

**AMENDMENT NO. 1
TO AGREEMENT FOR PROFESSIONAL SERVICES
Land IQ**

Environmental Services

This Amendment No. 1 to Agreement for Professional Services ("Amendment No. 1") is made and entered into as of December 11, 2018 by and between the City of Lake Elsinore, a municipal corporation ("City), and Land IQ, LLC, a California limited liability company ("Consultant").

RECITALS

A. The City and Consultant entered into that certain Agreement for Professional Services dated as of June 12, 2018 (the "Original Agreement") attached hereto as Exhibit B. Except as otherwise defined herein, all capitalized terms used herein shall have the meanings set forth for such terms in the Original Agreement.

B. The Original Agreement provided for compensation to Consultant for professional services as a Restoration Specialist in an amount not to exceed Twenty-Four Thousand Five Hundred dollars (\$24,500).

C. Consultant has completed the scope of services under the Original Agreement, including (1) consultation with responsible wildlife resources agencies, including the California Department of Fish and Wildlife (CDFW) and the United States Fish and Wildlife Service (USFW) regarding the revegetation of the 5.75 acre Lake Elsinore Boat Launch Project mitigation site required by Streambed Alteration Agreement No. 1600-2007-0210-R6 and (2) preparation of a Habitat Mitigation and Monitoring Plan (HMMP) for the 5.75 acre site.

D. The parties now desire to amend the Original Agreement to include services by Consultant as set forth in Consultant's Proposal dated November 13, 2018 attached hereto and incorporated herein by reference (Exhibit A) which include oversight of the implementation and biological monitoring described in the HMMP.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, City and Consultant agree as follows:

1. Section 2, subparts a, b, and c, are hereby amended and restated in their entirety as follows:

a. Time of Essence. Time is of the essence in the performance of this Agreement. The time for completion of the professional services to be performed by Consultant is an essential condition of this Agreement. Consultant shall prosecute regularly and diligently the professional services contemplated pursuant to this Agreement according to the agreed upon schedule set forth in Exhibit A.

b. Performance Schedule. Consultant shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the schedule set forth in Exhibit A. When requested by Consultant, extensions to the time period(s) specified may be approved in writing by the City Manager.

c. Term. Unless earlier terminated as provided elsewhere in the Original Agreement, this Amendment No. 1 shall commence immediately and shall continue until the services and related work are completed through monitoring year 5 (2024-2025) in accordance with Exhibit A.

2. Section 3, Compensation, is hereby amended to read in its entirety as follows:

Compensation to be paid to Consultant shall be in accordance with the fees set forth in Exhibit A.

In no event shall Consultant's compensation for services set forth in Exhibit A exceed One Hundred Ninety Eight Thousand Six Hundred Ninety dollars (\$198,640) without additional written authorization from the City.

Notwithstanding any provision of Consultant's Proposal to the contrary, out of pocket expenses shall be reimbursed at cost without an inflator or administrative charge. Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.

3. Except for the changes specifically set forth herein, all other terms and conditions of the Original Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Amendment No. 1 to be executed on the respective dates set forth below.

"CITY"

CITY OF LAKE ELSINORE, a
municipal corporation

"CONSULTANT"

LAND IQ, LLC

Grant Yates, City Manager

Mica Heilmann, Manager

ATTEST:

Susan M. Domen, MMC,
City Clerk

APPROVED AS TO
FORM:

Barbara Leibold, City Attorney

Exhibits: A. Consultant's Proposal dated November 13, 2018
B. Original Agreement

EXHIBIT A

CONSULTANT'S PROPOSAL DATED NOVEMBER 13, 2018

ORIGINAL AGREEMENT

[ATTACHED]

2010 Boat Launch Facility Project: Mitigation Site HMMP Implementation Oversight and Monitoring

PREPARED FOR: Grant Taylor
Director of Community Development
City of Lake Elsinore
130 South Main Street, Lake Elsinore, CA 92530

PREPARED BY: Travis Brooks, Land IQ
tbrooks@landiq.com
310-266-4627

DATE: November 13, 2018

Scope of Work

In May 2018, Land IQ was selected as the Restoration Specialist identified in Streambed Alteration Agreement (SAA) #1600-2017-0145-R6 Revision 1, between Lake Elsinore CCR, LLC (Permittee) and California Department of Fish and Wildlife (CDFW) for the Mission Trail Apartments Project. As required by the SAA and under contract with the Permittee, Land IQ prepared the Salvage Plan for the 5.75-acre Borrow Site for the project and oversaw fine grading of the Borrow Site by the Permittee to prepare the site for revegetation by the City of Lake Elsinore. Fine grading was completed in November 2018.

In this Scope of Work, Land IQ proposes to provide oversight of the implementation and biological monitoring described in the Habitat Mitigation and Monitoring Plan (HMMP). The City intends on contracting separately with a qualified native habitat restoration contractor to implement the work described in the HMMP, including the installation of a temporary irrigation system, procurement of native seed mix, hydroseed application of the native seed, planting of salt grass seed plugs, irrigation management to establish the native plant material and maintenance weeding. The restoration contractor will implement the HMMP with oversight and guidance from Land IQ. The salt grass (*Distichlis spicata*) seed plugs will be contract grown by a qualified native plant grower, separately contracted with the City, and material delivered to the site for installation by the restoration contractor.

Task 1: Project Initiation (Anticipated Dec 2018)

- Kick-off site meeting with restoration contractor
- Pre-work wintering bird and general biological survey, establishment of activity buffers as needed
- Qualitative monitoring, including photo points and cover estimates
- Oversight of restoration contractor, as needed, including installation of temporary irrigation system, pre-seeding weed control, and hydroseed application
- Oversight of salt grass plug order
- Scheduling communication, coordination and meetings with wildlife agencies, as needed

Task 2: Establishment Monitoring and Salt Grass Planting Oversight (2019)

- Winter, Spring, Summer and Fall horticultural site visits to monitor seed mix germination, weed timing and irrigation application, as needed
- Pre-work spring nesting bird and general biological surveys, establishment of activity buffers as needed
- Qualitative monitoring, including photo points and cover estimates
- Oversight of restoration contractor, as needed, including irrigation application and maintenance weeding
- Oversight of salt grass plug planting and irrigation, as needed
- Preparation of Installation Memo, including installation of temporary irrigation system, hydroseed application, salt grass plug planting and maintenance weeding activity through Spring 2019.
- Wintering bird and general biological survey
- Scheduling, communication and coordination

Task 2 Deliverable: Installation Memo due to City by June 30, 2019.

Task 3: Performance Monitoring Year 1 (2020)

- Winter, Spring, Summer and Fall horticultural site visits to monitor seed mix germination, weed timing and irrigation application, as needed
- Pre-work spring nesting bird and general biological surveys, establishment of activity buffers as needed
- Qualitative monitoring, including photo points and cover estimates
- Oversight of restoration contractor, as needed, including irrigation application and maintenance weeding
- Wintering bird and general biological survey
- Preparation of Draft and Final Annual Performance Monitoring Report
- Scheduling, communication and coordination

Task 3 Deliverable: Final Annual Report due to City by December 31, 2020.

Task 4: Performance Monitoring Year 2 (2021)

- Winter, Spring, Summer and Fall horticultural site visits to monitor seed mix germination, weed timing and irrigation application, as needed
- Pre-work spring nesting bird and general biological surveys, establishment of activity buffers as needed
- Qualitative monitoring, including photo points and cover estimates
- Oversight of restoration contractor, as needed, including irrigation application and maintenance weeding
- Wintering bird and general biological survey
- Preparation of Draft and Final Annual Performance Monitoring Report
- Scheduling, communication and coordination

Task 4 Deliverable: Final Annual Report due to City by December 31, 2021.

Scope Confidentiality: *It should be noted that this scope of work is considered confidential in nature, and is intended for review and consideration only by the addressees in the "Prepared For" line.*

Task 5: Performance Monitoring Year 3 (2022)

- Winter, Spring, Summer and Fall horticultural site visits to monitor seed mix germination, weed timing and irrigation application, as needed
- Pre-work spring nesting bird and general biological surveys, establishment of activity buffers as needed
- Quantitative and Qualitative monitoring, including line transects, photo points and cover estimates
- Oversight of restoration contractor, as needed, including irrigation application and maintenance weeding
- Oversight of removal of temporary irrigation system
- Wintering bird and general biological survey
- Preparation of Draft and Final Annual Performance Monitoring Report
- Scheduling, communication and coordination

Task 5 Deliverable: Final Annual Report due to City by December 31, 2022.

Task 6: Performance Monitoring Year 4 (2023)

- Winter, Spring, Summer and Fall horticultural site visits to monitor seed mix germination and weed timing, as needed
- Pre-work spring nesting bird and general biological surveys, establishment of activity buffers as needed
- Qualitative monitoring, including photo points and cover estimates
- Oversight of restoration contractor, as needed, including irrigation application and maintenance weeding
- Wintering bird and general biological survey
- Preparation of Draft and Final Annual Performance Monitoring Report
- Scheduling, communication and coordination

Task 4 Deliverable: Final Annual Report due to City by December 31, 2023.

Task 7: Performance Monitoring Year 5 (2024-2025)

- Winter, Spring, Summer and Fall horticultural site visits to monitor seed mix germination and weed timing, as needed
- Pre-work spring nesting bird and general biological surveys, establishment of activity buffers as needed
- Quantitative and Qualitative monitoring, including photo points, line transects and cover estimates
- Oversight of restoration contractor, as needed, including irrigation application and maintenance weeding
- Wintering bird and general biological survey
- Preparation of Draft and Final Annual Performance Monitoring Report
- Scheduling, communication and coordination with wildlife agencies
- Buy-off field meeting with wildlife agencies (Anticipated in Winter or Spring 2025).

Task 5 Deliverable: Final Annual Report due to City by December 31, 2024.

Scope Confidentiality: *It should be noted that this scope of work is considered confidential in nature, and is intended for review and consideration only by the addressees in the "Prepared For" line.*

Cost

Work will be conducted according to a time and materials agreement, not to exceed a cost of \$198,690. See attached labor rate sheet. Expenses will be charged at no mark up to the client. Mileage expenses will be charged at the current federal reimbursement rate (currently \$0.545 per mile).

The implementation of the HMMP follows an adaptive management approach, requiring that Land IQ adjust the timing and intensity of biological monitoring and restoration contractor oversight to current site conditions. For example, biological activity, including the nesting behavior of birds and the germination of weed species targeted for control, is dependent upon dynamic physical factors, such as rainfall, humidity, wind events and temperature. Consequently, the following budget by task is provided as an estimate for the City's planning purposes, but Land IQ reserves the right to spend more or less per task, as necessary. Land IQ will not exceed the agreement total of \$198,690 without written approval from the City.

Table 1. Budget Estimate by Task.

Task (Approximate Calendar Year)	Budget Estimate
Task 1: Project Initiation (Anticipated Dec 2018)	\$12,725
Task 2: Establishment Monitoring and Salt Grass Planting Oversight (2019)	\$34,732
Task 3: Performance Monitoring Year 1 (2020)	\$37,561
Task 4: Performance Monitoring Year 2 (2021)	\$28,279
Task 5: Performance Monitoring Year 3 (2022)	\$32,852
Task 6: Performance Monitoring Year 4 (2023)	\$23,655
Task 7: Performance Monitoring Year 5 (2024-2025)	\$28,886
Total Not to Exceed Cost	\$198,690

Scope Confidentiality: It should be noted that this scope of work is considered confidential in nature, and is intended for review and consideration only by the addressees in the "Prepared For" line.

Land IQ - Rates - Effective Jan 2018 - Dec 2018

(All rates are per hour cost)

Std Classification	Staff Member	Consulting
Principal Scientist II	Joel Kimmelshue, PhD	\$ 220.00
Principal Scientist I	Mica Heilmann, BS	\$ 195.00
Principal Analyst I	Zhongwu Wang, PhD	\$ 195.00
Senior Ecologist	Margot Griswold, PhD	\$ 175.00
Project Scientist	Stephanie Tillman, MS	\$ 155.00
Project Scientist	Travis Longcore, PhD	\$ 155.00
Project Analyst	Frank Anderson, MS	\$ 155.00
Project Analyst	Naveed Sami, MS	\$ 155.00
Associate Scientist	Chris Stall, MS	\$ 135.00
Associate Scientist	Seth Mulder, MS	\$ 135.00
Associate Ecologist	Donna Eto, BS	\$ 135.00
Associate Ecologist	Melissa Riedel-Lehrke, BS	\$ 135.00
Associate Ecologist	Travis Brooks, (PhD Candidate)	\$ 135.00
Associate Ecologist	Jenni Snibbe, BS	\$ 135.00
Associate Analyst	Heidi Hershenhouse, MBA	\$ 125.00
Associate Analyst	Casey Gudel, MS	\$ 125.00
Associate Analyst	Carlos Kelly, MS	\$ 125.00
Staff II Scientist	Diya Chowdhury, MS	\$ 125.00
Staff II Scientist	Cody Fink, MS	\$ 120.00
Staff I Scientist		\$ 115.00
Staff II Analyst		\$ 110.00
Staff I Analyst	Justin Sitton	\$ 105.00
Staff I Analyst	Andrew Loberg	\$ 105.00
Staff I Analyst	Spring Riddle	\$ 105.00
Technician/Assistant II	Eleanore Hunts	\$ 85.00
Technician/Assistant II	Karri Peters	\$ 85.00
Technician/Assistant II	Korinne Tarian	\$ 85.00
Technician/Assistant II	Stephanie Duarte	\$ 85.00
Technician/Assistant II	Laura McFadden	\$ 85.00

Rates escalate 3% on January 1st of each new subsequent calendar year

Scope Confidentiality: It should be noted that this scope of work is considered confidential in nature, and is intended for review and consideration only by the addressees in the "Prepared For" line.

EXHIBIT B

ORIGINAL AGREEMENT DATED JUNE 18, 2018

AGREEMENT FOR PROFESSIONAL SERVICES LAND IQ

[Environmental Services]

This Agreement for Professional Services (the "Agreement") is made and entered into as of June 12, 2018, by and between the City of Lake Elsinore, a municipal corporation ("City") and Land IQ, LLC, a California limited liability company ("Consultant").

RECITALS

A. The City has determined that it requires the following professional services: habitat restoration specialist to coordinate with resource agencies regarding the restoration of the City's 5.75 acre mitigation site, prepare a Habitat Mitigation and Monitoring Plan and oversee the preparation of the borrow site for future rehabilitation.

B. Consultant has submitted to City a proposal, dated May 30, 2018, attached hereto as Exhibit A ("Consultant's Proposal") and incorporated herein, to provide professional services to City pursuant to the terms of this Agreement.

C. Consultant possesses the skill, experience, ability, background, certification and knowledge to perform the services described in this Agreement on the terms and conditions described herein.

D. City desires to retain Consultant to perform the services as provided herein and Consultant desires to provide such professional services as set forth in this Agreement.

AGREEMENT

1. Scope of Services. Consultant shall perform the services described in Consultant's Proposal (Exhibit A). Consultant shall provide such services at the time, place, and in the manner specified in Consultant's Proposal (Exhibit A), subject to the direction of the City through its staff that it may provide from time to time.

2. Time of Performance.

a. Time of Essence. Time is of the essence in the performance of this Agreement. The time for completion of the professional services to be performed by Consultant is an essential condition of this Agreement. Consultant shall prosecute regularly and diligently the professional services contemplated pursuant to this Agreement according to the agreed upon Schedule of Performance (Exhibit B).

b. Performance Schedule. Consultant shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the Schedule of Performance (Exhibit B). When requested by Consultant, extensions to the time period(s) specified may be approved in writing by the City Manager.

c. Term.

The term of this Agreement shall commence upon execution of this Agreement and shall continue until the services and related work set forth in Consultant's Proposal (Exhibit A) are completed.

3. Compensation. Compensation to be paid to Consultant shall be in accordance with the fees set forth in Consultants' Proposal (Exhibit A). In no event shall Consultant's compensation exceed Twenty Four Thousand Five Hundred Dollars (\$24,500) without additional written authorization from the City. Notwithstanding any provision of Consultant's Proposal to the contrary, out of pocket expenses set forth in Exhibit A shall be reimbursed at cost without an inflator or administrative charge. Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.

4. Method of Payment. Contractor shall promptly submit billings to the City describing the services and related work performed during the preceding month to the extent that such services and related work were performed. Contractor's bills shall be segregated by project task, if applicable, such that the City receives a separate accounting for work done on each individual task for which Contractor provides services. Contractor's bills shall include a brief description of the services performed, the date the services were performed, the number of hours spent and by whom, and a description of any reimbursable expenditures. City shall pay Contractor no later than forty-five (45) days after receipt of the monthly invoice by City staff.

5. Reserved.

6. Suspension or Termination.

a. The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Consultant at least ten (10) days prior written notice. Upon receipt of such notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

b. In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the City, pursuant to Section entitled "Method of Payment" herein.

7. Ownership of Documents. All plans, studies, documents and other writings prepared by and for Consultant, its officers, employees and agents and subcontractors in the course of implementing this Agreement, except working notepad internal documents, shall become the property of the City upon payment to Consultant for such work, and the City shall have the sole right to use such materials in its discretion without further compensation to Consultant or to any other party. Consultant shall, at Consultant's expense, provide such reports, plans, studies, documents and other writings to City upon written request. City acknowledges that any use of such materials in a manner beyond the intended purpose as set forth herein shall be at the sole risk of the City. City further agrees to defend, indemnify and hold harmless Consultant, its officers, officials, agents, employees and volunteers from any claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including

any and all costs and expenses in connection therein), arising out of the City's use of such materials in a manner beyond the intended purpose as set forth herein.

a. Licensing of Intellectual Property. This Agreement creates a nonexclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). Consultant shall require that all subcontractors agree in writing that City is granted a nonexclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by the City. City shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

b. Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents & Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of City, be used by Consultant for any purposes other than the performance of the services under this Agreement. Nor shall such materials be disclosed to any person or entity not connected with the performance of the services under this Agreement. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs relating to project for which Consultant's services are rendered, or any publicity pertaining to the Consultant's services under this Agreement in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

8. Consultant's Books and Records.

a. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant to this Agreement.

b. Consultant shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

c. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Manager, City Attorney, City Auditor or a designated representative of these officers. Copies of such documents shall be provided to the City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

d. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Consultant's business, City may, by written request by any of the above-named officers, require that custody of the records be given to the City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Consultant, Consultant's representatives, or Consultant's successor-in-interest.

9. Independent Contractor. It is understood that Consultant, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and shall not act as an agent or employee of the City.

10. PERS Eligibility Indemnification. In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Notwithstanding any other federal, state and local laws, codes, ordinances and regulations to the contrary, Consultant and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

11. Interests of Consultant. Consultant (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this Agreement or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Consultant's services hereunder. Consultant further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this Agreement.

Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

a. will conduct research and arrive at conclusions with respect to his/her rendition of information, advice, recommendation or counsel independent of the control and direction of the City or of any City official, other than normal agreement monitoring; and

b. possesses no authority with respect to any City decision beyond rendition of information, advice, recommendation or counsel. (FPPC Reg. 18700(a)(2).)

12. Professional Ability of Consultant. City has relied upon the professional training and ability of Consultant to perform the services hereunder as a material inducement to enter into this Agreement. Consultant shall therefore provide properly skilled professional and technical personnel to perform all services under this Agreement. All work performed by Consultant under this Agreement shall be in accordance with applicable legal requirements and

shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.

13. Compliance with Laws. Consultant shall use the standard of care in its profession to comply with all applicable federal, state and local laws, codes, ordinances and regulations.

14. Licenses. Consultant represents and warrants to City that it has the licenses, permits, qualifications, insurance and approvals of whatsoever nature which are legally required of Consultant to practice its profession. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, insurance and approvals which are legally required of Consultant to practice its profession. Consultant shall maintain a City of Lake Elsinore business license.

15. Indemnity. Consultant shall indemnify, defend, and hold harmless the City and its officials, officers, employees, agents, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises from the sole negligence or willful misconduct of the City or its officers, employees, agents, or volunteers and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

16. Insurance Requirements.

a. Insurance. Consultant, at Consultant's own cost and expense, shall procure and maintain, for the duration of the contract, unless modified by the City's Risk Manager, the following insurance policies.

i. Workers' Compensation Coverage. Consultant shall maintain Workers' Compensation Insurance and Employer's Liability Insurance for his/her employees in accordance with the laws of the State of California. In addition, Consultant shall require each subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California for all of the subcontractor's employees. Any notice of cancellation or non-renewal of all Workers' Compensation policies must be received by the City at least thirty (30) days prior to such change. The insurer shall agree to waive all rights of subrogation against City, its officers, agents, employees and volunteers for losses arising from work performed by Consultant for City. In the event that Consultant is exempt from Worker's

Compensation Insurance and Employer's Liability Insurance for his/her employees in accordance with the laws of the State of California, Consultant shall submit to the City a Certificate of Exemption from Workers Compensation Insurance in a form approved by the City Attorney.

ii. General Liability Coverage. Consultant shall maintain commercial general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage. If a commercial general liability insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Required commercial general liability coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. No endorsement may be attached limiting the coverage.

iii. Automobile Liability Coverage. Consultant shall maintain automobile liability insurance covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with the work to be performed under this Agreement, including coverage for owned, hired and non-owned vehicles, in an amount of not less than one million dollars (\$1,000,000) combined single limit for each occurrence. Automobile liability coverage must be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement may be attached limiting the coverage.

iv. Professional Liability Coverage. Consultant shall maintain professional errors and omissions liability insurance appropriate for Consultant's profession for protection against claims alleging negligent acts, errors or omissions which may arise from Consultant's services under this Agreement, whether such services are provided by the Consultant or by its employees, subcontractors, or sub consultants. The amount of this insurance shall not be less than one million dollars (\$1,000,000) on a claims-made annual aggregate basis, or a combined single limit per occurrence basis.

b. Endorsements. Each general liability and automobile liability insurance policy shall be with insurers possessing a Best's rating of no less than A:VII and shall be endorsed with the following specific language:

i. The City, its elected or appointed officers, officials, employees, agents and volunteers are to be covered as additional insured with respect to liability arising out of work performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work or operations.

ii. This policy shall be considered primary insurance as respects the City, its elected or appointed officers, officials, employees, agents and volunteers. Any insurance maintained by the City, including any self-insured retention the City may have, shall be considered excess insurance only and shall not contribute with it.

iii. This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.

iv. The insurer waives all rights of subrogation against the City, its elected or appointed officers, officials, employees or agents.

v. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected or appointed officers, officials, employees, agents or volunteers.

vi. The insurance provided by this Policy shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days written notice has been received by the City.

c. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

d. Certificates of Insurance. Consultant shall provide certificates of insurance with original endorsements to City as evidence of the insurance coverage required herein. Certificates of such insurance shall be filed with the City on or before commencement of performance of this Agreement. Current certification of insurance shall be kept on file with the City at all times during the term of this Agreement.

17. Notices. Any notice required to be given under this Agreement shall be in writing and either served personally or sent prepaid, first class mail. Any such notice shall be addressed to the other party at the address set forth below. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to City: City of Lake Elsinore
Attn: City Manager
130 South Main Street
Lake Elsinore, CA 92530
(Fax) 951-674-2392

With a copy to: City of Lake Elsinore
Attn: City Clerk
130 South Main Street
Lake Elsinore, CA 92530
(Fax) 951-245-5322

If to Consultant: Land IQ
Attn: Mica Heilmann
2020 L St., Suite 110
Sacramento, CA 95811
(Fax) _____

With a copy to: Land IQ
Attn: Travis Brooks
3791 Wade Street
Los Angeles, CA 90066
(Fax) _____

18. Entire Agreement. This Agreement constitutes the complete and exclusive statement of Agreement between the City and Consultant. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, are superseded in total by this Agreement.

19. Amendments. This Agreement may be modified or amended only by a written document executed by both Consultant and City and approved as to form by the City Attorney.

20. Assignment and Subcontracting. The parties recognize that a substantial inducement to City for entering into this Agreement is the professional reputation, experience and competence of Consultant. Consultant shall be fully responsible to City for all acts or omissions of any subcontractors. Assignments of any or all rights, duties or obligations of the Consultant under this Agreement will be permitted only with the express consent of the City. Consultant shall not subcontract any portion of the work to be performed under this Agreement without the written authorization of the City. If City consents to such subcontract, Consultant shall be fully responsible to City for all acts or omissions of those subcontractors. Nothing in this Agreement shall create any contractual relationship between City and any subcontractor nor shall it create any obligation on the part of the City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise is required by law.

21. Waiver. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision under this Agreement.

22. Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

23. Controlling Law Venue. This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Riverside.

24. Litigation Expenses and Attorneys' Fees. If either party to this Agreement commences any legal action against the other party arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorneys' fees.

25. Mediation. The parties agree to make a good faith attempt to resolve any disputes arising out of this Agreement through mediation prior to commencing litigation. The parties shall mutually agree upon the mediator and share the costs of mediation equally. If the parties are unable to agree upon a mediator, the dispute shall be submitted to JAMS or its successor in interest. JAMS shall provide the parties with the names of five qualified mediators. Each party shall have the option to strike two of the five mediators selected by JAMS and thereafter the mediator remaining shall hear the dispute. If the dispute remains unresolved after mediation, either party may commence litigation.

26. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

27. Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party. The City Manager is authorized to enter into an amendment or otherwise take action on behalf of the City to make the following modifications to the Agreement: (a) a name change; (b) grant extensions of time; (c) non-monetary changes in the scope of services; and/or (d) suspend or terminate the Agreement.

28. Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

29. Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

30. Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. Consultant agrees to fully comply with all applicable federal and state labor laws (including, without limitation, if applicable, the Prevailing Wage Laws). It is agreed by the parties that, in connection with the Work or Services provided pursuant to this Agreement, Consultant shall bear all risks of payment or non-payment of prevailing wages under California law, and Consultant hereby agrees to defend, indemnify, and hold the City, and its officials, officers, employees, agents, and volunteers, free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. The foregoing indemnity shall survive termination of this Agreement.

[Signatures on next page]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first written above.

“CITY”

CITY OF LAKE ELSINORE, a municipal corporation

“CONSULTANT”

LAND IQ, LLC

DocuSigned by:

Grant Yates

Grant Yates, City Manager

DocuSigned by:

Mica Heilmann

Mica Heilmann, Manager

ATTEST:

DocuSigned by:

Susan M. Domen

Susan M. Domen, MMC, City Clerk

APPROVED AS TO FORM:

DocuSigned by:

Barbara Leibold

Barbara Leibold, City Attorney

Attachments: Exhibit A – Consultant’s Proposal
Exhibit B – Schedule of Performance

EXHIBIT A
CONSULTANT'S PROPOSAL
[ATTACHED]

SCOPE OF WORK



MISSION TRAIL APARTMENTS PROJECT: THE 5.75-ACRE BORROW SITE HABITAT MITIGATION AND MONITORING PLAN

PREPARED FOR: Grant Taylor
Director of Community Development
City of Lake Elsinore
130 South Main Street, Lake Elsinore, CA 92530

PREPARED BY: Travis Brooks, Land IQ
tbrooks@landiq.com
310-266-4627

DATE: May 30, 2018

Scope of Work

In May 2018, Land IQ was identified as the Restoration Specialist identified in Streambed Alteration Agreement (SAA) #1600-2017-0145-R6 Revision 1, between Lake Elsinore CCR, LLC (Permittee) and California Department of Fish and Wildlife (CDFW) for the Mission Trail Apartments Project. As required by the SAA and under contract with the Permittee, Land IQ has prepared the Salvage Plan for the 5.75-acre Borrow Site for the project. Land IQ will also provide oversight of the preparation of the borrow site for future rehabilitation by the City of Lake Elsinore.

In this Scope of Work, Land IQ proposes to complete two tasks for the City: (1) Meet with the responsible wildlife resource agencies, CDFW and U.S. Fish and Wildlife Service (USFWS), and discuss the potential for revegetation of the site with ecologically appropriate native material; and (2) Prepare a Habitat Mitigation and Monitoring Plan (HMMP) for the 5.75-acre Mission Trail Borrow Site for wildlife agency approval.

Land IQ collaborated VCS Environmental staff to complete the Salvage Plan, and we will continue to work with VCS on this new part of the Mission Trail Apartments Project.

Task 1: Meeting with CDFW and USFWS

- Attendance at a field meeting with regulatory agencies, including CDFW and USFWS staff to discuss the revegetation potential, strategies for the borrow site, and achievable performance standards.
- Follow up discussions and summary of consensus for approach to rehabilitation of the borrow site.

Task 1 Deliverable: Memorandum summarizing meeting with wildlife agencies and consensus on rehabilitation approach.

Task 2: Preparation of Draft HMMP

- Collect available information about existing conditions from VCS Environmental and other available sources.
- Review of any new information, such as soil sample analysis from the Permittee following fine grading of the newly excavated borrow site.
- Review of Existing Information, including information collected during development of the Salvage Plan for the borrow site.
- Identification of any constraints to the application of available techniques and methods (e.g. water source and quality for temporary irrigation system, budgetary constraints, access issues)
- Development of a strategy to revegetate the alkaline soils in the newly excavated borrow site.
- Preparation of a Draft HMMP for review by City staff, including identification of revegetation goals, summary of existing conditions, site preparation requirements, source and type of native plant materials, installation methods, plant establishment period requirements, maintenance weeding, monitoring, reporting and long-term management goals.

Task 2 Deliverable: Draft HMMP for City staff and wildlife agency review.

Task 3: Final HMMP

- Finalization of HMMP following comments.

Task 3 Deliverable: Finalized HMMP for submittal to wildlife agencies.

Cost

Work will be conducted according to a time and materials agreement, not to exceed a cost of \$24,500.

Scope Confidentiality: It should be noted that this scope of work is considered confidential in nature, and is intended for review and consideration only by the addressees in the "Prepared For" line.

Land IQ - Rates - Effective Jan 2018 - Dec 2018

(All rates are per hour cost)

Std Classification	Staff Member	Consulting
Principal Scientist II	Joel Kimmelshue, PhD	\$ 220.00
Principal Scientist I	Mica Heilmann, BS	\$ 195.00
Principal Analyst I	Zhongwu Wang, PhD	\$ 195.00
Senior Ecologist	Margot Griswold, PhD	\$ 175.00
Project Scientist	Stephanie Tillman, MS	\$ 155.00
Project Scientist	Travis Longcore, PhD	\$ 155.00
Project Analyst	Frank Anderson, MS	\$ 155.00
Project Analyst	Naveed Sami, MS	\$ 155.00
Associate Scientist	Chris Stall, MS	\$ 135.00
Associate Scientist	Seth Mulder, MS	\$ 135.00
Associate Ecologist	Donna Eto, BS	\$ 135.00
Associate Ecologist	Melissa Riedel-Lehrke, BS	\$ 135.00
Associate Ecologist	Travis Brooks, (PhD Candidate)	\$ 135.00
Associate Ecologist	Jenni Snibbe, BS	\$ 135.00
Associate Analyst	Heidi Hershenhouse, MBA	\$ 125.00
Associate Analyst	Casey Gudel, MS	\$ 125.00
Associate Analyst	Carlos Kelly, MS	\$ 125.00
Staff II Scientist	Diya Chowdhury, MS	\$ 125.00
Staff II Scientist	Cody Fink, MS	\$ 120.00
Staff I Scientist		\$ 115.00
Staff II Analyst		\$ 110.00
Staff I Analyst	Justin Sitton	\$ 105.00
Staff I Analyst	Andrew Loberg	\$ 105.00
Staff I Analyst	Spring Riddle	\$ 105.00
Technician/Assistant II	Eleanore Hunts	\$ 85.00
Technician/Assistant II	Karri Peters	\$ 85.00
Technician/Assistant II	Korinne Tarian	\$ 85.00
Technician/Assistant II	Stephanie Duarte	\$ 85.00
Technician/Assistant II	Laura McFadden	\$ 85.00

Rates escalate 3% on January 1st of each new subsequent calendar year

Scope Confidentiality: It should be noted that this scope of work is considered confidential in nature, and is intended for review and consideration only by the addressees in the "Prepared For" line.

EXHIBIT B
SCHEDULE OF PERFORMANCE

Consultant shall make diligent efforts to complete the Scope of Services by August 31, 2018.

Task 1: Meeting with CDFW and USFWS: Not later than 3 weeks from Authorization to Proceed

Task 2: Preparation of Draft HMMP: Not later than 10 weeks from Authorization to proceed

Task 3: Final HMMP: Not later than 16 weeks from Authorization to Proceed