



CITY OF ESCONDIDO
CONSULTING AGREEMENT

This Consulting Agreement ("Agreement") is made and entered into as of the last signature date set forth below ("Effective Date"),

Between: CITY OF ESCONDIDO
a California municipal corporation
201 N. Broadway
Escondido, CA 92025
Attn: Megan Crooks, Management Analyst II
760-839-4021
("CITY")

And: GLENN A. RICK ENGINEERING AND DEVELOPMENT CO.
a California corporation
5620 Friars Road
San Diego, CA 92110
Attn: Brooke Peterson
619-291-0707
("CONSULTANT").

(The CITY and CONSULTANT each may be referred to herein as a "Party" and collectively as the "Parties.")

WHEREAS, the CITY has determined that it is in the CITY's best interest to retain the professional services of a consultant to provide on-call services in the areas of storm water plan review, planning entitlement application review, environmental document review and planning policy expertise; and

WHEREAS, CONSULTANT is considered competent to perform the necessary professional services for the CITY; and

WHEREAS, the CITY and CONSULTANT desire to enter into this Agreement for the performance of the Services described herein.

NOW, THEREFORE, in consideration of the mutual covenants, promises, terms, and conditions set forth herein, and the mutual benefits derived therefrom, the Parties hereby agree as follows:

1. Description of Services. CONSULTANT shall furnish all of the Services described in the Scope of Work, which is attached to this Agreement as Attachment "A" and incorporated herein by this reference ("Services").

2. Compensation. In exchange for CONSULTANT's completion of the Services, the CITY shall pay, and CONSULTANT shall accept in full, an amount not to exceed the sum of **\$539,340**. CONSULTANT shall be compensated only for performance of the Services described in this Agreement. No compensation shall be provided for any other work or services without the CITY's prior written consent. If this Agreement is amended at any time, additional compensation of CONSULTANT contained in any subsequent amendments shall not exceed a cumulative total of 25% of the maximum payment provided for in this Section 2, unless approved by resolution of the City Council.
3. Performance. CONSULTANT shall faithfully perform the Services in a proficient manner, to the satisfaction of the CITY, and in accord with the terms of this Agreement. CONSULTANT shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all reports and other information furnished by CONSULTANT pursuant to this Agreement, except that CONSULTANT shall not be responsible for the accuracy of information supplied by the CITY.
4. Personnel. The performance of the Services by certain professionals is significant to the CITY. As such, CONSULTANT shall only assign the persons listed on Attachment "B", attached to this Agreement and incorporated herein by this reference ("Personnel List"), to perform the Services. CONSULTANT shall not add or remove persons from the Personnel List without the City's prior written consent. If CONSULTANT has not designated a person to perform a component of the Services, CONSULTANT shall not assign such component of the Services to a person without obtaining the City's prior written consent. CONSULTANT shall not subcontract any component of the Services without obtaining the City's prior written consent.
5. Termination. The Parties may mutually terminate this Agreement through a writing signed by both Parties. The CITY may terminate this Agreement for any reason upon providing CONSULTANT with 10 days' advance written notice. CONSULTANT agrees to cease all work under this Agreement on or before the effective date of any notice of termination. If the CITY terminates this Agreement due to no fault or failure of performance by CONSULTANT, then CONSULTANT shall be compensated based on the work satisfactorily performed at the time of such termination. In no event shall CONSULTANT be entitled to receive more than the amount that would be paid to CONSULTANT for the full performance of the Services.
6. City Property. All original documents, drawings, electronic media, and other materials prepared by CONSULTANT pursuant to this Agreement immediately become the exclusive property of the CITY, and shall not be used by CONSULTANT for any other purpose without the CITY's prior written consent.
7. Insurance Requirements.
 - a. CONSULTANT shall procure and maintain, at its own cost, during the entire term of this Agreement, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Services, and the results of such work, by CONSULTANT, its agents, representatives, employees, or subcontractors. Insurance coverage shall be at least as broad as the following:
 - (1) *Commercial General Liability.* Insurance Services Office ("ISO") Form CG 00 01 covering Commercial General Liability on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal & advertising injury, with limits no less than \$2,000,000 per occurrence and \$4,000,000 general aggregate.
 - (2) *Automobile Liability.* ISO Form CA 00 01 covering any auto (Code 1), or if CONSULTANT has no owned autos, hired (Code 8) and non-owned autos (Code 9), with limits no less than \$1,000,000 per accident for bodily injury and property damage, unless waived by the CITY and approved in writing by the CITY's Risk and Safety Division.

- (3) *Workers' Compensation.* Worker's Compensation as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease.
 - (4) *Professional Liability (Errors and Omissions).* Professional Liability (Errors and Omissions) appropriate to CONSULTANT's profession, with limits no less than \$2,000,000 per occurrence or claim and \$2,000,000 aggregate.
 - (5) If CONSULTANT maintains broader coverage and/or higher limits than the minimums otherwise required by this Agreement, the CITY requires and shall be entitled to the broader coverage and/or the higher limits maintained by CONSULTANT.
- b. Each insurance policy required by this Agreement must be acceptable to the City Attorney and shall meet the following requirements:
- (1) *Acceptability of Insurers.* Insurance coverage must be provided by an insurer authorized to conduct business in the state of California with a current A.M. Best's rating of no less than A-: FSC VII, or as approved by the CITY.
 - (2) *Additional Insured Status.* Both the Commercial General Liability and the Automobile Liability policies must name the CITY (including its officials, officers, agents, employees, and volunteers) specifically as an additional insured under the policy on a separate endorsement page. The Commercial General Liability additional insured endorsement shall be at least as broad as ISO Form CG 20 10 11 85, or if not available, through the addition of *both* CG 20 10, CG 20 26, CG 20 33, or CG 20 38, *and* CG 20 37 if a later edition is used. The Automobile Liability endorsement shall be at least as broad as ISO Form CA 20 01.
 - (3) *Primary Coverage.* CONSULTANT's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 with respect to the CITY, its officials, officers, agents, employees, and volunteers. Any insurance or self-insurance maintained by the CITY, its officials, officers, agents, employees, or volunteers shall be in excess of CONSULTANT's insurance and shall not contribute with it.
 - (4) *Notice of Cancellation.* Each insurance policy shall provide that coverage shall not be canceled, except with prior written notice to the CITY.
 - (5) *Subcontractors.* If applicable, CONSULTANT shall require and verify that all subcontractors maintain insurance meeting all the requirements stated within this Agreement, and CONSULTANT shall ensure that the CITY (including its officials, officers, agents, employees, and volunteers) is an additional insured on any insurance required from a subcontractor.
 - (6) *Waiver of Subrogation.* CONSULTANT hereby grants to the CITY a waiver of any right to subrogation that any insurer of CONSULTANT may acquire against the CITY by virtue of the payment of any loss under such insurance. CONSULTANT agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this subsection shall apply regardless of whether or not the CITY has received a waiver of subrogation endorsement from the insurer. Any Workers' Compensation policy required by this Agreement shall be endorsed with a waiver of subrogation in favor of the CITY for all work performed by the CONSULTANT, its agents, representatives, employees, and subcontractors.
 - (7) *Self-Insurance.* CONSULTANT may, with the CITY's prior written consent, fulfill some or all of the insurance requirements contained in this Agreement under a plan of self-insurance. CONSULTANT shall only be permitted to utilize such self-insurance if, in the opinion of the CITY, CONSULTANT's (i) net worth and (ii) reserves for payment of claims of liability against CONSULTANT are sufficient to adequately compensate for the lack of

other insurance coverage required by this Agreement. CONSULTANT's utilization of self-insurance shall not in any way limit the liabilities assumed by CONSULTANT pursuant to this Agreement.

(8) *Self-Insured Retentions*. Self-insured retentions must be declared to and approved by the CITY.

- c. *Verification of Coverage*. At the time CONSULTANT executes this Agreement, CONSULTANT shall provide the CITY with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting the insurance coverage required by this Agreement), which shall meet all requirements under this Agreement. The CITY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by this Agreement, at any time.
- d. *Special Risks or Circumstances*. The CITY reserves the right, at any point during the term of this Agreement, to modify the insurance requirements in this Agreement, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
- e. *No Limitation of Obligations*. The insurance requirements in this Agreement, including the types and limits of insurance coverage CONSULTANT must maintain, and any approval of such insurance by the CITY, are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by CONSULTANT pursuant to this Agreement, including but not limited to any provisions in this Agreement concerning indemnification.
- f. Failure to comply with any of the insurance requirements in this Agreement, including, but not limited to, a lapse in any required insurance coverage during the term of this Agreement, shall be a material breach of this Agreement. In the event that CONSULTANT fails to comply with any such insurance requirements in this Agreement, in addition to any other remedies the CITY may have, the CITY may, at its sole option, (i) immediately terminate this Agreement; or (ii) order CONSULTANT to stop work under this Agreement and/or withhold any payment that becomes due to CONSULTANT until CONSULTANT demonstrates compliance with the insurance requirements in this Agreement.

8. Indemnification, Duty to Defend, and Hold Harmless.

- a. CONSULTANT (including CONSULTANT's agents, employees, and subcontractors, if any) shall indemnify, defend, and hold harmless the CITY, its officials, officers, agents, employees, and volunteers from and against any and all claims, demands, actions, causes of action, proceedings (including but not limited to legal and administrative proceedings of any kind), suits, fines, penalties, judgments, orders, levies, costs, expenses, liabilities, losses, damages, or injuries, in law or equity, including without limitation the payment of all consequential damages and attorney's fees and other related litigation costs and expenses (collectively, "Claims"), of every nature caused by, arising out of, or in connection with CONSULTANT's performance of the Services or its failure to comply with any of its obligations contained in this Agreement, except where caused by the sole negligence or willful misconduct of the CITY.
- b. CONSULTANT (including CONSULTANT's agents, employees, and subcontractors, if any) shall indemnify, defend, and hold harmless the CITY, its officials, officers, agents, employees, and volunteers from and against any and all Claims caused by, arising under, or resulting from any violation, or claim of violation, of the San Diego Municipal Storm Water Permit (Order No. R9-2013-0001, as amended) of the California Regional Water Quality Control Board, Region 9, San Diego, that the CITY might suffer, incur, or become subject to by reason of, or occurring as a result of, or allegedly caused by, any work performed pursuant to this Agreement.
- c. All terms and provisions within this Section 8 shall survive the termination of this Agreement.

9. Anti-Assignment Clause. Because the CITY has relied on the particular skills of CONSULTANT in entering into this Agreement, CONSULTANT shall not assign, delegate, subcontract, or otherwise transfer any duty or right under this Agreement, including as to any portion of the Services, without the CITY's prior written consent. Any purported assignment, delegation, subcontract, or other transfer made without the CITY's consent shall be void and ineffective. Unless CONSULTANT assigns this entire Agreement, including all rights and duties herein, to a third party with the CITY's prior written consent, CONSULTANT shall be the sole payee under this Agreement. Any and all payments made pursuant to the terms of this Agreement are otherwise not assignable.
10. Attorney's Fees and Costs. In any action to enforce the terms and conditions of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs.
11. Independent Contractor. CONSULTANT is an independent contractor, and no agency or employment relationship is created by the execution of this Agreement.
12. Amendment. This Agreement shall not be amended except in a writing signed by the CITY and CONSULTANT.
13. Merger Clause. This Agreement, together with its attachments or other documents described or incorporated herein, if any, constitutes the entire agreement and understanding of the CITY and CONSULTANT concerning the subject of this Agreement and supersedes and replaces all prior negotiations, understandings, or proposed agreements, written or oral, except as otherwise provided herein. In the event of any conflict between the provisions of this Agreement and any of its attachments or related documents, if any, the provisions of this Agreement shall prevail.
14. Anti-Waiver Clause. None of the provisions of this Agreement shall be waived by the CITY because of previous failure to insist upon strict performance, nor shall any provision be waived because any other provision has been waived by the CITY, in whole or in part.
15. Severability. This Agreement shall be performed and shall be enforceable to the full extent allowed by applicable law, and the illegality, invalidity, waiver, or unenforceability of any provision of this Agreement shall not affect the legality, validity, applicability, or enforceability of the remaining provisions of this Agreement.
16. Governing Law. This Agreement and all rights and obligations arising out of it shall be construed in accordance with the laws of the State of California. Venue for any action arising from this Agreement shall be conducted only in the state or federal courts of San Diego County, California.
17. Counterparts. This Agreement may be executed on separate counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument. Delivery of an executed signature page of this Agreement by electronic means, including an attachment to an email, shall be effective as delivery of an executed original. The Agreement on file with the City is the copy of the Agreement that shall take precedence if any differences exist between or among copies or counterparts of the Agreement.
18. Provisions Cumulative. The foregoing provisions are cumulative to, in addition to, and not in limitation of any other rights or remedies available to the CITY.
19. Notice. Any statements, communications, or notices to be provided pursuant to this Agreement shall be sent to the attention of the persons indicated herein, and the CITY and CONSULTANT shall promptly provide the other Party with notice of any changes to such contact information.

20. Business License. CONSULTANT shall obtain a City of Escondido Business License prior to execution of this Agreement and shall maintain such Business License throughout the term of this Agreement.
21. Compliance with Laws, Permits, and Licenses. CONSULTANT shall keep itself informed of and comply with all applicable federal, state, and local laws, statutes, codes, ordinances, regulations, rules, and other legal requirements in effect during the term of this Agreement. CONSULTANT shall obtain any and all permits, licenses, and other authorizations necessary to perform the Services. Neither the CITY, nor any elected or appointed boards, officers, officials, employees, or agents of the CITY, shall be liable, at law or in equity, as a result of any failure of CONSULTANT to comply with this section.
22. Prevailing Wages. If applicable, pursuant to California Labor Code section 1770 et seq., CONSULTANT agrees that a prevailing rate and scale of wages, in accordance with applicable laws, shall be paid in performing this Agreement. CONSULTANT shall keep itself informed of and comply with all applicable federal, state, and local laws, statutes, codes, ordinances, regulations, rules, and other legal requirements pertaining to the payment of prevailing wages. The prevailing rate and scale to be paid shall be the same as the applicable "General Prevailing Wage Determination" approved by the Department of Industrial Relations as of the Effective Date of this Agreement, which are available online at <http://www.dir.ca.gov/oprl/dprevwagedetermination.htm> and incorporated into this Agreement by this reference. Neither the CITY, nor any elected or appointed boards, officers, officials, employees, or agents of the CITY, shall be liable, at law or in equity, as a result of any failure of CONSULTANT to comply with this section.
23. Immigration Reform and Control Act of 1986. CONSULTANT shall keep itself informed of and shall comply with the Immigration Reform and Control Act of 1986 ("IRCA"). CONSULTANT represents and warrants that all of its employees and the employees of any subcontractor retained by CONSULTANT who perform any of the Services under this Agreement, are and will be authorized to perform the Services in full compliance with the IRCA. CONSULTANT affirms that as a licensed contractor and employer in the State of California, all new employees must produce proof of eligibility to work in the United States within the first three days of employment and that only employees legally eligible to work in the United States will perform the Services. CONSULTANT agrees to comply with the IRCA before commencing any Services, and continuously throughout the performance of the Services and the term of this Agreement.
24. Effective Date. Unless a different date is provided in this Agreement, the effective date of this Agreement shall be the latest date of execution set forth by the names of the signatories below.

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, this Agreement is executed by the Parties or their duly authorized representatives as of the Effective Date:

CITY OF ESCONDIDO

Date: _____

Dane White, Mayor

GLENN A. RICK ENGINEERING AND DEVELOPMENT CO.

Date: _____

Brooke Peterson, Associate Principal

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY
MICHAEL R. MCGUINNESS, CITY ATTORNEY

BY: _____

THE CITY OF ESCONDIDO DOES NOT DISCRIMINATE AGAINST QUALIFIED PERSONS WITH DISABILITIES.

ATTACHMENT "A"

Scope of Work

A. General

Glenn A. Rick Engineering and Development Co., a California corporation ("Consultant") will provide the City of Escondido, a California municipal corporation ("City") with consulting services related to storm water plan review, planning entitlement application review, environmental document review, and as-needed planning policy expertise.

B. Location

Consultant to provide services in relation to the City's Development Services Department's storm water plan review, planning discretionary review, and planning environmental and project expertise. It is anticipated that services will be provided at both Escondido City Hall located at 201 N. Broadway, Escondido, CA 92025, and various remote locations.

C. Services

Consultant shall provide services as described in **Exhibit 1** to this Scope of Work, which is attached hereto and incorporated by this reference. In the event of a conflict between this Agreement (including this Scope of Work) and Exhibit 1, the terms of this Agreement shall prevail. Services shall include Engineering and Planning on-call services regarding storm water plan review, planning entitlement application review, environmental document review, and as-needed planning policy expertise.

1. Engineering On-Call Services

- a. Technical assistance for the review of Storm Water Quality Management Plans (SWQMP) for land development projects.
 - i. Services will be provided for up to two days per week with one being on-site and for up to 25 unique SWQMPs.
 - ii. All reviews shall confirm compliance with the Escondido Storm Water Design Manual and Municipal Separate Storm Sewer System (MS4) Permit.
 - iii. Typical reviews may consist of Minor, Standard, or Priority Development Projects (PDP), SWQMPs and Hydromodification Management Plans (HMPs).
- b. Project management and reporting (quality control) shall be provided up to 2 hours per month.

2. Planning On-Call Services

- a. Planning review for entitlement applications to include the following:
 - i. Project management of various entitlement applications (conditional use permits, plot plans, etc.);
 - ii. Review of environmental documents associated to the entitlement application;
 - iii. Review of post-entitlement plans (building, grading, landscaping, etc.) for compliance with conditions of approval;
 - iv. Preparation of staff reports; and
 - v. Other duties related to Planning Division activities.
- b. Environmental document review in support of staff-assigned entitlement applications or for larger environmental projects.
- c. Planning expertise as-needed to include, but not limited to; historical preservation, long range planning, or cultural resources.

3. Contingent Scope Item: Planning Grant Project Services

- a. This scope item is contingent on the receipt of grant funds. Should funding not be available for this scope item, City is not obligated to any payment toward the proposed fee of \$172,660 for this scope item described as follows:
 - i. Planning project management toward the completion of the Safety and Environmental Justice Element policy and language updates to the General Plan;
 - ii. Environmental Review and determination of the appropriate environmental document pursuant to the California Environmental Quality Act (CEQA) for the Safety and Environmental Justice Elements inclusive of final outreach and public comment; and
 - iii. Project management shall meet the task deliverables and timelines as described in the final grant agreement scope of work.

D. Scheduling

Consultant to schedule specific dates of work in advance by contacting the following staff members respective to the areas of work:

Storm Water Review	Owen Tunnell	otunnell@escondido.org
Planning Services	Veronica Morones	vmorones@escondido.org

Further instructions will be provided upon scheduling.

E. Contract Price and Payment Terms

The contract price shall not exceed **\$539,340**; with \$166,680 assigned to Engineering on-call services, \$200,000 assigned to Planning on-call services, and \$172,660 assigned to Planning project management contingent upon the receipt of grant funds. Consultant shall submit monthly invoices to the City, and the City shall pay Consultant for invoiced services within 30 days of receipt of an invoice. Consultant shall not bill the City for any transportation costs associated with travel to and from the project site.

Rates for services as described in **Exhibit 2** to this Scope of Work, which is attached hereto and incorporated by this reference, shall remain firm throughout the term of this Agreement.

F. Term

The term of this Agreement shall be from the Effective Date of the Agreement through **June 30, 2025**.

G. Other

1. Consultant acknowledges that this Agreement is being entered into on an interim basis and shall only remain in effect while the City undertakes the filling of staff positions in its Planning Division necessary to meet entitlement application processing demands. As Planning Division staff positions become filled, Consultant may be requested to continue the review of assigned projects to completion while no new projects will be assigned.
2. The Parties acknowledge that Transnet Smart Growth Incentive Program (SGIP) Grant Funds, administered by the San Diego Association of Governments (SANDAG), will be used to fund all or a portion of this Agreement. As a sub-contractor of the CITY, the CONSULTANT shall comply with all applicable federal laws, regulations, executive orders, policies, procedures, and directives relating to such funds, including but not limited to all applicable provisions and requirements of the SGIP SANDAG Contract, which is attached hereto as **Exhibit 3** and incorporated herein by this reference.

ATTACHMENT "B"

Personnel List

Pursuant to Section 4 of the Agreement, CONSULTANT shall only assign performance of Services to persons listed below.

1. Brooke Peterson, AICP, Director of Planning and Design/Associate Principal
bpeterson@rickengineering.com
Glenn A. Rick Engineering and Development Co.;
2. Brian Mooney, Principal
bmooney@rickengineering.com
Glenn A. Rick Engineering and Development Co.;
3. Greg Mattson, AICP, Senior Planner II
gmattson@rickengineering.com
Glenn A. Rick Engineering and Development Co.;
4. Vicrim Chima, Senior Planner II
vchima@rickengineering.com
Glenn A. Rick Engineering and Development Co.;
5. Shannon Baer, Senior Planner I
sbaer@rickengineering.com
Glenn A. Rick Engineering and Development Co.;
6. Adam Mercieca, Associate Planner
amercieca@rickengineering.com
Glenn A. Rick Engineering and Development Co.;
7. Julia Hill, Associate Planner
jhill@rickengineering.com
Glenn A. Rick Engineering and Development Co.;
8. Sabrina Sessarego, Assistant Planner
ssessarego@rickengineering.com
Glenn A. Rick Engineering and Development Co.;
9. Sydney Rankmore, Assistant Planner
srankmore@rickengineering.com
Glenn A. Rick Engineering and Development Co.;
10. Teresa Wilkinson, Director of Environmental Services
twilkinson@rickengineering.com
Glenn A. Rick Engineering and Development Co.;
11. Venkat Gummadi, Associate Principal
vgummadi@rickengineering.com
Glenn A. Rick Engineering and Development Co.;

12. Sal Sanchez, Assistant project Engineer/Manager
ssanchez@rickengineering.com
Glenn A. Rick Engineering and Development Co.;
13. Jennifer Campos, Project Director
jcampos@reconenvironmental.com
RECON Environmental (Sub-Consultant);
14. Lori Spar, Environmental Project Manager
lspar@reconenvironmental.com
RECON Environmental (Sub-Consultant);
15. Nick Larkin, Senior Environmental Project Manager
nlarkin@reconenvironmental.com
RECON Environmental (Sub-Consultant);
16. Bronwyn Brown, Environmental Project Manager
bbrown@reconenvironmental.com
RECON Environmental (Sub-Consultant);
17. Cailin Lyons, Biology Director
clyons@reconenvironmental.com
RECON Environmental (Sub-Consultant);
18. Carmen Zepeda-Herman, Senior Archaeologist
czepeda@reconenvironmental.com
RECON Environmental (Sub-Consultant);
19. Jessica Fleming, Noise, Air Quality and GHG Specialist
jfleming@reconenvironmental.com
RECON Environmental (Sub-Consultant);
20. Frank McDermott, GIS/UAV Manager
fmcdermott@reconenvironmental.com
RECON Environmental (Sub-Consultant);

CONSULTANT shall not add or remove persons from this Personnel List without the City's prior written consent. If CONSULTANT has not designated a person to perform a component of the Services, CONSULTANT shall not assign such component of the Services to a person without obtaining the City's prior written consent. CONSULTANT shall not subcontract any component of the Services without obtaining the City's prior written consent.

Acknowledged by:

Date: _____

Brooke Peterson, Associate Principal