available at Consultant's address indicated for receipt of notices in this Agreement.
- 11.3** Where City has reason to believe that any of the documents or records required to be maintained by this section may be lost or discarded due to dissolution or termination of Consultant's business, City may, by written request, require that custody of such documents or records be given to a person or entity mutually agreed upon and that such documents and records thereafter be maintained by such person or entity at Consultant's expense. Access to such documents and records must be granted to City, as well as to its successors-in-interest and authorized representatives.

Section 12. Status of Consultant.

- 12.1** Consultant is and will at all times remain a wholly independent contractor and not an officer or employee of City. Consultant has no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City.
- 12.2** The personnel performing the services under this Agreement on behalf of Consultant will at all times be under Consultant's exclusive direction and control. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, will have control over the conduct of Consultant or any of Consultant's officers, employees or agents, except as provided in this Agreement. Consultant agrees that it will not at any time or in any manner represent that Consultant or any of Consultant's officers, employees or agents are in any manner officials, officers, or employees of City.
- 12.3** Neither Consultant, nor any of Consultant's officers, employees or agents, will obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim to any such rights or benefits.

Section 13. Compliance with Applicable Laws.

- 13.1 In General.** Consultant must use the standard of care in its profession to keep itself informed of and comply with applicable federal, state and local laws, statutes, codes, ordinances,

regulations and rules in effect during the term of this Agreement that apply to the services performed by Consultant.

- 13.2 Professional Licenses and Approvals.** Consultant agrees that it will, at its sole cost and expense, obtain and maintain in effect at all times during the term of this Agreement any licenses, permits, insurance and approvals that are legally required for Consultant to practice its profession.
- 13.3 Employment Laws.** Consultant agrees to comply with all applicable federal and state employment laws including those that relate to minimum hours and wages, occupational health and safety, and workers compensation insurance. Consultant further represents that it is an equal opportunity employer and in performing services under this Agreement agrees to comply with all applicable federal and state laws governing equal opportunity employment, and further agrees that it will not discriminate in the employment of persons to perform services under this Agreement on the basis of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation of any such person, except as may be permitted by California Government Code section 12940.

Section 14. Unauthorized Aliens.

Consultant agrees to comply with all of the applicable provisions of the Federal Immigration and Nationality Act (8 U.S.C. § 1101 *et seq.*), as it may be amended, and further agrees not to employ unauthorized aliens as defined under the Act. Should Consultant employ any unauthorized aliens for the performance of any work or services covered by this Agreement, and should any liability or sanctions be imposed against City for the use of unauthorized aliens, Consultant agrees to reimburse City for the amount of all such liabilities or sanctions imposed, together with any and all related costs, including attorneys' fees, incurred by City.

Section 15. Conflicts of Interest.

- 15.1** Consultant covenants that neither Consultant, nor any officer, principal or employee of its firm, has or will, acquire any interest, directly or indirectly, that would conflict in any manner with the interests of City or that would in any way hinder Consultant's performance of services under this Agreement. Consultant's attention is directed to the conflict of interest rules applicable to governmental decision-making contained in the Political Reform Act (California Government Code Section 87100 and following) and its implementing regulations (California Code of Regulations, Title 2, Section 18700 *et seq.*), and California Government Code section 1090.
- 15.2** Consultant covenants that neither Consultant, nor any officer, principal or employee of its firm will make, participate in the making, or in any way attempt to use the position of Consultant to influence any decision of the City in which Consultant knows or has reason to know that Consultant, or any officer, principal or employee of Consultant has any of the financial interests listed in Government Code section 87103.
- 15.3** If Consultant discovers that it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement, Consultant must promptly disclose the relationship to City and take such action as City may direct to remedy the conflict.
- 15.4** City understands and acknowledges that Consultant is, as of the Effective Date, independently involved in the performance of non-related services for other governmental agencies and private parties. Consultant represents that, except as otherwise disclosed to City, it is unaware of any stated position of City relative to these projects. Any future position of City on these projects will not be considered a conflict of interest for purposes of this section.

Section 16. Indemnification.

- 16.1** The parties agree that City should, to the fullest extent permitted by law, be defended, indemnified, and held harmless from all Services Claims and Operations Claims (defined below) related to the performance by Consultant of this Agreement. Accordingly, the provisions of this section are intended by the parties to be interpreted and construed to provide the City with the fullest protection possible under the law. Consultant acknowledges that City would not enter into this Agreement in the absence of Consultant's commitment to defend, indemnify, and hold harmless City as set forth in this section.
- 16.2** For the purposes of this section, "City" includes City's officers, officials, employees, and volunteers, and "Consultant" includes Consultant's officers, officials, employees, and subcontractors and any other persons for whom Consultant is legally responsible.
- 16.3** With respect to the performance of professional services under this Agreement where the law establishes a professional standard of care for such services, Consultant agrees to indemnify, and hold harmless City from and against all liabilities, damages, and losses, including but not limited to reimbursement of reasonable attorney's fees and all other costs of defense, to the extent caused by the negligence, recklessness, or willful misconduct of Consultant (collectively, "Services Claims").
- 16.4** With respect to the acts and operations of Consultant under this Agreement other than the performance of professional services, Consultant agrees to defend, indemnify, and hold harmless City from and against any and all claims, liabilities, damages, losses, and costs including but not limited to reasonable attorney's fees and all other costs of defense, to the extent caused, in whole or in part, by the negligence, recklessness, or willful misconduct of Consultant, and excepting only those claims, damages, liabilities, losses, and costs caused by City's sole negligence or willful misconduct (collectively, "Operations Claims").
- 16.5** Consultant must notify City within five days of receipt of notice of any Operations Claims or Services Claims made or legal action initiated that arises out of or pertains to Consultant's performance of services under this Agreement. Consultant's duty to defend Operations Claims is a separate and distinct obligation from Consultant's duty to indemnify City for any Operations Claims.
- 16.6** With respect to Operations Claims, Consultant is obligated to defend City in legal, equitable proceedings with counsel reasonably approved by City upon tender to Consultant of an Operations Claim in any form or at any stage of an action or proceeding, whether or not liability is established. Only a final determination that persons other than Consultant are fully responsible for the Operations Claim will relieve Consultant from its separate and distinct obligation to defend under this section. The obligation to defend extends through final judgment, including exhaustion of any appeals.
- 16.7** Consultant agrees that settlement of any Operations or Services Claim against City requires the consent of City. City agrees that its consent will not be unreasonably withheld provided that Consultant is financially able (based on demonstrated assets including insurance) to fulfill its obligation to indemnify City for the costs of any such settlement as required under this Agreement.
- 16.8** The insurance required to be maintained by Consultant under this Agreement is intended to ensure Consultant's obligations under this section, but the limits of such insurance do not limit the liability of Consultant.
- 16.9** Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth in this section from each subcontractor or any other person or entity involved by, for,

with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity obligations from others as required, Consultant will be fully responsible for all obligations under this section. City's failure to monitor compliance with this requirement imposes no additional obligations on City and will in no way act as a waiver of any rights under this Agreement.

16.10 The parties acknowledge and agree that design professionals are required to defend and indemnify the City only to the extent permitted by Civil Code section 2782.8, which limits claims to those that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the design professional. The term "design professional," is defined in Section 2782.8, and includes licensed architects, licensed landscape architects, registered professional engineers, professional land surveyors and the business entities that offer such services in accordance with the applicable provisions of the Business and Professions Code. The parties further acknowledge and agree that the provisions of this Section 16 are to be interpreted and applied to the fullest extent permitted by Civil Code section 2782.8.

16.11 The provisions of this section will survive the expiration or earlier termination of this Agreement in accordance with the applicable provisions of Exhibit C ("Insurance").

Section 17. Insurance.

Consultant agrees to obtain and maintain in full force and effect during the term of this Agreement the insurance coverages listed in Exhibit C ("Insurance"), which is made a part of this Agreement. All insurance policies are subject to approval by City as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the City Manager or City Attorney.

Section 18. Assignment.

The expertise and experience of Consultant are material considerations for this Agreement. City has an interest in the qualifications of and capability of the persons and entities that will fulfill the duties and obligations imposed upon Consultant under this Agreement. In recognition of that interest, Consultant may not assign or transfer this Agreement or any portion of this Agreement or the performance of any of Consultant's duties or obligations under this Agreement without the prior written consent of City, which may be withheld in the City's sole discretion. Any attempted assignment will be null and void, and will constitute a material breach of this Agreement entitling City to any and all remedies at law or in equity, including summary termination of this Agreement.

Section 19. Default; Limitations on Liability.

19.1 In the event that Consultant is in default under the terms of this Agreement, City will have no obligation or duty to continue compensating Consultant for any services performed after City provides written notice to Consultant of such default.

19.2 Consultant agrees that no City official, officer, employee or agent will be personally liable to Consultant in the event of any default or breach of City, or for any amount which may become due to Consultant, or for any obligations directly or indirectly incurred under this Agreement. City agrees that no Consultant official, officer, or employee will be personally liable to City in the event of any default or breach of Consultant, or for any obligations directly or indirectly incurred under this Agreement.

19.3 City's liability under this Agreement is limited to payment of Consultant in accordance with the terms of this Agreement and excludes any liability whatsoever for consequential or indirect damages even if such damages are foreseeable.

Section 20. Termination of Agreement.

- 20.1** City may terminate this Agreement, with or without cause, at any time by written notice of termination to Consultant. In the event such notice is given, Consultant must cease immediately all work and services in progress.
- 20.2** Consultant may terminate this Agreement at any time upon 30 days prior written notice of termination to City.
- 20.3** Upon termination of this Agreement by either Consultant or City, all property belonging to City that is in Consultant's possession must be returned to City. Consultant must promptly deliver to City a final invoice for all outstanding services performed and expenses incurred by Consultant as of the date of termination. Compensation for work in progress not based on an hourly rate will be prorated based on the percentage of work completed as of the date of termination.
- 20.4** Consultant acknowledges City's rights to terminate this Agreement as provided in this section, and hereby waives any and all claims for damages that might otherwise arise from City's termination of this Agreement. Any reuse of Consultant documents will be at City's own risk, as set forth in Section 9.1 of this Agreement.

Section 21. Notices.

- 21.1** All written notices required or permitted to be given under this Agreement will be deemed made when received by the other party at its respective address as follows:

To City:

City of Rolling Hills Estates
 4045 Palos Verdes Drive North
 City of Rolling Hills Estates, CA 90274
 Attention: Alexa Davis, Assistant City Manager

(Tel.) (310) 377-1577 x101
 (Fax) (310) 377-4468
 (E-Mail) alexad@ci.rolling-hills-estates.ca.us

To Consultant:

Roesling Nakamura Terada Architects, Inc.
 363 Fifth Ave Ste. 202
 San Diego, CA 92101
 Ralph Roesling, FAIA, Principal Architect
 Rick España, AICP, Project Manager

(Tel.) (619) 233-1023
 (E-Mail) espana@rntarchitects.com

- 21.2** Notice will be deemed effective on the date personally delivered or electronically transmitted by facsimile. If the notice is mailed, notice will be deemed given three days after deposit of the same in the custody of the United States Postal Service, postage prepaid, for first class delivery, or upon delivery if using a major courier service with tracking capabilities.
- 21.3** Any party may change its notice information by giving notice to the other party in compliance with this section.


Section 22. General Provisions.

- 22.1 Authority to Execute; Counterparts.** Each party represents and warrants that all necessary action has been taken by such party to authorize the undersigned to execute this Agreement and to bind it to the performance of its obligations hereunder. This Agreement may be executed in several counterparts, each of which will constitute one and the same instrument and will become binding upon the parties when at least one copy has been signed by both parties.
- 22.2 Entire Agreement.** This Agreement, including the attached Exhibits A through C, is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed in this Agreement and supersedes all other agreements or understandings, whether oral or written, between Consultant and City prior to the execution of this Agreement.
- 22.3 Binding Effect.** This Agreement is binding upon the heirs, executors, administrators, successors and assigns of the parties.
- 22.4 Modification of Agreement.** No amendment to or modification of this Agreement will be valid unless made in writing and approved by Consultant and by the City Council or City Manager, as applicable. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver will be void.
- 22.5 Electronic Signatures.** This Agreement and any amendment will be considered executed when the signature page of a party is delivered by facsimile or other electronic transmission. Such electronic signatures will have the same effect as an original signature.
- 22.6 Waiver.** Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement will not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement will not constitute a waiver of any other provision, or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any services by Consultant will not constitute a waiver of any of the provisions of this Agreement.
- 22.7 Interpretation.** This Agreement will be interpreted, construed and governed according to the laws of the State of California. Each party has had the opportunity to review this Agreement with legal counsel. The Agreement will be construed simply, as a whole, and in accordance with its fair meaning. It will not be interpreted strictly for or against either party.
- 22.8 Severability.** If any term, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement will not be affected and the Agreement will be read and construed without the invalid, void or unenforceable provision.

22.9 Venue. In the event of litigation between the parties, venue in will be exclusively in a state court in the County of Los Angeles.

THE UNDERSIGNED AUTHORIZED REPRESENTATIVES OF the parties hereby execute this Agreement as follows:

CITY OF ROLLING HILLS ESTATES



Greg Grammer, City Manager

ATTEST:



Lauren Pettit, City Clerk


APPROVED AS TO FORM:



Donald M. Davis, City Attorney

CONSULTANT:

Roesling, Nakamura, Terada Architects, Inc. a California Corporation



Ralph Roesling, Principal-in-Charge

EXHIBIT A
SCOPE OF SERVICES
[SEE ATTACHMENT]

EXHIBIT B

KEY PERSONNEL & COMPENSATION

1. Consultant's designated representative who is authorized to act on its behalf and to make all decisions in connection with the performance of services under this Agreement is Ralph Roesling.
2. Total compensation under this Agreement, including reimbursement for actual expenses, may not exceed: **\$234,895 for A/E Phase II Design Fees as detailed in Exhibit A and \$5,000 in reimbursable expenses.**

EXHIBIT C**INSURANCE**

1. **Required Insurance.** Before commencing any services, Consultant must procure and maintain in full force and effect during the term of this Agreement the following types of insurance with at least the minimum coverage listed and subject to the applicable additional requirements set forth below:

<u>Type of Insurance</u>	<u>Limits (combined single)</u>
Commercial General Liability	\$1,000,000
Business Automobile Liability	\$1,000,000
Workers' Compensation	Statutory Requirements
Professional Liability	\$1,000,000

2. **Insurance Rating.** All insurance required to be maintained by Consultant must be issued by companies licensed by or admitted to conduct insurance business in the State of California by the California Department of Insurance and must have a rating of A or better and Class VII or better by the latest edition of A.M. Best's Key Rating Guide, unless otherwise approved by the City's legal counsel.
3. **Commercial General Liability Insurance.** The commercial general liability insurance must meet or exceed the requirements of Insurance Services Office (ISO) form CG 00 01, and must be in an amount not less than \$1,000,000 per occurrence for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. The insurance must be on an "occurrence" not a "claims made" basis. Defense costs must be paid in addition to limits. There must be no cross-liability exclusion for claims or suits by one insured against another. The insurance must include a waiver of subrogation applicable to the insurance or self-insurance, a primary and non-contributory endorsement, and an additional insured endorsement, all in favor of the City, its officers, agents, employees and volunteers.
4. **Business Automobile Insurance.** The business automobile insurance coverage must be at least as broad as ISO Business Auto Coverage form CA 00 01, covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with the services to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident. Such insurance must include both a waiver of subrogation applicable to the insurance or self-insurance, and a primary and non-contributory endorsement, both in favor of the City, its officers, agents, employees and volunteers.
5. **Workers' Compensation.** Consultant must maintain workers' compensation insurance (statutory limits) and employer's liability insurance (with limits of at least \$1,000,000). Such insurance must include a waiver of subrogation endorsement in favor of City, its officers, agents, employees and volunteers.
6. **Professional Liability (Errors & Omissions) Insurance.** The professional liability insurance must cover the services to be performed under this Agreement and must be in an amount not less than \$1,000,000. The coverage must be provided on a "claims made" basis. Consultant must maintain continuous coverage through a period not less than three years after the completion of the services required under this Agreement.
7. **Umbrella or Excess Liability Insurance.** If an excess or umbrella liability policy is used to meet minimum limit requirements, the insurance must provide coverage at least as broad as specified

for the underlying coverages. Any such coverage provided under an umbrella or excess liability policy must include a "drop-down provision" requiring the policy to respond in the event that any primary insurance that would otherwise have applied proves to be uncollectable in whole or in part for any reason. Coverage must be provided on a "pay-on-behalf" basis, with defense costs payable in addition to policy limits. There may be no cross-liability exclusion precluding coverage for claims or suits by one insured against another. The policy must "follow form" to the underlying primary policy. Coverage must be applicable to all insureds under the primary policies. The scope of coverage provided is subject to approval of City following receipt of the required proof of insurance. Limits are subject to review, but in no event may be less than \$4,000,000 per occurrence and aggregate.

8. **Deductibles and Self-Insured Retention.** Any deductibles or self-insured retentions applicable to the insurance policies required under this Agreement must be declared to and approved by City. In no event may any required insurance policy have a deductible, self-insured retention or other similar policy provision in excess of \$50,000 without prior written approval by City in its sole discretion. At the option of City, either the insurer will reduce or eliminate such deductibles or self-insured retentions with respect to the City's additional insureds or Consultant will procure a bond guaranteeing payment of any losses, damages, expenses, costs or settlements up to the amount of such deductibles or self-insured retentions.
9. **Certificates of Insurance and Endorsements; Notice of Termination or Changes to Policies.** Prior to commencing any services under this Agreement, Consultant must file with the City certificates of insurance and endorsements evidencing the existence of all insurance required by this Agreement, along with such other evidence of insurance or certified copies of policies as may reasonably be required by City. These certificates of insurance and endorsements must be in a form approved by the City's legal counsel. Consultant must maintain current certificates and endorsements on file with City during the term of this Agreement reflecting the existence of all required insurance. Each of the certificates must expressly provide that no material change in the policy, or termination or cancellation of the required coverage, will be effective except upon 30 days' prior written notice to City by certified mail, return receipt requested. The delivery to City of any certificates of insurance or endorsements that do not comply with the requirements of this Agreement will not waive the City's right to require compliance. In the event that Consultant's policies are materially changed, Consultant must provide the City with at least 30 days' prior written notice of the applicable changes.
10. **Failure to Maintain Required Insurance.** If Consultant, for any reason, fails to have in place at all times during the term of this Agreement all of the required insurance coverage, the City may, but is not obligated to, obtain such coverage at Consultant's expense and deduct the cost from the sums due Consultant. Alternatively, City may terminate the Agreement.
11. **Effect of Coverage.** The existence of the required insurance coverage under this Agreement will not be deemed to satisfy or limit Consultant's indemnity obligations under this Agreement. Consultant acknowledges that the insurance coverage and policy limits set forth in this Agreement constitute the minimum coverage and policy limits required. Should any coverage carried by the Consultant or any subcontractor of any tier have limits of liability that exceed the limits or have broader coverage than required in this Agreement, those higher limits and that broader coverage are deemed to apply for the benefit of any person or organization included as an additional insured and those limits and broader coverage will become the required minimum limits and insurance coverage in all sections of this Agreement. Any insurance proceeds available to City in excess of the limits and coverages required by this Agreement, and which is applicable to a given loss, must be made available to City to compensate it for such losses.

12. **Right to Revise Insurance Specifications.** City reserves the right to change the amounts and types of insurance required by giving Consultant at least 90 days' advance written notice of such change. If such change results in substantial additional cost to Consultant, the parties may renegotiate Consultant's compensation.

13. **Timely Notice of Claims.** Consultant must give City prompt notice of claims made of lawsuits initiated that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability insurance policies.



April 29, 2024

ROLLING HILLS ESTATES GEORGE F CANYON NATURE CENTER
BUILDING DESIGN – ADDITIONAL SERVICES A/E SCOPE OF WORK PROPOSAL

CLIENT	The City of Rolling Hills Estates 4045 Palos Verde Drive North Rolling Hills Estates, 90274
ARCHITECT	Roesling Nakamura Terada Architects, Inc. 363 Fifth Ave Ste. 202 San Diego, CA 92101 Ralph Roesling, FAIA, Principal Architect Rick España, AICP, Project Manager
PROJECT SCOPE	A/E Services for Final Design Services: Additional services for design bid documents, support, and construction administration.

Additional Services Description

This Additional Services Proposal is for additional design services to support ongoing design and construction support efforts for Rolling Hills Estates for the new George F Canyon Nature Center building project. The base Scope of Work is per the June 14, 2021 Revision 1 proposal and related project agreement with The City of Rolling Hills Estates.

ADDITIONAL SERVICES INCLUDE TASKS:

- 1) Additional design coordination services to work with the City’s Construction Manager. Services include attending pre-construction weekly meetings set up by the CM and includes added bid document preparation coordination time.
- 2) Additional time needed to provide project support during an estimated 18-month construction schedule. This allows RNT to provide continued assistance beyond the base 100 hours being provided in the current proposal.

A fee spreadsheet is provided separately and attached to this. RNT can proceed with the above additional scope of work per your written notice to proceed while a contract amendment is being prepared and executed.

A handwritten signature in blue ink, appearing to read 'Rick España'.

Rick Espana, AICP Principal
Roesling Nakamura Terada Architects



City of Rolling Hills Estates

PROFESSIONAL SERVICES AGREEMENT

With

UltraSystems Environmental

Effective Date: May 14, 2024

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PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT (“**Agreement**”) is effective as of May 14, 2024 (“**Effective Date**”), and is between the City of Rolling Hills Estates, a California municipal corporation and general law city (“**City**”) and UltraSystems Environmental, a California corporation (“**Consultant**”).

Section 1. Term of Agreement.

Subject to the provisions of Section 20 [Termination of Agreement], the term of this Agreement will be for a period commencing on the Effective Date and will terminate upon the completion of Consultant’s services.

Section 2. Scope and Performance of Services.

- 2.1** Consultant agrees to perform the services set forth in Exhibit A [Scope of Services], which is made a part of this Agreement.
- 2.2** Consultant will furnish all of the labor, technical, administrative, professional and other personnel, all supplies and materials, equipment, printing, vehicles, transportation, office space and facilities, and all tests, testing and analyses, calculations, and all other means whatsoever, except as otherwise expressly specified in this Agreement, necessary to perform the services required of Consultant under this Agreement.
- 2.3** Consultant’s designated representative(s) who are authorized to act on its behalf and to make all decisions in connection with the performance of services under this Agreement are listed in Exhibit B [Key Personnel & Compensation], which is made a part of this Agreement.
- 2.4** Consultant must make every reasonable effort to maintain the stability and continuity of Consultant’s key personnel and subcontractors, if any, listed in Exhibit B to perform the services required under this Agreement. Consultant must notify City and obtain City’s written approval with respect of any changes in key personnel prior to the performance of any services by replacement personnel.
- 2.5** Consultant must obtain City’s prior written approval before utilizing any subcontractors to perform any services under this Agreement. This written approval must include the identity of the subcontractor and the terms of compensation.
- 2.6** Consultant represents that it has the qualifications, experience and facilities necessary to properly perform the services required under this Agreement in a thorough, competent and professional manner. Consultant will at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described in this Agreement. In meeting its obligations under this Agreement, Consultant must employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of Consultant under this Agreement.
- 2.7** City may inspect and accept or reject any of Consultant’s work under this Agreement, either during performance or when completed. Acceptance of any of Consultant’s work by City will not constitute a waiver of any of the provisions of this Agreement.

- 2.8** The Consultant must maintain any work site in the City in a safe condition, free of hazards to persons and property resulting from its operations.

Section 3. Additional Services and Changes in Services.

- 3.1** Consultant will not be compensated for any services rendered in connection with its performance of this Agreement that are in addition to or outside of those set forth in the Scope of Services or otherwise required by this Agreement, unless such additional services are authorized in advance and in writing by City.
- 3.2** If Consultant believes that additional services are needed to complete the Scope of Services, Consultant will provide the City Manager with written notification describing the proposed additional services, the reasons for such services, and a detailed proposal regarding cost.
- 3.3** City may order changes to the Scope of Services, consisting of additions, deletions, or other revisions, and the compensation to be paid Consultant will be adjusted accordingly. All such changes must be authorized in writing, and executed by Consultant and City. The cost or credit to City resulting from changes in the services will be determined by the written agreement between the parties.

Section 4. Familiarity with Services and Site.

- 4.1** By executing this Agreement, Consultant represents that Consultant:
- (a) has thoroughly investigated and considered the Scope of Services to be performed;
 - (b) has carefully considered how the services should be performed;
 - (c) understands the facilities, difficulties, and restrictions attending performance of the services under this Agreement; and
 - (d) possesses all licenses required under local, state or federal law to perform the services contemplated by this Agreement, and will maintain all required licenses during the performance of this Agreement.
- 4.2** If services involve work upon any site, Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, before commencing its services. Should Consultant discover any latent or unknown conditions that may materially affect the performance of services, Consultant will immediately inform City of such fact and will not proceed except at Consultant's own risk until written instructions are received from City.

Section 5. Compensation and Payment.

- 5.1** Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in Exhibit B ("Key Personnel & Compensation"). The total compensation, including reimbursement for actual expenses, may not exceed the amount set forth in Exhibit B, unless additional compensation is approved in writing by City.
- 5.2** The use of subconsultants will not be considered a reimbursable expense, and such costs must be applied towards the approved budgeted amount.

- 5.3** Each month during the term of this Agreement, Consultant must furnish City with an original invoice for all services performed and expenses incurred during the preceding month in accordance with the fee schedule set forth in Exhibit B. The invoice must detail charges by the following categories: labor (by subcategory), reimbursable costs, subcontractor contracts and miscellaneous expenses. The invoice must list, as applicable, the hours worked and hourly rates for each personnel category, the tasks performed, the percentage of the task completed during the billing period, the cumulative percentage completed for each task, and the total cost of the services. If applicable, the invoice must also provide a budget summary including the total amounts previously invoiced and paid, the current invoice amount and the budget remaining.
- 5.4** City will review each invoice submitted by Consultant to determine whether the work performed and expenses incurred are in compliance with this Agreement. In the event that no charges or expenses are disputed, the invoice will be approved and paid. In the event any charges or expenses are disputed by City, the invoice will be returned by City to Consultant for correction and resubmission.
- 5.5** Except as to any charges for work performed or expenses incurred by Consultant that are disputed by City, City will cause Consultant to be paid within 30 days of receipt of Consultant's invoice.
- 5.6** Payment to Consultant for services performed under this Agreement may not be deemed to waive any defects in the services performed by Consultant, even if such defects were known to City at the time of payment.
- 5.7** City reserves the right to withhold future payment to Consultant if any aspect of the Consultant's work is found substantially inadequate.

Section 6. Required Documentation Prior to Performance.

- 6.1** Consultant may not perform any services under this Agreement until:
- (a) Consultant furnishes proof of insurance as required under Exhibit C;
 - (b) Consultant provides City with a Taxpayer Identification Number;
 - (c) Consultant obtains a City business tax certificate and license, if applicable, and provides proof of compliance; and
 - (d) City gives Consultant a written notice to proceed.
- 6.2** The City will have no obligation to pay for any services rendered by Consultant in advance of receiving written authorization to proceed, and Consultant acknowledges that any such services are at Consultant's own risk.

Section 7. Time of Performance; Excusable Delays; Extensions.

- 7.1** Consultant must adhere to all schedules and deadlines set forth in this Agreement.

- 7.2** Consultant will not be liable for damages, including liquidated damages, if any, caused by delay in performance or failure to perform due to causes beyond the control of Consultant. Such causes include, but are not limited to, acts of God, acts of terrorism, acts of federal, state or local governments, acts of City, court orders, fires, floods, epidemics, strikes, embargoes, and unusually severe weather.
- 7.3** If Consultant is delayed by any cause beyond Consultant's control, City may grant, but is not required to, a time extension for the completion of services. If delay occurs, Consultant must notify City within 48 hours, in writing, of the cause and the extent of the delay and how such delay interferes with Consultant's performance of services.

Section 8. Cooperation by City.

All public information, data, reports, records, and maps as are existing and available to City as public records, and which are necessary for carrying out the Scope of Services will be furnished to Consultant in every reasonable way to facilitate, without undue delay, the services to be performed under this Agreement.

Section 9. Project Documents.

- 9.1** All original computer programs, data, designs, drawings, files, maps, memoranda, models, notes, photographs, reports, studies, surveys and other documents (collectively, "**Project Documents**") prepared, developed or discovered by Consultant in the course of providing services under this Agreement will become the sole property of City and may be used, reused or otherwise disposed of by City without the permission of Consultant. Consultant will take such steps as are necessary to perfect or protect the ownership interest of City in such Project Documents. Upon completion, expiration or termination of this Agreement or upon request by City, Consultant must turn over to City all such original Project Documents in its possession; provided, however, that Consultant may retain copies of Project Documents. City acknowledges and agrees that use of Consultant's completed work product, for purposes other than identified in this Agreement, or use of incomplete work product, is at City's own risk. If necessary, Consultant agrees to execute all appropriate documents to assign to City the copyright or intellectual property rights to the Project Documents created pursuant to this Agreement.
- 9.2** Except as necessary for the performance of services under this Agreement, no Project Documents prepared under this Agreement, will be released by Consultant to any other person or entity without City's prior written approval.

Section 10. Confidential Information; Release of Information.

- 10.1** All information gained or work product produced by Consultant in performance of this Agreement will be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant may not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the City Manager, except as may be required by law.
- 10.2** Consultant, its officers, employees, or agents, may not, without prior written authorization from the City Manager or unless requested by the City Attorney of City, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the services performed under this Agreement. Response to a

subpoena or court order will not be considered “voluntary” provided Consultant gives City notice of such court order or subpoena.

- 10.3** If Consultant, or any officer, employee, or agent of Consultant, provides any information or work product (including Project Documents) in violation of this Agreement, then City will have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorneys fees, to the extent caused by or incurred as a result of Consultant’s conduct.
- 10.4** Consultant must promptly notify City should Consultant, its officers, employees, or agents be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the services performed under this Agreement. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite such response.
- 10.5** All media and press releases, including graphic display information, must be approved and distributed solely by City, unless otherwise agreed to in writing by City. All media interviews regarding the performance of services under this Agreement are prohibited unless expressly authorized by City.

Section 11. Consultant’s Books and Records.

- 11.1** Consultant must maintain all documents and records demonstrating or relating to Consultant’s performance of services under this Agreement, including ledgers, books of account, invoices, vouchers, canceled checks, or other documents or records evidencing or relating to work, services, expenditures and disbursements charged to City under this Agreement. All financial documents or records must be maintained in accordance with generally accepted accounting principles and all other documents must be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by Consultant under this Agreement. All such documents or records must be maintained for at least three years following the final payment under this Agreement.
- 11.2** Any and all records or documents required to be maintained by this section must be made available for inspection, audit and copying, at any time during regular business hours, upon written request by City or its designated representative. Copies of such documents or records must be provided directly to City for inspection, audit and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, such documents and records must be made available at Consultant’s address indicated for receipt of notices in this Agreement.
- 11.3** Where City has reason to believe that any of the documents or records required to be maintained by this section may be lost or discarded due to dissolution or termination of Consultant’s business, City may, by written request, require that custody of such documents or records be given to a person or entity mutually agreed upon and that such documents and records thereafter be maintained by such person or entity at Consultant’s expense. Access to such documents and records must be granted to City, as well as to its successors-in-interest and authorized representatives.

Section 12. Status of Consultant.

- 12.1** Consultant is and will at all times remain a wholly independent contractor and not an officer or employee of City. Consultant has no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City.
- 12.2** The personnel performing the services under this Agreement on behalf of Consultant will at all times be under Consultant's exclusive direction and control. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, will have control over the conduct of Consultant or any of Consultant's officers, employees or agents, except as provided in this Agreement. Consultant agrees that it will not at any time or in any manner represent that Consultant or any of Consultant's officers, employees or agents are in any manner officials, officers, or employees of City.
- 12.3** Neither Consultant, nor any of Consultant's officers, employees or agents, will obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim to any such rights or benefits.

Section 13. Compliance with Applicable Laws.

- 13.1 In General.** Consultant must use the standard of care in its profession to keep itself informed of and comply with all federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this Agreement that apply to the services performed by Consultant.
- 13.2 Professional Licenses and Approvals.** Consultant agrees that it will, at its sole cost and expense, obtain and maintain in effect at all times during the term of this Agreement any licenses, permits, insurance and approvals that are legally required for Consultant to practice its profession.
- 13.3 Employment Laws.** Consultant agrees to comply with all applicable federal and state employment laws including those that relate to minimum hours and wages, occupational health and safety, and workers compensation insurance. Consultant further represents that it is an equal opportunity employer and in performing services under this Agreement agrees to comply with all applicable federal and state laws governing equal opportunity employment, and further agrees that it will not discriminate in the employment of persons to perform services under this Agreement on the basis of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation of any such person, except as may be permitted by California Government Code section 12940.

Section 14. Unauthorized Persons.

Consultant agrees to comply with all of the applicable provisions of the Federal Immigration and Nationality Act (8 U.S.C. § 1101 *et seq.*), as it may be amended, and further agrees not to employ unauthorized persons as defined under the Act. Should Consultant employ any unauthorized persons for the performance of any work or services covered by this Agreement, and should any liability or sanctions be imposed against City for the use of unauthorized persons, Consultant agrees

to reimburse City for the amount of all such liabilities or sanctions imposed, together with any and all related costs, including attorneys' fees, incurred by City.

Section 15. Conflicts of Interest.

- 15.1** Consultant covenants that neither Consultant, nor any officer, principal or employee of its firm, has or will acquire any interest, directly or indirectly, that would conflict in any manner with the interests of City or that would in any way hinder Consultant's performance of services under this Agreement. Consultant's attention is directed to the conflict of interest rules applicable to governmental decision-making contained in the Political Reform Act (California Government Code Section 87100 and following) and its implementing regulations (California Code of Regulations, Title 2, Section 18700 et seq.), and California Government Code section 1090.
- 15.2** Consultant covenants that neither Consultant, nor any officer, principal or employee of its firm will make, participate in the making, or in any way attempt to use the position of Consultant to influence any decision of the City in which Consultant knows or has reason to know that Consultant, or any officer, principal or employee of Consultant has any of the financial interests listed in Government Code section 87103.
- 15.3** If Consultant discovers that it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement, Consultant must promptly disclose the relationship to City and take such action as City may direct to remedy the conflict.
- 15.4** City understands and acknowledges that Consultant is, as of the Effective Date, independently involved in the performance of non-related services for other governmental agencies and private parties. Consultant represents that, except as otherwise disclosed to City, it is unaware of any stated position of City relative to these projects. Any future position of City on these projects will not be considered a conflict of interest for purposes of this section.

Section 16. Indemnification.

- 16.1** The parties agree that City should, to the fullest extent permitted by law, be defended, indemnified, and held harmless from all Services Claims and Operations Claims (defined below) related to the performance by Consultant of this Agreement. Accordingly, the provisions of this section are intended by the parties to be interpreted and construed to provide the City with the fullest protection possible under the law. Consultant acknowledges that City would not enter into this Agreement in the absence of Consultant's commitment to defend, indemnify, and hold harmless City as set forth in this section.
- 16.2** For the purposes of this section, "City" includes City's officers, officials, employees, agents and volunteers, and "Consultant" includes Consultant's officers, officials, employees, agents and subcontractors and any other persons for whom Consultant is legally responsible.
- 16.3** With respect to the performance of professional services under this Agreement where the law establishes a professional standard of care for such services, Consultant agrees to indemnify, and hold harmless City from and against all liabilities, damages, losses, and costs, including but not limited to reimbursement of reasonable attorney's fees and all other costs of defense, to the extent caused by the negligence, recklessness, or willful misconduct of Consultant (collectively, "**Services Claims**").

- 16.4** With respect to the acts and operations of Consultant under this Agreement other than the performance of professional services, Consultant agrees to defend, indemnify, and hold harmless City from and against any and all claims, liabilities, damages, losses, and costs, including but not limited to reasonable attorney's fees and all other costs of defense, to the extent caused, in whole or in part, by the negligence, recklessness, or willful misconduct of Consultant, and excepting only those claims, damages, liabilities, losses, and costs caused by City's sole negligence or willful misconduct (collectively, "**Operations Claims**").
- 16.5** Consultant must notify City within five days of receipt of notice of any Operations Claims or Services Claims made or legal action initiated that arises out of or pertains to Consultant's performance of services under this Agreement.
- 16.6** Consultant's duty to defend Operations Claims is a separate and distinct obligation from Consultant's duty to indemnify City for any Operations Claims. With respect to Operations Claims, Consultant is obligated to defend City in all legal, equitable, administrative, or special proceedings, with counsel reasonably approved by City, immediately upon tender to Consultant of an Operations Claim in any form or at any stage of an action or proceeding, whether or not liability is established. An allegation or determination that persons other than Consultant are responsible for the Operations Claim does not relieve Consultant from its separate and distinct obligation to defend under this section. The obligation to defend extends through final judgment, including exhaustion of any appeals..
- 16.7** Consultant agrees that settlement of any Operations or Services Claim against City requires the consent of City. City agrees that its consent will not be unreasonably withheld provided that Consultant is financially able (based on demonstrated assets including insurance) to fulfill its obligation to indemnify City for the costs of any such settlement as required under this Agreement.
- 16.8** The insurance required to be maintained by Consultant under this Agreement is intended to ensure Consultant's obligations under this section, but the limits of such insurance do not limit the liability of Consultant.
- 16.9** Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth in this section from each subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity obligations from others as required, Consultant will be fully responsible for all obligations under this section. City's failure to monitor compliance with this requirement imposes no additional obligations on City and will in no way act as a waiver of any rights under this Agreement.
- 16.10** The parties acknowledge and agree that design professionals are required to defend and indemnify the City only to the extent permitted by Civil Code section 2782.8, which limits claims to those that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the design professional. The term "design professional," is defined in Section 2782.8, and includes licensed architects, licensed landscape architects, registered professional engineers, professional land surveyors and the business entities that offer such services in accordance with the applicable provisions of the Business and Professions Code. The parties further acknowledge and agree that the provisions of this Section 16 are to be interpreted and applied to the fullest extent permitted by Civil Code section 2782.8.

16.11 The provisions of this section will survive the expiration or earlier termination of this Agreement in accordance with the applicable provisions of Exhibit C [Insurance].

Section 17. Insurance.

Consultant agrees to obtain and maintain in full force and effect during the term of this Agreement the insurance coverages listed in Exhibit C ("Insurance"), which is made a part of this Agreement. All insurance policies are subject to approval by City as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the City Manager or City Attorney.

Section 18. Assignment.

The expertise and experience of Consultant are material considerations for this Agreement. City has an interest in the qualifications of and capability of the persons and entities that will fulfill the duties and obligations imposed upon Consultant under this Agreement. In recognition of that interest, Consultant may not assign or transfer this Agreement or any portion of this Agreement or the performance of any of Consultant's duties or obligations under this Agreement without the prior written consent of City, which may be withheld in the City's sole discretion. Any attempted assignment will be null and void, and will constitute a material breach of this Agreement entitling City to any and all remedies at law or in equity, including summary termination of this Agreement.

Section 19. Default; Limitations on Liability.

- 19.1** In the event that Consultant is in default under the terms of this Agreement, City will have no obligation or duty to continue compensating Consultant for any services performed after City provides written notice to Consultant of such default.
- 19.2** Consultant agrees that no City official, officer, employee or agent will be personally liable to Consultant in the event of any default or breach of City, or for any amount which may become due to Consultant, or for any obligations directly or indirectly incurred under this Agreement.
- 19.3** City's liability under this Agreement is limited to payment of Consultant in accordance with the terms of this Agreement and excludes any liability whatsoever for consequential or indirect damages even if such damages are foreseeable.

Section 20. Termination of Agreement.

- 20.1** City may terminate this Agreement, with or without cause, at any time by written notice of termination to Consultant. In the event such notice is given, Consultant must cease immediately all work and services in progress.
- 20.2** Consultant may terminate this Agreement at any time upon 30 days prior written notice of termination to City.
- 20.3** Upon termination of this Agreement by either Consultant or City, all property belonging to City that is in Consultant's possession must be returned to City. Consultant must promptly deliver to City a final invoice for all outstanding services performed and expenses incurred by Consultant as of the date of termination. Compensation for work in progress not based on an hourly rate will be prorated based on the percentage of work completed as of the date of termination.

- 20.4** Consultant acknowledges City's rights to terminate this Agreement as provided in this section, and hereby waives any and all claims for damages that might otherwise arise from City's termination of this Agreement.

Section 21. Notices.

- 21.1** All written notices required or permitted to be given under this Agreement will be deemed made when received by the other party at its respective address as follows:

To City: City of Rolling Hills Estates
4045 Palos Verdes Drive North
City of Rolling Hills Estates, CA 90274
Attention: David Wahba, Public Works Director

(Tel.) (310) 377-1577, ext. 103
(Fax) (310) 377-4468
(E-Mail) DavidW@RollingHillsEstates.gov

To Consultant: UltraSystems Environmental
16431 Scientific Way
Irvine, CA 92618

Attention: Betsy A Lindsay, President/CEO

(Tel.) (949) 788-4900, ext. 227
(Fax) (949) 788-4901
(E-mail) blindsay@ultrasystems.com

- 21.2** Notice will be deemed effective on the date personally delivered or electronically transmitted by facsimile. If the notice is mailed, notice will be deemed given three days after deposit of the same in the custody of the United States Postal Service, postage prepaid, for first class delivery, or upon delivery if using a major courier service with tracking capabilities.
- 21.3** Any party may change its notice information by giving notice to the other party in compliance with this section.

Section 22. General Provisions.

- 22.1 Authority to Execute; Counterparts.** Each party represents and warrants that all necessary action has been taken by such party to authorize the undersigned to execute this Agreement and to bind it to the performance of its obligations hereunder. This Agreement may be executed in several counterparts, each of which will constitute one and the same instrument and will become binding upon the parties when at least one copy has been signed by both parties.
- 22.2 Entire Agreement.** This Agreement, including the attached Exhibits A through C, is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed in this Agreement and supersedes all other agreements or understandings, whether oral or written, between Consultant and City prior to the execution of this Agreement.

- 22.3 Binding Effect.** This Agreement is binding upon the heirs, executors, administrators, successors and assigns of the parties.
- 22.4 Modification of Agreement.** No amendment to or modification of this Agreement will be valid unless made in writing and approved by Consultant and by the City Council or City Manager, as applicable. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver will be void.
- 22.5 Electronic Signatures.** This Agreement and any amendment will be considered executed when the signature page of a party is delivered by facsimile or other electronic transmission. Such electronic signatures will have the same effect as an original signature.
- 22.6 Waiver.** Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement will not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement will not constitute a waiver of any other provision, or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any services by Consultant will not constitute a waiver of any of the provisions of this Agreement.
- 22.7 Interpretation.** This Agreement will be interpreted, construed and governed according to the laws of the State of California. Each party has had the opportunity to review this Agreement with legal counsel. The Agreement will be construed simply, as a whole, and in accordance with its fair meaning. It will not be interpreted strictly for or against either party.
- 22.8 Severability.** If any term, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement will not be affected and the Agreement will be read and construed without the invalid, void or unenforceable provision.
- 22.9 Venue.** In the event of litigation between the parties, venue in will be exclusively in a state court in the County of Los Angeles.

[Signatures on the following page.]

THE UNDERSIGNED AUTHORIZED REPRESENTATIVES OF the parties hereby execute this Agreement as follows:

CITY OF ROLLING HILLS ESTATES

Greg Grammer, City Manager

ATTEST:

Lauren Pettit, City Clerk

APPROVED AS TO FORM:

Donald M. Davis, City Attorney

CONSULTANT:

UltraSystems Environmental, a California Corporation

By _____
Name: Betsy A. Lindsay
Title: President/CEO

By _____
Name: Betsy A. Lindsay
Title: Secretary

EXHIBIT A

SCOPE OF SERVICES

[Attached]

EXHIBIT B

KEY PERSONNEL & COMPENSATION

- 1. Consultant’s designated representative(s) who are authorized to act on its behalf and to make all decisions in connection with the performance of services under this Agreement are: Betsy A. Lindsay, Michelle Tollet, Michael Lindsay, Michael Rogozen, Steve O’Neil, and Hina Gupta.
- 2. Total compensation under this Agreement, including reimbursement for actual expenses, may not exceed: **\$50,201**.

FEE SCHEDULE

(See Attached Schedule)

SUBCONSULTANTS:

Name	Title/Position	Rate (Per Hour)
NONE		

EXHIBIT C**INSURANCE**

1. **Required Insurance.** Before commencing any services, Consultant must procure and maintain in full force and effect during the term of this Agreement the following types of insurance with at least the minimum coverage listed and subject to the applicable additional requirements set forth below:

<u>Type of Insurance</u>	<u>Limits (combined single)</u>
Commercial General Liability	\$1,000,000
Business Automobile Liability	\$1,000,000
Workers' Compensation	Statutory Requirements
Professional Liability	\$1,000,000

2. **Insurance Rating.** All insurance required to be maintained by Consultant must be issued by companies licensed by or admitted to conduct insurance business in the State of California by the California Department of Insurance and must have a rating of A or better and Class VII or better by the latest edition of A.M. Best's Key Rating Guide, unless otherwise approved by the City's legal counsel.
3. **Commercial General Liability Insurance.** The commercial general liability insurance must meet or exceed the requirements of Insurance Services Office (ISO) form CG 00 01, and must be in an amount not less than \$1,000,000 per occurrence for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. The insurance must be on an "occurrence" not a "claims made" basis. Defense costs must be paid in addition to limits. There must be no cross-liability exclusion for claims or suits by one insured against another. The insurance must include a waiver of subrogation applicable to the insurance or self-insurance, a primary and non-contributory endorsement, and an additional insured endorsement, all in favor of the City, its officers, agents, employees and volunteers.
4. **Business Automobile Insurance.** The business automobile insurance coverage must be at least as broad as ISO Business Auto Coverage form CA 00 01, covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with the services to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident. Such insurance must include both a waiver of subrogation applicable to the insurance or self-insurance, and a primary and non-contributory endorsement, both in favor of the City, its officers, agents, employees and volunteers.
5. **Workers' Compensation.** Consultant must maintain workers' compensation insurance (statutory limits) and employer's liability insurance (with limits of at least \$1,000,000). Such insurance must include a waiver of subrogation endorsement in favor of City, its officers, agents, employees and volunteers.
6. **Professional Liability (Errors & Omissions) Insurance.** The professional liability insurance must cover the services to be performed under this Agreement and must be in an amount not less than \$1,000,000. The coverage must be provided on a "claims made" basis. Consultant must maintain continuous coverage through a period not less than three years after the completion of the services required under this Agreement.

7. **Umbrella or Excess Liability Insurance.** If an excess or umbrella liability policy is used to meet minimum limit requirements, the insurance must provide coverage at least as broad as specified for the underlying coverages. Any such coverage provided under an umbrella or excess liability policy must include a “drop-down provision” requiring the policy to respond in the event that any primary insurance that would otherwise have applied proves to be uncollectable in whole or in part for any reason. Coverage must be provided on a “pay-on-behalf” basis, with defense costs payable in addition to policy limits. There may be no cross-liability exclusion precluding coverage for claims or suits by one insured against another. The policy must “follow form” to the underlying primary policy. Coverage must be applicable to all insureds under the primary policies. The scope of coverage provided is subject to approval of City following receipt of the required proof of insurance. Limits are subject to review, but in no event may be less than \$4,000,000 per occurrence and aggregate.
8. **Deductibles and Self-Insured Retention.** Any deductibles or self-insured retentions applicable to the insurance policies required under this Agreement must be declared to and approved by City. In no event may any required insurance policy have a deductible, self-insured retention or other similar policy provision in excess of \$50,000 without prior written approval by City in its sole discretion. At the option of City, either the insurer will reduce or eliminate such deductibles or self-insured retentions with respect to the City’s additional insureds or Consultant will procure a bond guaranteeing payment of any losses, damages, expenses, costs or settlements up to the amount of such deductibles or self-insured retentions.
9. **Certificates of Insurance and Endorsements; Notice of Termination or Changes to Policies.** Prior to commencing any services under this Agreement, Consultant must file with the City certificates of insurance and endorsements evidencing the existence of all insurance required by this Agreement, along with such other evidence of insurance or certified copies of policies as may reasonably be required by City. These certificates of insurance and endorsements must be in a form approved by the City’s legal counsel. Consultant must maintain current certificates and endorsements on file with City during the term of this Agreement reflecting the existence of all required insurance. Each of the certificates must expressly provide that no material change in the policy, or termination or cancellation of the required coverage, will be effective except upon 30 days’ prior written notice to City by certified mail, return receipt requested. The delivery to City of any certificates of insurance or endorsements that do not comply with the requirements of this Agreement will not waive the City’s right to require compliance. In the event that Consultant’s policies are materially changed, Consultant must provide the City with at least 30 days’ prior written notice of the applicable changes.
10. **Failure to Maintain Required Insurance.** If Consultant, for any reason, fails to have in place at all times during the term of this Agreement all of the required insurance coverage, the City may, but is not obligated to, obtain such coverage at Consultant’s expense and deduct the cost from the sums due Consultant. Alternatively, City may terminate the Agreement.
11. **Effect of Coverage.** The existence of the required insurance coverage under this Agreement will not be deemed to satisfy or limit Consultant’s indemnity obligations under this Agreement. Consultant acknowledges that the insurance coverage and policy limits set forth in this Agreement constitute the minimum coverage and policy limits required. Should any coverage carried by the Consultant or any subcontractor of any tier have limits of liability that exceed the limits or have broader coverage than required in this Agreement, those higher limits and that broader coverage are deemed to apply for the benefit of any person or organization included as an additional insured and those limits and broader coverage will become the required minimum

limits and insurance coverage in all sections of this Agreement. Any insurance proceeds available to City in excess of the limits and coverages required by this Agreement, and which is applicable to a given loss, must be made available to City to compensate it for such losses.

12. **Right to Revise Insurance Specifications.** City reserves the right to change the amounts and types of insurance required by giving Consultant at least 90 days' advance written notice of such change. If such change results in substantial additional cost to Consultant, the parties may renegotiate Consultant's compensation.
13. **Timely Notice of Claims.** Consultant must give City prompt notice of claims made of lawsuits initiated that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability insurance policies.

❖ **Technical Proposal** ❖

April 8, 2024

David Wahba, Director of Public Works
City of Rolling Hills Estates
4045 Palos Verdes Drive North
Rolling Hills Estates, CA 90274
E: DavidW@RollingHillsEstates.gov

VIA EMAIL

**Subject: Proposal to Provide Biological, Cultural Resources for the
George F. Canyon Nature Center and Stein/Hale Nature Trail - REVISED**

Dear Mr. Wahba:

UltraSystems Environmental Inc. (UltraSystems) is pleased to provide the City of Rolling Hills Estates (City) with our proposal to you to prepare a biological, cultural, and tribal monitoring for the George F. Canyon Nature Center and Stein/Hale Nature Trail. Our work will include the Mitigation Measures that were approved by the City for this project.

As noted in the Construction Documents, a new Nature Center of 2,024 sq. ft. is planned, along with a new single-story gallery/lecture building and a new outdoor learning deck that will have a retractable shade awing. There will also be some improvements to the existing parking lot and a new ADA Ramp Boardwalk area.

The Nature Center is a popular destination for hikers, equestrian riders, and bicyclists. It includes a total lot area of 132, 197 sq. ft. The total site area is 27,921 sq. ft. The park is located at 2500 Palos Verdes Drive N., with the City of Rolling Hills Estates, CA.

1.0 ABOUT ULTRASYSTEMS

For over **30 years**, UltraSystems has provided consulting services to public agencies and private clients throughout Southern California, preparing over **7,000** environmental reports, engineering studies and other technical studies for clients. We are confident that our arborist experience, coupled with our senior-level in-house professional and technical resources, will result in high quality, legally defensible documentation for the project.

QUALIFICATIONS OF THE PERSONNEL ASSIGNED TO THE PROJECT

Key technical staff information is provided below.

NAME	ROLE ON THE PROJECT	YEARS EXP.	YEARS with FIRM
Michelle Tollett, BS, ISA Senior Biologist	Project Manager – She will manage all field work relating to this project.	22	9
Matthew Sutton, BS Field Biologist	Biological Resources	16	9
Steve O’Neil, MA Cultural Resources Archaeologist	Cultural Resources	40	14

❖ **Technical Proposal** ❖

NAME	ROLE ON THE PROJECT	YEARS EXP.	YEARS with FIRM
Stephen Chesterman, BEng GIS Analyst	Provide GIS Analysis, maps and figures.	15	7

KEY TECHNICAL MANAGER

Presented below are brief bios of Michelle Tollett, the proposed Senior Project Manager, who will manage the work assignment.

MICHELLE TOLLETT, BS, ISA | *Senior Biologist – Contact with the Client*



Ms. Tollett is a senior biological resources scientist with **22 years** of environmental consulting experience in the public sectors within Southern California. Her responsibilities include regulatory compliance, biological constraints surveys, habitat suitability assessments, wetland and waters delineations, California Rapid Assessment Method (CRAM) surveys, and focused special-status species surveys. She has participated in and completed over 200 projects with a variety of management responsibilities, from planning to post-construction phases of projects.

Ms. Tollett has diverse experience with the regulatory framework and field identification necessary for the preparation of biological reports and environmental documents to meet due diligence needs for NEPA and CEQA, FESA and CESA, invasive species control, waterway permitting, mitigation monitoring and planning, construction monitoring and post-construction restoration and reporting. Ms. Tollett has experience with a variety of projects ranging from simple to complex within riparian, wetland, coastal sage scrub, chaparral, coniferous forest, desert and other native ecosystems throughout Southern California. She has extensive experience working with the County of San Bernardino on numerous biological surveys, permitting, and regulatory work for public agencies and private developers.

EDUCATION

B.A., Botany and Environmental Science; University of Montana

PROFESSIONAL CERTIFICATIONS AND AFFILIATIONS

- ISA Certified Arborist (WE-12103A)
- State Water Resources Control Board certified California Rapid Assessment Method (CRAM) Instructor, October 2015
- California Naturalist, Tejon Ranch Conservancy, September 2014
- Certified Caulerpa taxifolia Surveyor, National Marine Fisheries Service, 2013, renewed 2014
- Certified Volunteer Naturalist, Newport Bay Conservancy 10-week Naturalist Training, 2012
- Western Pond Turtle Workshop, Elkhorn Slough Coastal Training Program, 2012
- Learning California Bird Sounds Workshop, Sea and Sage Audubon Org, Huntington Beach, 2012
- Flat-tailed Horned Lizard Training, Southwest Partners in Amphibian and Reptile Conservation

❖ **Technical Proposal** ❖

- Certified CRAM Assessor, California Rapid Assessment Method (CRAM) Training, 2012
- Western Spadefoot Toad (*Spea hammondi*) research, USGS and Cal State Fullerton, 2011-2012
- Scientific Collection Permit, California Department of Fish and Game
- Wetland Regional Seminar and Field Practicum Training, Wetland Training Institute, Certificate 2011
- Difficult Wetland Situations Seminar Training, Wetland Training Institute, Certificate 2011
- Desert Tortoise Surveying, Monitoring, and Handling Techniques Workshop, November 2011
- Birds of Southern California 10-week course, Sea and Sage Audubon, Sylvia Gallagher Instructor, 2011
- Western Mountains and their Birds Workshop, Sea and Sage Audubon Org, Huntington Beach, 2011
- Basic Wetland Delineation Training (40-hour), Wetland Training Institute, Certificate 2005
- 24-hour HazCom Hazardous Materials Training, Certificate 2004

2.0 WORK SCOPE

Our work scope will follow the Mitigation Measures laid out in the MMRP for this project. They include the following:

Biological Resources Mitigation Measures

BIO-1: Preconstruction Botanical Clearance Surveys, Avoidance, and Mitigation. Within ten (10) days prior to the start of any vegetation removal during the Project construction, a qualified biologist shall conduct a botanical clearance survey for special-status plant species, including lemonade berry shrub in the areas where direct vegetation disturbance would occur. If special-status plant species are detected, the biologist shall work with the construction contractor to identify a means to avoid disturbing the plant(s). In the case of the lemonade berry shrub on the Project site, the qualified biologist shall work with the construction contractor to identify the extent of impacts to sensitive lemonade berry shrub habitat under the Project acres and oversee installation of construction fencing to protect lemonade berry shrub habitat that would not be removed under the biologist. The biologist will then work with the construction contractor and Preserve staff to identify a suitable location within the Preserve where lemonade berry shrubs that require removal can be replanted. Transplanted lemonade berry shrubs would be maintained and monitored as needed by Preserve staff to support long-term establishment of transplanted lemonade berry shrubs.

BIO-2: Workers Environmental Awareness Program (WEAP) Training. Prior to initiating Project activities, a qualified biologist shall prepare and present WEAP training for all contractors, subcontractors, and workers expected to be on-site throughout the entire construction period. The WEAP shall include a brief review of any special-status species and vegetation communities (e.g., Cooper's hawk, Coulter's matilija poppy, lemonade berry scrub), including habitat requirements and where they might be found, and other sensitive biological resources that could occur in and adjacent to the survey area. The WEAP shall also include a summary of the biological mitigation measures listed in the Project's approved Mitigation Monitoring and Reporting Program, as well as applicable conditions and provisions of any associated environmental permits, including but not limited to preconstruction biological surveys, installation of perimeter sediment and erosion control best management practices, and any recurrent nesting bird surveys (as needed).

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BIO-3: Preconstruction Nesting Bird and Coastal California Gnatcatcher (CAGN) Surveys. If Project-related activities are to be initiated during the nesting season (January 1 to September 15), a preconstruction nesting bird clearance survey shall be conducted by a qualified biologist within seven (7) days prior to the start of any vegetation removal or ground-disturbing activities in a buffer up to 500 feet from the nature center site, subject to the discretion of the surveying biologist. To ensure the greatest protection to CAGN in the event that CAGN occur on-site in the future, the survey should be conducted by a qualified biologist with demonstrable experience identifying CAGN nesting behavior and finding their nests, and who has been approved by the US Fish and Wildlife Service (USFWS) to conduct a CAGN nesting survey. The qualified biologist shall survey all suitable nesting habitat within the Project impact area, and areas within a biologically defensible buffer zone surrounding the Project impact area. If an active CAGN nest is found during the survey, no Project-related construction will be allowed within 500 feet of an active CAGN nest, or within an alternative safe distance as determined by the qualified biologist based on topography, visual shielding, nest progress, and the type of construction and associated disturbance, until the active nest has been determined by the qualified biologist to have failed or the young have successfully fledged and are no longer reliant on the nest. For other species, if an active bird nest is found, the species shall be identified, and a “no-disturbance” buffer shall be established around the active nest. The size of the “no-disturbance” buffer shall be increased or decreased based on the judgement of the qualified biologist and level of activity and sensitivity of the species. The qualified biologist shall periodically monitor any active bird nests to determine if project-related activities occurring outside the “no-disturbance” buffer disturb the birds and if the buffer shall be increased. Once the young have fledged and left the nest, or the nest otherwise becomes inactive under natural conditions, project activities within the “no-disturbance” buffer may occur following an additional survey by the qualified biologist to search for any new bird nests in the restricted area. If no active bird nests are detected during the clearance survey, Project activities may begin, and no additional avoidance and minimization measures shall be required.

Results of the nesting bird survey shall be compiled in a report and submitted to the City and to the USFWS for the project record.

Cultural Resources Measures – OPTIONAL, IF NEEDED

Measure CUL-1: Inadvertent Discovery of Archaeological Resources. In the event that any subsurface cultural resources are encountered during earth-moving activities, it is recommended that all work within 50 feet be halted until a qualified archaeologist evaluates the findings and makes recommendations. Prehistoric materials can include flaked-stone tools (e.g., projectile points, knives, choppers) or obsidian, chert, or quartzite toolmaking debris; culturally darkened soil (i.e., midden soil often containing heat-affected rock, ash, and charcoal, shellfish remains, and cultural materials); and stone milling equipment (e.g., mortars, pestles, handstones). Historical materials might include wood, stone, or concrete footings, walls, and other structural remains; debris-filled wells or privies; and deposits of wood, metal, glass, ceramics, and other refuse. The archaeologist may evaluate the find in accordance with State and local guidelines, including those set forth in the California Public Resources Code Section 21083.2, to assess the significance of the find and identify avoidance or other measures as appropriate. If suspected prehistoric or historical archaeological deposits are discovered during construction, all work within the immediate area of the discovery shall be redirected and the find shall be evaluated by a qualified archaeologist meeting the Secretary of the Interior’s Professional Qualifications Standards for archaeology.

If the archaeologist determines that the resource is prehistoric or otherwise Native American in origin or potential significance, then consulting Native American tribes will be contacted to obtain their input

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as to the significance and treatment of the find. Based on the recommendations of the qualified archaeologist and the results of consultation with Native American governments, the City of Rolling Hills Estates shall make a determination, in its discretion and supported by substantial evidence, whether the find is significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1 and therefore constitutes a tribal cultural resource. If the City determines the resource is significant, then a plan of treatment shall be prepared and implemented by the qualified archaeologist as informed by the City's consultation with interested Native American tribal governments.

Paleontological Resources Monitoring

GEO-1: Paleontological Resources Monitoring. The Project shall be monitored by a qualified professional paleontologist *during excavation into the Valmonte diatomite or native Pleistocene-age materials*. In the event that paleontological resources are encountered during earth-disturbing activities, all construction activities in the area of the find shall be temporarily halted and a qualified paleontologist shall evaluate the find to determine the appropriate treatment in accordance with Society for Vertebrate Paleontology guidelines for identification, evaluation, disclosure, avoidance, recovery, and/or curation, as appropriate. Any fossils recovered during mitigation shall be deposited to an accredited and permanent scientific institution. A qualified professional paleontologist is a professional with a graduate degree in paleontology, geology, or related field, with demonstrated experience in the vertebrate, invertebrate, or botanical paleontology of California, as well as at least one year of full-time professional experience, or equivalent specialized training in paleontological research (i.e., the identification of fossil deposits, application of paleontological field and laboratory procedures and techniques, and curation of fossil specimens), and at least four months of supervised field and analytic experience in general North American paleontology.

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3.0 FEE SCHEDULE

The following summary presents UltraSystems’ Fixed Rate/Percent Complete fees to prepare the Biological Resources MM Measure noted below. Any work outside of the scope presented above would be negotiated with City first, approved, and be billed in accordance with UltraSystems’ Standard Rate Schedule, **Table 3.0-2**.

Table 3.0-1
SUMMARY OF PROPOSED FEES - BASED ON T&M

Mitigation No.	Subject Area	Cost
BIO NO.	BIOLOGICAL RESOURCES MEASURES	
BIO-1	Preconstruction Botanical Clearance Surveys, Avoidance, and Mitigation	\$3,234
BIO-2	Workers Environmental Awareness Program (WEAP) Training	\$3,740
BIO-3	Preconstruction Nesting Bird and Coastal California Gnatcatcher (CAGN) Surveys	\$4,091
	Subtotal	\$11,065
CUL NO.	CULTURAL RESOURCES MEASURES - OPTIONAL	
CUL-1	Inadvertent Discovery of Archaeological Resources	\$5,028
	Subtotal	\$5,028
GEO NO.	PALEONTOLOGICAL RESOURCES MONITORING	
GEO-1	Paleontological Resources Monitoring - One Month/30 days	\$34,109
	Subtotal	\$34,109
	TOTAL COST (w/Optional Task)	\$50,201

Table 3.0-2
ULTRASYSTEMS STANDARD RATE SCHEDULE | EFFECTIVE JANUARY 2024

PROFESSIONAL STAFF	Hourly
Principal	\$185
Director	\$185
Senior Project Manager	\$175
Project Manager	\$170
Senior Principal Engineer	\$175
Senior Scientist/Engineer	\$165
Scientist/Engineer	\$150
Staff Scientist/Engineer	\$140
Senior Planner	\$150
Associate Planner	\$145
Planner/Environmental Analyst	\$140
Senior Biologist II	\$145
Senior Biologist I	\$140
Staff Biologist II	\$135
Staff Biologist I	\$130

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Associate Biologist	\$125
Cultural Specialist	\$140
Archaeologist	\$135
Cultural Monitor	\$110
Senior GIS Analyst	\$135
GIS Technician	\$125
Word Processor	\$110
Intern	\$75

Consultant support (printing, reproduction, and other direct expenses) will be billed at a rate of cost plus ten (10) percent. Automobile mileage will be charged at IRS standard rates. Travel time will be billed as indicated in the hourly rate schedule above.

Invoices will be submitted **monthly** for work in progress and at completion of contract obligations and are payable upon receipt. Fees not paid within thirty (30) days of invoice date may be assessed as an interest charge of one and one-half (1.5) percent per month, from the date due (net 30). Attorney fees and court costs incurred for collection of delinquent accounts will be borne by the client.

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Table 3.0-3
COST TABLE BREAKDOWN BY LABOR CATEGORIES

 TASK COST BREAKDOWN • ROLLING HILLS ESTATES - GEORGE F. CANYON NATURE CENTER												
Labor Categories >>>>		Senior Biologist II	Senior Biologist I	Staff Biologist I	Cultural Specialist	Archaeologist/Paleontologist	Word Processor	Total		Vehicle Travel		TOTAL (rounded)
Hourly Rate By Labor Category >>>>		\$145.00	\$130.00	\$130.00	\$140.00	\$135.00	\$110.00	Hours	Cost	Miles	\$0.670	
		Hours										
BIO NO.	BIOLOGICAL RESOURCES MEASURES											
BIO-1	Preconstruction Botanical Clearance Surveys, Avoidance, and Mitigation	0	12	12	0	0	0	24	\$3,120.00	170	\$113.90	\$3,234
BIO-2	Workers Environmental Awareness Program (WEAP) Training	12	12	0	0	0	4	28	\$3,740.00	0	\$0.00	\$3,740
BIO-3	Preconstruction Nesting Bird and Coastal California Gnatcatcher (CAGN) Surveys	24	0	0	0	0	4	28	\$3,920.00	255	\$170.85	\$4,091
	Subtotal	36	24	12	0	0	8	80	\$10,780.00	425	\$284.75	\$11,065
CUL NO.	CULTURAL RESOURCES MEASURES - OPTIONAL											
CUL-1	Inadvertent Discovery of Archaeological Resources	0	0	0	8	24	4	36	\$4,800.00	340	\$227.80	\$5,028
	Subtotal	0	0	0	8	24	4	36	\$4,800.00	340	\$227.80	\$5,028
GEO NO.	PALEONTOLOGICAL RESOURCES MONITORING											
GEO-1	Paleontological Resources Monitoring - One Month/30 days	0	0	0	0	240	0	240	\$32,400.00	2550	\$1,708.50	\$34,109
	Subtotal	0	0	0	0	240	0	240	\$32,400.00	2550	\$1,708.50	\$34,109
	TOTAL HOURS	36	24	12	8	264	12					
	TOTAL COST	\$5,220	\$3,120	\$1,560	\$1,120	\$35,640	\$1,320	356	\$47,980.00	3315	2221.05	\$50,201

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Should you have any questions concerning this report, please contact me at (949) 788-4900, ext. 227 at your convenience.

Sincerely,

ULTRASYSTEMS ENVIRONMENTAL INC.



Betsy A. Lindsay
President/ CEO

STANDARD RATE SCHEDULE

Effective January 2024

PROFESSIONAL STAFF	Hourly
Principal	\$185
Director	\$185
Senior Project Manager	\$175
Project Manager	\$170
Senior Principal Engineer	\$175
Senior Scientist/Engineer	\$165
Scientist/Engineer	\$150
Staff Scientist/Engineer	\$140
Senior Planner	\$150
Associate Planner	\$145
Planner/Environmental Analyst	\$140
Senior Biologist II	\$145
Senior Biologist I	\$140
Staff Biologist II	\$135
Staff Biologist I	\$130
Associate Biologist	\$125
Cultural Specialist	\$140
Archaeologist	\$135
Cultural Monitor	\$110
Senior GIS Analyst	\$135
GIS Technician	\$125
Word Processor	\$95
Intern	\$75

Building Services

Field Management	\$145
ACM Air Monitor/Lead Inspector/Sampling	\$88

Note: ACM/LBP Removal quoted per job basis

FIELD EQUIPMENT

	Daily	Weekly
Excavation Screen	\$5	\$20
Field Supplies (shovels, health and safety, flagging, binoculars, etc.)	\$15	\$60
Garmin GPS (non-Trimble)	\$5	\$20
iPad Data Tablet	\$25	\$100
Kestrel Anemometer (or equivalent)	\$5	\$20
Photoionization detector (PID) or equivalent	\$100	\$400
Quest SoundPro SP-DL-1-1/3 Sound Level Meter (or equivalent)	\$110	\$440
RKI GX-2003 Multi-Gas Meter (or equivalent)	\$65	\$260
Trimble Geo7x GPS Unit with Rangefinder (or equivalent)	\$120	\$560
XRF Analyzer	\$95	\$380

Consultant support (printing, reproduction and other direct expenses) will be billed at a rate of cost plus ten (10) percent. Automobile mileage will be charged at IRS standard rates. Travel time will be billed as indicated in the hourly rate schedule above.

Invoices will be submitted monthly for work in progress and at completion of contract obligations, and are payable upon receipt. Fees not paid within thirty (30) days of invoice date may be assessed an interest charge of one and one-half (1.5) percent per month, from the date due (net 30). Attorney fees and court costs incurred for collection of delinquent accounts will be borne by the client.



KIZH NATION RESOURCES MANAGEMENT
-A Native American Owned and Operated Small Minority Business-



NATIVE AMERICAN MONITORING SERVICE AGREEMENT

This agreement for Native American monitoring services is entered into on March 21, 2024 by and between, KIZH NATION RESOURCES MANAGEMENT (“KNRM”), and City of Rolling Hills Estates (“Lead Agency”) (collectively referred to as, the “Parties”), for the compliance of the development project located at 27305 Palos Verdes Dr E, Rolling Hills Estates, California 90274 (the “Project Site”), with the mitigation measures adopted by the Project lead agency, City of Rolling Hills pursuant to the California Environmental Quality Act (“CEQA”) (hereinafter, the “Project”).

RECITALS

WHEREAS, the Tribe consulted with the lead agency regarding the adverse impacts the Project will have on tribal cultural resources (“TCR”) at, on, and/or beneath the Project Site, and proposed mitigation measures to reduce those impacts below the threshold of significance as required by the California Environmental Quality Act (“CEQA”);

WHEREAS, the lead agency found that substantial evidence supported the adoption of the Tribe’s proposed TCR mitigation measures and made those mitigations mandatory conditions of the Project approval (collectively, the “Mitigations”);

WHEREAS, the purpose of this Agreement is for the protection and preservation of the Tribe’s TCRs and compliance of the Project with the adopted Mitigations, which are attached hereto as Exhibit A, and incorporated herein by this reference.

Accordingly, KNRM and City of Rolling Hills Estates hereby agree as follows:

[CONTINUED ON THE FOLLOWING PAGE]

MONITORING AGREEMENT

1. SCOPE OF WORK

- 1.1. KNRM's Native American monitor will be physically present on the Project Site at all times ground-disturbing Project activities are occurring. To implement the "tribal cultural resource" ("TCR") Mitigations adopted for this Project, KNRM's monitor shall:
- a) Monitor all "ground disturbing activities," including but not limited to, demolition, grubbing/clearing, rough grading, precise grading, mass grading, trenching, excavation, boring, augering, and weed abatement on previously disturbed and undisturbed ground;
 - b) Identify uncovered and/or discovered TCRs, including but not limited to Native American artifacts, village sites, trade routes, midden deposits, ceremonial locations, human remains, and grave goods (collectively referred to as, "TCR" or "TCRs");
 - c) Ensure all TCRs, especially human remains and associated grave goods, are treated with culturally appropriate dignity and respect, and are handled and/or removed from the Project Site in accordance with the Tribe's ceremonial and cultural practices ;
 - d) Attend and participate in Project meetings, including trainings and conferences, to inform Project personnel about the potential for TCR discoveries and the appropriate courses of action if/when a discovery occurs;
 - e) Create daily logs of observations made during monitoring, and provide written reports detailing each TCR discovery, including but not limited to, the date and time, location on the Project Site, nature of the soil in the discovery location, facts pertaining to the Project activities in that area, the location of the perimeter around the TCR discovery that the monitor establishes to protect the location, and any cultural findings; and
 - f) Report discoveries to the Tribal Chairman and/or the Tribal Archaeologist, and incorporate their input regarding the treatment of the TCR(s).
- 1.2. In order to fully and effectively execute the monitoring services identified in Section 1.1 above, the Parties agree that KNRM's monitor shall possess all of the following rights, which may be asserted at any time and at any location on the Project Site:
- a) To access any/all areas of the Project Site necessary to physically observe the "ground-disturbing activities", as that phrase is defined in Section 1.1(a) above, as those ground-disturbing activities are occurring;
 - b) To halt construction activity within the surrounding 50 feet (or more where deemed necessary by KNRM's monitor) of a discovered TCR;
 - c) To meet and confer with the Project Supervisor in a timely manner regarding how to re-direct Project activities in the vicinity of a discovered TCR and the time frame for imposing a no-work perimeter around a discovered TCR;
 - d) To meet and confer with the Project Supervisor in a timely manner regarding issues pertaining to effectively monitoring the Project Site in a manner that ensures compliance with the Mitigations;
 - e) To be timely notified of all Project meetings, including safety meetings, trainings, scheduling, etc., and permitted to attend any/all meetings; and
 - f) To be treated in a respectful and courteous manner by all Project management, staff, personnel, contractors, and subcontractors.

2. DISCOVERY OF NATIVE AMERICAN ARTIFACTS, GRAVE GOODS, AND/OR HUMAN REMAINS

- 2.1. If TCRs are found, the Tribe will retain it/them in the form and/or manner the Tribe deems appropriate, for educational purposes.
- 2.2. If human remains and/or grave goods are discovered or recognized at the Project Site, all damage or disturbance shall immediately cease, and the county coroner shall be notified per Public Resources Code Section 5097.98, and Health & Safety Code Section 7050.5. Human remains and grave/burial goods shall be treated alike per California Public Resources Code section 5097.98(d)(1) and (2).
- 2.3. The Lead Agency expressly acknowledges the obligations required of it under governing State and Federal laws, including but not limited to, the California Public Resources Code, California Health & Safety Code, California Government Code, and California Code of Regulations, in the event human remains are discovered on the Project Site, and expressly agrees to comply with all such obligations, and to the extent possible, obtain compliance of the property owner in the event human remains are discovered on the Project Site but on land not owned and/or controlled by the Lead Agency.
- 2.4. Pursuant to Public Resources Code Section 5097.98, subsections (d) and (e), if human remains or associated burial goods are found on the Project Site and in an area that is under the ownership and/or control of the Project Applicant, the Lead Agency agrees to provide a designated area on the property at which to reinter the remains and/or burial goods with appropriate dignity that is not subject to further disturbance.
- 2.5. In the event that human remains and/or burial goods are found within the Project Site but in an area that is outside of the ownership and/or control of the Project Applicant, the Lead Agency will make a reasonable effort to secure an agreement with the property owner to reinter the remains and/or burial goods with appropriate dignity in a designated area on the Project Site that is not subject to further disturbance, as is required of the property owner pursuant to Public Resources Code Section 5097.98, subsections (d) and (e). If such an agreement with the property owner cannot be reached, to the extent feasible, the Lead Agency will provide a designated area on the Project Site that is within the Project Applicant's ownership and/or control, for reinternment of the human remains and/or burial goods.
- 2.6. If the portion of the Project Site where human remains and/or burial goods are discovered is within the ownership and/or control of the Project Applicant, pursuant to Public Resources Code Section 5097.98(b), the Lead Agency shall ensure that the immediate area surrounding the discovery will be isolated and remain undisturbed until recommendations by the designated most likely descendent (within approximately 48-hours). The grading and excavation may continue outside of the isolated area.

3. FEES AND INVOICES

- 3.1. The Lead Agency agrees to pay KNRM for the above described monitoring services for the Project at the following rates:
 - a) The standard, day-time rate per monitor is one hundred dollars (\$100.00) per hour for an eight (8) hour day ("Standard Workday"). A night differential rate of \$110.00 per hour will

be applied for monitoring performed at or after 6 p.m. The night rate for monitoring that exceeds 8 hours per day, or 40 hours per week is \$165.00 per hour

- b) The rate for monitoring that exceeds 8 hours per day, or 40 hours per week is \$ 150.00 per hour.
 - c) The rate for monitoring performed on a Saturday or Sunday is \$150.00 per hour.
 - d) The rate for project management services, including but not limited to, consultant communications, monitor coordination, project documentation, is one hundred and Forty-five dollars (\$145) per hour;
 - e) The rate for Project Director services, including consultation, Project meetings and trainings, and communications, documentation, and coordination pertaining to compliance issues, is two hundred dollars (\$200) per hour;
 - f) The rate for KNRM's Compliance Officer Specialist (COS) is responsible for ensuring all projects are working in a safe, healthy, and professional work environment. The KNRM compliance officer performs project inspections to assess that project applicants and KNRM monitors are following all safety and environmental laws per Federal and State regulations at a rate of one hundred and Twenty dollars (\$120) per hour;
 - g) In the event TCRs are discovered (whether prehistoric or historic), a KNRM Archaeologist (who meets the Secretary of the Interior's standards for Professional Archaeology), shall be retained in addition to the monitor to assess the TCR, at a rate of one hundred and fifty dollars (\$150) per hour;
 - h) Mileage shall be reimbursed at the Federal Standard Rate for travel to and from the Project Site, to/from KNRM's office located at 910 N. Citrus Avenue, Covina, California;
 - i) Lodging is required if the monitor must travel 40 miles or more to the Project site, and is reimbursed at the rate of two-hundred dollars (\$200) per night; *and*
 - j) Per diem for meals at the rate of seventy-five dollars (\$75) per day.
- 3.2. If it is unreasonable for one monitor to fulfill their duties because Project Activities are occurring concurrently, at more than one location on the Project Site and at a distance impractical for a single monitor to serve simultaneously, then an additional monitor will be required at identical rates and on identical terms.
- 3.3. KNRM shall invoice Lead Agency for fees monthly. The Lead Agency shall make payment to KNRM not later than thirty (30) days following the invoice date (Net 30). An advance deposit is required from the Project Applicant, in an amount equal to twenty-five percent (25%) of the estimated cost budgeted for the Project, prior to any work performed by KNRM under this Agreement. Invoices not paid within 30 days of the invoice date are subject to a finance charge equal to ten percent (10%) of the monthly invoice total each additional month payment is not received. Checks shall be made payable to "Kizh Nation Resources Management" and mailed to:

Kizh Nation Resources Management
910 N. Citrus Ave
Covina, CA 91722

- 3.4. The Project Applicant's estimated hours of monitoring services utilized for the Project budget (if any) shall not constitute or be interpreted as a limitation on the monitoring services performed for this Project by KNRM if additional monitoring is necessary to satisfy the Project mitigations and conditions of approval.

4. NOTICE

- 4.1. To ensure there are no delays and to ensure a monitor is present onsite we request a minimum of 72 hours advance notice to assist with scheduling efforts (Although we are sensitive to last minute changes and we will try to accommodate). **Please submit your monitor requests to: KNRM Dispatch to knrmdispatch@gmail.com or text or call (626) 825-8248. For immediate assistance you may contact Andrew Salas (626) 926-4131. For archaeological services you can contact our Tribal Archaeologist John Torres at indigenous.crm@gmail.com or (909)705-6241.**
- 4.2. In the event a scheduled Standard Workday is canceled entirely or the hours are altered for any reason, the Lead Agency shall promptly notify KNRM no later than 5:00 p.m. PST on the business day prior to the altered day, at the "Contact Information" set forth in Section 5 below. If KNRM has not received timely notice of a schedule cancellation or change, a minimum fee of three hundred forty dollars (\$340.00) shall be applied per late cancellation event.
- 4.3. All communications pertaining to or that may impact KNRM's implementation of the services set forth in section 1 of this Agreement shall be made in writing and per the contact information in section 5 below.

5. CONTACT INFORMATION

5.1. Notices to KNRM:

Telephone - (626) 926-4131

KNRM Office - (626) 521-5827

Email: admin@knrm-nsn.us

5.2. Project Applicant:

Name: _____

Phone: _____

Email: _____

5.3. **On-Site Project Contact** (i.e., "Project Supervisor")

Name: _____

Phone: _____

Email: _____

5.4 Billing Contact information

Name: _____

Phone: _____

Email: _____

6. LIMITATION OF LIABILITY AND LIQUIDATED DAMAGES

- 6.1. Despite any language in this Agreement to the contrary, KNRM's obligations under this Agreement (including any actual or alleged breach or default by KNRM) do not constitute personal obligations of the individual partners, directors, officers, members or shareholders of KNRM or the Tribe, or the partners or members of KNRM or the Tribe. The Lead Agency shall not seek recourse against the individual partners, directors, officers, members or shareholders of KNRM or the Tribe, or any of their personal assets for satisfaction of any liability with respect to this Agreement.
- 6.2. In consideration of the benefits accruing hereunder to the Lead Agency and notwithstanding anything contained in this Agreement to the contrary, the Lead Agency hereby covenants and agrees for itself and all of its successors and assigns that the liability of KNRM and the Tribe for KNRM's obligations under this Agreement (including any liability as a result of any actual or alleged failure, breach or default hereunder by KNRM or any alleged tort committed in connection with KNRM's work), shall be limited solely to KNRM's insurance coverage as provided in Section 7 of this Agreement.
- 6.3. In the event the Lead Agency performs (directly or through a contractor, subcontractor, agent, representative or otherwise at the Project Applicant's direction) or allows to be performed ground-disturbing work without a monitor present in violation of Mitigations and in breach of this Agreement, KNRM will suffer substantial harm for which it is impracticable to fix actual damages. To limit or prevent further harm, the Lead Agency agrees and consents to the immediate issuance of a Stop Work Order by the Project lead agency, which shall stay in full force and effect unless and until the Parties resolve the non-compliance events and resulting damages.
- 6.4. In an effort to liquidate in advance the sum that should represent such damages and to avoid the additional costs Lead Agency will incur to remedy that breach by redoing all non-compliant ground-disturbing Project activities with a KNRM monitor present, Lead Agency agrees to pay KNRM a "Noncompliance Fee" equal to the cost of redoing all non-compliant ground-disturbing Project activities, plus KNRM's monitoring fees for monitoring those activities. You acknowledge that you have been given notice of this Noncompliance Fee and agree that such a fee is fair and reasonable.

7. INSURANCE

- 7.1. A certificate of general liability insurance coverage can be provided upon request.
- 7.2. KNRM does not hold an automobile liability policy for the monitors. Vehicles are only used for transportation to and from the Project Site. Each individual monitor is required to carry automobile

insurance pursuant to California State law. Proof of a monitor's automobile insurance can be provided upon request.

8. MISCELLANEOUS

- 8.1. **Governing Law.** This Agreement shall be governed by, and construed pursuant to, the laws of the state of California.
- 8.2. **Recitals.** All recitals set forth in this Agreement are contractual.
- 8.3. **Terms and Headings.** Section headings of this Agreement are for convenience, are merely descriptive, and do not alter the rights of the parties.
- 8.4. **Time.** Time is of the essence with respect to performance of every provision of this Agreement in which time or performance is a factor. All references in this Agreement to "days" shall mean calendar days unless specifically modified herein to be "business" days.
- 8.5. **Professional Fees.** If either KNRM or Lead Agency should bring suit against the other with respect to this Agreement, then all reasonable costs and expenses incurred by the prevailing party therein (including, without limitation, its accountants', attorneys', experts' and other professional's fees, expenses and court costs), shall be paid by the other party.
- 8.6. **Waiver.** The waiver by either party of any breach by the other party of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant and condition herein contained, nor shall any custom or practice which may become established between the Parties in the administration of the terms hereof be deemed a waiver of, or in any way affect, the right of any party to insist upon the performance by the other in strict accordance with said terms.
- 8.7. **Prior Agreements; Amendments.** This Agreement, contains all of the covenants, provisions, agreements, conditions and understandings between the Parties concerning the Project and any other matter covered or mentioned in this Agreement, and no prior agreement or understanding, oral or written, express or implied, pertaining to the Project or any such other matter shall be effective for any purpose. No provision of this Agreement may be amended or added to except by an agreement in writing signed by the Parties hereto or their respective successors in interest. The Parties acknowledge that all prior agreements, representations and negotiations are deemed superseded by the execution of this Agreement to the extent they are not expressly incorporated herein. The Parties hereto acknowledge and agree that each has participated in the negotiation and drafting of this Agreement; therefore, in the event of an ambiguity in, or dispute regarding the interpretation of, this Agreement, the interpretation of this Agreement shall not be resolved by any rule of interpretation providing for interpretation against the party who caused the uncertainty to exist or against the draftsman. Any deletion of language from this Agreement prior to its execution by the Parties shall not be construed to raise any presumption, canon of construction or implication, including, without limitation, any implication that the Parties intended thereby to state the converse of the deleted language.
- 8.8. **Separability.** The invalidity or unenforceability of any provision of this Agreement shall in no way affect, impair or invalidate any other provision hereof, and such other provisions shall remain valid and in full force and effect to the fullest extent permitted by law.
- 8.9. **Force Majeure.** In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, governmental moratorium or other governmental action or inaction (including failure, refusal or delay in issuing permits, approvals and/or authorizations), orders/closures/restrictions pertaining to COVID-19, injunction or court order, riots, insurrection, war, fire, earthquake, flood, inclement weather in excess of average for the Los Angeles County area or other natural disaster or other reason of a like nature not the fault of the

party delayed in performing work or doing acts required under the terms of this Agreement (herein collectively, "Force Majeure Delays"), then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay, provided the delayed party has notified the other party of the Force Majeure Delay within five (5) business days of learning of the same, such notice specifically describes the Force Majeure Delay and its expected duration, and the delayed party regularly updates the other party of the status of the same and the delayed party takes all commercially reasonable efforts to mitigate the effects and minimize the duration of the delay. The provisions of this Section 7.9 shall not apply to nor operate to excuse Lead Agency (or any third-party contractor operating on behalf of Lead Agency) from the payment of any fees owed to or the reimbursement of costs incurred by KNRM in accordance with the terms of this Agreement, nor extend the date for payment of same to KNRM.

8.10. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall be one and the same agreement. Facsimile and electronic signatures are valid and binding.

8.11. **Project Applicant’s Authority.** The agent/representative of the Lead Agency that executes this Agreement represents and warrants that: (a) the Lead Agency is qualified to do business in the state of California; (b) such persons executing this Agreement are duly authorized to execute and deliver this Agreement on the Project Applicant’s behalf, or a duly adopted resolution of the Project Applicant’s board of directors; and (c) this Agreement is binding upon the Lead Agency in accordance with its terms.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of _____, 2024.

“PROJECT APPLICANT”

[City of Rolling Hills Estates]

*By: _____

Print Name: _____

Print Title: _____

“KNRM”

KIZH NATION RESOURCES MANAGEMENT

*By: _____

Print Name: _____

Print Title: _____



Kizh Nation Resources Management Projected Cost Sheet

Project Name and Address:

27305 Palos Verdes Dr E, Rolling Hills Estates, California 90274

Name of Entity:

City of Rolling Hills Estates

Project Manager:

David Wahba

Director of Public Works

City of Rolling Hills Estates | 4045 Palos Verdes Drive North | Rolling Hills Estates | CA | 90274

310.377.1577 ext. 103 | DavidW@RollingHillsEstates.gov

Estimate Based on 30 Days of Ground Disturbance

• Native American Monitoring	\$100 x 240hrs	\$24,000.00
• Project Management (WEAP Training included)	\$145 x 30hrs	\$4,350.00
• KNRM's Compliance Officer Specialist (COS)	\$120 x 4 hrs	\$480.00
• Director	\$200 x 4hrs	\$800.00
• Roundtrip Mileage	84mi x 0.67 x 30 days	\$1,688.40
Total Projected Costs		\$31,318.40

This estimate is based on the number of days provided for anticipated Earth disturbance. The projected costs were based on 240 hours of anticipated field work.

The prices listed in the preceding table are an estimate for the services discussed. This summary is not a warranty of final price. Estimates are subject to change if project specifications are changed or if project requirements exceed the tasks specified above. Since assessments are subject to unknown variables such as the discovery of protected resources or change in project scope, a change order will be issued to cover the costs of additional work or inclusion of other tasks that may be necessary for project compliance purposes.

**Weekend Rates and Overt-time rates are not included in this estimate but will be applicable if necessary. These rates are found in Section 3.0 of the Monitoring Agreement document.*