

# **ATTACHMENT C**

**CONSULTANT/PROFESSIONAL SERVICES PROVIDER AGREEMENT  
BY AND BETWEEN  
THE CITY OF VICTORVILLE  
AND  
WSP USA INC.  
FOR  
LA MESA/NISQUALLI 404 PERMIT COMPLIANCE – PERMIT  
MODIFICATION AND MITIGATION SITE COORDINATION,  
PROJECT ESC18-016**

THIS CONSULTANT/PROFESSIONAL SERVICES PROVIDER AGREEMENT (hereinafter "Agreement"), is made and entered into by and between THE CITY OF VICTORVILLE, a municipal corporation located in the County of San Bernardino, State of California, hereinafter referred to as the "City", and WSP USA Inc., a corporation, hereinafter referred to as "Consultant." City and Consultant are sometimes hereinafter referred to individually as a "Party" and collectively referred to as the "Parties."

**RECITALS:**

**WHEREAS**, the City requires Consultant/Professional Services for **La Mesa/Nisqualli 404 Permit Compliance – Permit Modification and Mitigation Site Coordination, Project ESC18-016** (the "Project"); and

**WHEREAS**, Consultant represents that it is fully qualified to perform the consulting and/or professional services required for performance under this Agreement by virtue of its experience and the training, education and expertise of its principals and its employees; and

**WHEREAS**, in light of the facts set forth above, the City desires to retain the services of a qualified Consultant to provide, on an independent contractor basis, **La Mesa/Nisqualli 404 Permit Compliance – Permit Modification and Mitigation Site Coordination**; and

**NOW THEREFORE, IN CONSIDERATION OF THE COVENANTS, CONDITIONS, AND PROMISES CONTAINED HEREIN AND FOR SUCH OTHER GOOD AND VALUABLE CONSIDERATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:**

**Section 1.                      RECITALS**

The Recitals set forth above are true and correct and are hereby incorporated into this Agreement by this reference, as though set forth fully herein.

**Section 2.                      PROPOSAL**

Consultant shall provide to the City those services set forth in the Proposal, attached hereto as Exhibit "A", and incorporated as part of this Agreement by this reference.

### **Section 3.**

### **COMPENSATION**

The City shall pay to Consultant a sum not to exceed **twenty-six thousand nine hundred sixty and 00/100 dollars (\$26,960.00)** for faithful performance of the services to be rendered under this Agreement, subject to the Proposal provisions of Section 4, below. No expense reimbursements, including, but not limited to, reimbursements for travel, parking, lodging, and/or meals shall be paid to Consultant unless such expense reimbursements: (i) are specifically provided for and described by nature and type in Exhibit "A", below; (ii) appear on Consultant's monthly invoices to City; (iii) are supported by the appropriate receipts and other such documentation as the City shall require; and (iv) are directly related to the Scope of Services to be performed under this Agreement. In addition, any and all reimbursements shall be made in accordance with any City policy governing same.

### **Section 4.**

### **PROPOSAL**

The City shall pay Consultant as provided in the Proposal, attached hereto as Exhibit "A", and incorporated as part of this Agreement by this reference. The provisions of Exhibit "A" notwithstanding, in order to receive payments, Consultant shall be required to submit to the City detailed monthly invoices which include, if applicable, a description of all services/tasks performed, the number of hours expended on each service/task, the name of the person performing the service/task, and expense reimbursement information, if any, as required by Section 3, above. Provided that services have been satisfactorily rendered, invoices shall be paid by the City approximately thirty (30) working days following receipt of Consultant's invoice.

### **Section 5.**

### **RESERVED**

### **Section 6.**

### **TERM OF AGREEMENT**

This Agreement shall be for an Initial Term commencing on **September 1, 2017** (the "Commencement Date") and expiring on **December 31, 2019** (the "Termination Date") (the "Term"), unless terminated earlier pursuant to Section 21 of this Agreement. From and after the Termination Date, and upon subsequent agreement by the Parties, this Agreement may continue on a month-to-month basis until terminated pursuant to Section 21 below.

This Agreement may be extended for **ONE (1)** additional one-year period (hereinafter "Option Period"), at the option of City, subject to satisfactory performance as determined by the City. City shall give Consultant sixty (60) days advance written notice prior to the expiration the initial Term and sixty (60) days advance written notice prior to the expiration date of each subsequently exercised Option Period, if any, should the City decide to exercise its option(s) to extend. In the event City does not give Consultant such written notice of its option to extend, this Agreement shall terminate at the end of the then-current Term or Option Period without further notice from either Party, unless terminated earlier pursuant to the provisions of Section 21 below. Should the City fail to give Consultant the sixty (60) days written notice of its intention to exercise any Option Period, the City may, in its sole discretion, elect to exercise any Option Period at a later date, following written inquiry from Consultant.

### **Section 7.**

### **INDEPENDENT CONTRACTOR STATUS**

It is the express intention of the Parties that Consultant is an independent contractor and not an employee, agent, joint venturer, or partner of the City. Nothing in this agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee

between the City and Consultant or any employee or agent of Consultant. Both Parties acknowledge that Consultant is not an employee for state or federal tax purposes or any other purpose. Consultant shall retain the right to perform services for others during the term of this agreement.

**Section 8.**

**REPRESENTATIONS AND ACKNOWLEDGMENTS  
REGARDING INDEPENDENT CONTRACTOR'S STATUS OF  
CONSULTANT**

**a. Consultant represents and acknowledges the following:**

(1) The City is not required to provide any training or legal counsel to Consultant or its employees in order for Consultant to perform the services described in this Agreement.

(2) Performance of the services described in this Agreement does not have to be integrated into the daily business operations of the City.

(3) The services described in this Agreement can be performed without the use of City equipment, materials, tools, or facilities, unless otherwise provided under a separate agreement.

(4) Nothing in this Agreement shall be interpreted to imply that the City must maintain any contractual relationship with Consultant on a continuing basis after termination of this Agreement.

(5) The City will not be requested or demanded to assume any liability for the direct payment of any salary, wage, or other such compensation to any person employed by Consultant to perform the services described in this Agreement.

(6) Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are employees of the City.

**b. The City represents and acknowledges the following:**

(1) Consultant is solely responsible for determining who, under the supervision or direction of Consultant, will perform the services set forth in this Agreement.

(2) The City will not hire, supervise, or pay any employees or assistants working for Consultant pursuant to this Agreement. Nothing contained in this Agreement shall prevent the City from hiring Consultant's employees or assistants after termination of this Agreement.

(3) Nothing in this Agreement shall be interpreted to imply that Consultant must maintain any contractual relationship with the City on a continuing basis after termination of this Agreement.

(4) It is the sole responsibility of Consultant to set the hours in which Consultant performs or plans to perform the services set forth in this Agreement.

(5) Consultant is not required to devote full time to the business operations of the City in order to perform the services set forth in this Agreement.

(6) Unless deemed necessary under certain circumstances, Consultant is not required to perform the services set forth in this Agreement at City Hall or on City-owned property.

(7) Other than attendance at required public meetings and public hearings, and complying with the provisions of the Proposal set forth in Exhibit A and any procedural requirements set forth by law, Consultant is not required to perform the services set forth in this Agreement in any particular order or sequence.

(8) Nothing in this Agreement shall be interpreted to preclude Consultant from working for other persons or firms, provided that such work does not create a conflict of interest.

#### **Section 9. NOT AGENT OF THE CITY**

a. Nothing contained in this Agreement shall be deemed, construed, or represented by the City or Consultant or by any third person to create the relationship of principal and agent.

b. Consultant shall have no authority, express or implied, to act on behalf of the City in any capacity whatsoever as an agent, nor shall Consultant have any authority, express or implied, to bind the City to any obligation whatsoever.

#### **Section 10. LICENSES AND PERMITS**

Consultant represents that it has obtained and will maintain at all times during the Initial Term (and during the Option Period, if applicable) of this Agreement all business licenses, including but not limited to a City of Victorville business license, professional licenses or certifications, or permits necessary for performing the services described in this Agreement.

#### **Section 11. STANDARD OF PERFORMANCE**

a. Consultant agrees to perform all services required by this Agreement in a professional and competent manner, in accordance with the degree of skill and diligence which is normally employed by reputable professionals performing similar services under similar conditions in the same or similar locality. Such services shall also be performed in a manner which is reasonably satisfactory to **Brian Gengler, City Engineer**, or his designee.

b. By executing this Agreement, Consultant warrants that it:

(1) Has thoroughly investigated and considered the services and work to be performed;

(2) Has investigated the issues regarding the scope of services to be provided;

(3) Has carefully considered how the services and related work should be performed; and

(4) Fully understands the facilities, difficulties and restrictions associated with performance of the services required by this Agreement.

**Section 12.**                      **FAMILIARITY WITH WORK**

Should Consultant discover any latent or unknown conditions materially differing from those inherent in the services or as represented by the City, Consultant shall immediately inform the City of such fact and shall not provide any services, except at Consultant's risk, until written instructions are received from **Brian Gengler, City Engineer**, or his designee.

**Section 13.**                      **CONFLICTS OF INTEREST**

Consultant covenants that it does not have any interest, nor shall it acquire any interest, directly or indirectly, which would conflict in any manner with the performance of Consultant's services under this Agreement. Consultant further covenants that in the performance of services under this Agreement, no officer, employee or agent of Consultant having such interest shall be employed by it. In the event the City determines that Consultant must disclose its financial interests by completing and filing a Fair Political Practices Commission Form 700, Statement of Economic Interests, Consultant shall file such Form 700 with the City Clerk's Office pursuant to the written instructions provided by the City Clerk. Acquisition or maintenance of a conflicting interest by Consultant may result in termination of this Agreement by the City.

**Section 14.**                      **COMPLIANCE WITH LAWS**

Consultant shall comply with all local, state, and federal laws and regulations applicable to the services to be rendered hereunder, including any rule, regulation, or bylaw governing the conduct or performance of Consultant or its employees, officers, or board members.

**Section 15.**                      **COMMERCIAL GENERAL AND AUTOMOBILE LIABILITY INSURANCE**

a. Consultant shall procure and maintain at its own expense, during the Initial Term of this Agreement (and during the Option Period, if applicable), Commercial General Liability Insurance, of not less than One Million Dollars (\$1,000,000) per occurrence, and Two Million Dollars (\$2,000,000) in the aggregate, for bodily injury, personal injury, death, loss, or damage resulting from the wrongful or negligent acts by Consultant or its officers, employees, servants, volunteers, and agents and independent contractors.

b. Consultant shall further procure and maintain, at its own expense, during the Initial Term of this Agreement, (and during the Option Period, if applicable), Commercial Vehicle Liability Insurance covering personal injury and property damage, of not less than One Million Dollars (\$1,000,000) combined single limit, covering any vehicle utilized by Consultant or its officers, employees, servants, volunteers, agents and independent contractors in performing the services required by this Agreement.

**Section 16.**                      **WORKERS' COMPENSATION INSURANCE**

a. Consultant shall procure and maintain at its own expense, during the Initial Term of this Agreement (and during the Option Period, if applicable), Workers' Compensation Insurance, providing coverage as required by the California State Workers' Compensation Law.

b. If any class of employees employed by the Consultant pursuant to this Agreement is not protected by the California State Workers' Compensation Law, Consultant

shall provide adequate insurance for the protection of such employees to the satisfaction of the City.

**Section 17.                    PROFESSIONAL LIABILITY INSURANCE**

Professional Liability Insurance or Errors and Omissions insurance as appropriate to Consultant's profession shall be required and written on a policy form specifically designed to provide coverage for and protect against the negligent acts, errors and omissions of the Consultant in the performance of the services required by this Agreement. A minimum limit of \$1,000,000 per claim and in the aggregate must be provided.

**Section 18.                    ADDITIONAL INSURED**

Notwithstanding any inconsistent statement in any required insurance policies or any subsequent endorsements attached thereto, all insurance policies, except for the Workers' Compensation and Professional Liability, shall be endorsed to name the City and its officers, employees, servants, volunteers, agents and independent contractors, including, without limitation, the City Attorney, as Additional Insureds.

**Section 19.                    WAIVER OF SUBROGATION RIGHTS**

Consultant shall require the carriers of all required insurance policies, with exception to Professional Liability, to waive all rights of subrogation against the City and its officers, employees, servants, volunteers, agents, and independent contractors and subcontractors. Each policy of insurance shall be endorsed to reflect such waiver.

**Section 20.                    PROOF OF INSURANCE COVERAGE; REQUIRED ENDORSEMENTS**

a.        Consultant shall secure from a good and responsible company or companies authorized to transact insurance business in the State of California, the policies of insurance required by this Agreement and furnish to the City Clerk certificates of insurance evidencing the required coverage, and policy endorsements at least one (1) business day prior to the commencement of any services to be performed under this Agreement.

b.        The policies and certificates of insurance shall be endorsed to provide that in the event of cancellation or amendment of any required insurance policy for any reason whatsoever, the City shall be notified by mail, postage prepaid, not less than thirty (30) days before the cancellation or amendment is effective. In the case of cancellation for non-payment, ten (10) days advance written notice shall be given.

c.        Each policy and certificate of insurance shall be endorsed to provide that the policy shall not be terminated or expire without first providing thirty (30) days written notice to the City of such termination or expiration.

d.        Each policy and certificate of insurance shall be endorsed to provide that the policy will be maintained throughout the Initial Term (and during the Option Period, if applicable), of this Agreement.

e.        The Commercial General Liability and Vehicle Liability policies shall be endorsed to contain the following provision: "For any claims related to this Agreement, Consultant's

coverage shall be primary with respect to the City. Any insurance maintained by the City shall be in excess of Consultant's insurance and shall not contribute with it."

#### **Section 21.                      TERMINATION OR SUSPENSION**

a.                      This Agreement may be terminated or suspended without cause by either Party at any time, provided that the Party initiating the termination provides the other Party at least thirty (30) days advance written notice of such termination or suspension. In the event of such termination, the City shall only be liable for payment under the payment provisions of this Agreement for satisfactory services rendered or supplies actually furnished prior to the effective date of termination.

b.                      This Agreement may be terminated or suspended with cause by either Party at any time, provided that the Party initiating termination provides the other Party at least ten (10) days advance written notice of such termination or suspension. In the event of such termination, the City shall only be liable for payment under the payment provisions of this Agreement for satisfactory services rendered or supplies actually furnished prior to the effective date of termination.

#### **Section 22.                      TIME OF THE ESSENCE**

Time is of the essence in the performance of this Agreement.

#### **Section 23.                      INDEMNIFICATION**

a.                      Consultant shall defend, indemnify, and hold harmless the City, its officers, employees, representatives, and agents, from and against those actions, suits, proceedings, claims, demands, losses, costs, and expenses, including legal costs and attorneys fees, for any personal injuries, deaths, or property damage (including property owned by the City), which may arise out of Consultant's negligence or willful misconduct in the performance of the services described in this Agreement, unless such losses or damages are proven to be caused by the City's own negligence or willful misconduct, or that of its officers or employees.

b.                      The City does not and shall not waive any rights that it may have against Consultant under this Section, because of the acceptance by the City, or the deposit with the City, of any insurance policy or certificate required pursuant to this Agreement. The hold harmless and indemnification provisions of this Section shall apply regardless of whether said insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost, or expense described herein.

#### **Section 24.                      REPORTS**

Upon request by **Brian Gengler, City Engineer**, or his designee, or as otherwise required by this Agreement, including but not limited to, the Scope of Services set forth in Exhibit "A", Consultant shall prepare and submit reports to the City concerning Consultant's performance of the services required by this Agreement.



## **Section 25.**

## **RECORDS**

- a. Consultant shall keep such books and records as shall be necessary to perform the services required by this Agreement and enable **Brian Gengler, City Engineer**, or his designee, to evaluate the cost and the performance of such services.
- b. Books and records pertaining to costs shall be kept and prepared in accordance with generally accepted accounting principles.
- c. **Brian Gengler, City Engineer**, or his designee, shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit, and make records and transcripts from such records.
- d. Records and supporting documents pertaining to the use of funds paid to Consultant hereunder shall be retained by Consultant and made available to **Brian Gengler, City Engineer**, or his designee, for purposes of performing an audit for a period of five (5) years from the date of termination of this Agreement.

## **Section 26.**

## **RESERVED**

## **Section 27.**

## **CONFIDENTIALITY; OWNERSHIP OF WORK**

- a. Any and all documents and information obtained from the City or prepared by Consultant for the City shall be kept strictly confidential unless otherwise provided by applicable law. All City data, documents and information shall be returned to the City upon termination of the Agreement.
- b. Any drawings, specifications, reports, records, documents, or other materials prepared by Consultant in the performance of services under this Agreement shall not be released publicly without the prior written approval of **Brian Gengler, City Engineer**, or his designee, or as required by applicable law.
- c. Consultant shall not disclose to any other entity or person any information regarding the activities of the City, except with the prior written approval of **Brian Gengler, City Engineer**, or his designee, or as required by applicable law.
- d. All original documents, reports, designs, computer files and all other materials prepared by Consultant in the course of performing the services pursuant to this Agreement, whether completed or in progress, are the property of the City and shall be surrendered to the City upon the completion of Consultant's services or when requested by **Brian Gengler, City Engineer**, or his designee. Such materials may be used, reused or otherwise disposed of by the City without the permission of Consultant.
- e. Consultant's covenants under this Section 28 shall survive the termination of this Agreement.

## **Section 28.**

## **PRINCIPAL REPRESENTATIVES**

- a. **Victor Martinez, Vice President, Area Manager**, is designated as the principal representative of Consultant for purposes of communicating with the City on any matter associated with the performance of the services set forth in this Agreement.

b. **Brian Gengler, City Engineer**, or his designee, shall be the principal representative of the City for purposes of communicating with Consultant on any matter associated with the performance of the services set forth in this Agreement.

c. Either Party may designate another individual as its principal representative by giving written notice of such designation to the other Party.

**Section 29.                    MODIFICATIONS AND AMENDMENTS; EXTRA SERVICES**

a. This Agreement may be modified or amended only by a written instrument signed by both Parties.

b. During the Initial Term, the City may request that the Consultant perform Extra Services. As used herein, "Extra Services" means any services, which are determined by the City to be necessary for the proper completion of **La Mesa/Nisqualli 404 Permit Compliance – Permit Modification and Mitigation Site Coordination, Project ESC18-016**, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. A written instrument signed by both Parties shall be required to authorize performance of and payment for Extra Services.

**Section 30.                    ENTIRE AGREEMENT**

a. This Agreement supersedes any and all prior or contemporaneous agreements, either oral or written, between the City and Consultant with respect to the subject matter of this Agreement.

b. This Agreement contains all of the covenants and agreements between the Parties with respect to the subject matter of this Agreement, and each Party to this Agreement acknowledges that no representations, inducements, promises, or agreements have been made by or on behalf of any Party, except those covenants and agreements in this Agreement.

c. No agreement, statement, or promise with respect to the subject matter of this Agreement, which is not contained in this Agreement, or in a valid modification or amendment to this Agreement, shall be valid or binding on either Party.

**Section 31.                    AMBIGUITIES**

This Agreement is in all respects intended by each Party hereto to be deemed and construed to have been jointly prepared by the Parties and the Parties hereby expressly agree that any uncertainty or ambiguity existing herein shall not be interpreted against either of them. Except as expressly limited by this paragraph, all of the applicable rules of interpretation of contract shall govern the interpretation of any uncertainty or ambiguity of this Agreement.

Notwithstanding the foregoing, the Parties agree that **Exhibit "A"** is attached hereto for reference purposes and to the extent there are any ambiguities, inconsistencies or conflicts between the terms of this Consultant/Professional Services Standard Provider Agreement and **Exhibit "A"** the terms of this Consultant/Professional Services Standard Provider Agreement shall control and nothing set forth in **Exhibit "A"** shall be deemed to supersede any of the provisions of this Consultant/Professional Services Standard Provider Agreement.

**Section 32.****NOTICES**

a. Any notice to be provided pursuant to this Agreement shall be in writing, and all such notices shall be delivered by personal service or by deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, and addressed to the Parties as follows:

To the City: Brian Gengler, City Engineer  
Engineering Division  
Public Works and Water Department  
City of Victorville  
14343 Civic Drive  
Victorville, CA 92392

To Consultant: Victor Martinez, Vice President, Area Manager  
WSP USA Inc.  
451 East Vanderbilt Way, Suite 200  
San Bernardino, CA 92408

b. Notices, payments, and other documents shall be deemed delivered upon receipt by personal service or as of the second (2nd) day after deposit in the United States mail.

**Section 33.****NON-LIABILITY OF CITY OFFICERS AND EMPLOYEES**

No officer or employee of the City shall be personally liable to Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount, which may become due to Consultant or to its successor(s), or for any breach of any obligation of the terms of this Agreement.

**Section 34.****REVIEW BY ATTORNEYS**

Each Party hereto has had its attorney(s) review this Agreement and all related documents. Each Party hereto has consulted with its attorney(s) and has negotiated the terms of this Agreement based on such consultation.

**Section 35.****WAIVER**

a. No waiver shall be binding unless executed in writing by the Party making the waiver.

b. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision.

c. Failure of either Party to enforce any provision of this Agreement shall not constitute a waiver of the right to compel enforcement of such provision or any of the remaining provisions of this Agreement.

**Section 36.**

**ASSIGNMENT**

This Agreement shall not be assigned by either Party without prior written consent of the other Party.

**Section 37.**

**CARE OF WORK**

The performance of services by Consultant or the payment of money by the City shall not relieve Consultant from any obligation to correct any incomplete, inaccurate, or defective work at no further cost to the City, when such incomplete, inaccurate or defective work is due to the negligence of Consultant.

**Section 38.**

**CAPTIONS AND HEADINGS**

The captions and headings contained in this Agreement are provided for identification purposes only and shall not be interpreted to limit or define the content of the provisions described under the respective caption or heading.

**Section 39.**

**SUCCESSORS, HEIRS, AND ASSIGNS**

Except as otherwise expressly provided herein, this Agreement shall be binding upon the successors, endorsees, assigns, heirs, and personal representatives of each of the Parties to this Agreement and, likewise, shall inure to the benefit of the successors, endorsees, assigns, heirs, and personal representatives of each of the Parties.

**Section 40.**

**GENDER**

In this Agreement, unless the context clearly requires otherwise, the masculine, feminine and neuter genders and the singular and the plural shall include one another.

**Section 41.**

**SEVERABILITY**

If any one or more of the sentences, clauses, paragraphs, or sections contained herein is declared invalid, void, or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall not affect, impair, or invalidate any of the remaining sentences, clauses, paragraphs, or sections contained herein.

**Section 42.**

**GOVERNING LAW**

The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the Parties under this Agreement, shall be construed pursuant to and in accordance with California law.

**Section 43.**

**DEFAULT**

a. Failure or delay by any Party to this Agreement to perform any material term or provision of this Agreement shall constitute a default under this Agreement; provided however, that if the Party who is otherwise claimed to be in default by the other Party commences to cure, correct, or remedy the alleged default within fifteen (15) days after receipt of written notice specifying such default and shall diligently complete such cure, correction, or remedy, such Party shall not be deemed to be in default hereunder.

b. The Party claiming that a default has occurred shall give written notice of default to the Party in default, specifying the alleged default. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default; provided, however, the injured Party shall have no right to exercise any remedy for a default hereunder without delivering the written default notice, as specified herein.

c. Any failure or delay by a Party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any rights or remedies associated with a default.

d. In the event that a default by any Party to this Agreement may remain uncured for more than fifteen (15) days following written notice, as provided above, the injured Party shall be entitled to seek any appropriate remedy or damages by initiating legal proceedings.

#### **Section 44. CUMULATIVE REMEDIES**

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default of any other default by the other Party.

#### **Section 45. VENUE**

All proceedings involving disputes over the terms, provisions, covenants, or conditions contained in this Agreement and all proceedings involving any enforcement action related to this Agreement shall be initiated and conducted in the applicable court or forum in San Bernardino County, California.

#### **Section 46. ATTORNEYS' FEES**

In the event any action, suit, or proceeding is brought for the enforcement of, or the declaration of any right or obligation pursuant to this Agreement, or as a result of any alleged breach of any provision of this Agreement, the prevailing Party in such suit or proceeding shall be entitled to recover its costs and expenses, including reasonable attorneys' fees, from the losing Party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

#### **Section 47. EFFECTIVENESS OF AGREEMENT**

This Agreement shall not be binding upon the City, until signed by the authorized representative(s) of Consultant, approved by the City's Risk Manager, and executed by the authorized City personnel or Mayor.

**Section 48.**

**REPRESENTATIONS OF PARTIES AND PERSONS  
EXECUTING AGREEMENT**

a. Each of the Parties to this Agreement hereby represents that all necessary and appropriate actions of their governing bodies have been taken to make this Agreement a binding obligation of each of the Parties hereto.

b. The persons executing this Agreement warrant that they are duly authorized to execute this Agreement on behalf of and bind the Parties each purports to represent.

**Section 49.**

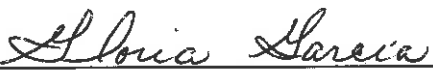
**COUNTERPARTS**

This Agreement may be executed by the Parties in counterparts, and when executed by each of the Parties, each counterpart shall be deemed to be a part of this Agreement.

(END OF THIS PAGE)


IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the dates written below.

THE CITY OF VICTORVILLE

By:   
Gloria Garcia,  
Mayor


Dated: 10-18-17

ATTEST

By:   
Carolee Bates,  
City Clerk

Dated: 10-18-17

WSP USA INC.

By:   
Victor Martinez,  
Vice President, Area Manager

Dated: 10/5/17

THE CITY OF VICTORVILLE

By:   
Chuck Buquet,  
Risk Manager

Dated: 10/10/17

Approved as to Standard Form:

By:   
*Deputy* Andre de Bortnowsky, *Charles Gmacy*  
City Attorney

Dated: 10/18/17

**EXHIBIT A**  
**PROPOSAL**

***See Attachment***





June 26, 2017

Brian Gengler  
City Engineer  
City of Victorville  
14343 Civic Drive  
Victorville, CA 92392

**Subject: Proposed Scope & Hours for the La Mesa/Nisqualli 404 Permit Compliance-  
Permit Modification and Mitigation Site Coordination**

Dear Brian:

Please accept this proposal for the third-party parcel coordination for the I-15 La Mesa Nisqualli mitigation parcel. The below scope of services is submitted for your review.

1. Approach for Compliance with the Mitigation Site Requirements:

- a. 6<sup>th</sup> Year Mitigation and Monitoring report to the Agencies. Coordinate with Jericho Systems (City's consultant) and coordinate with USACE to support the extension of the contract with Mojave Desert Resource Conservation District (MDRCD) by another year to allow for the continuation of maintenance and monitoring of the mitigation site, and to review and provide comments on a 6<sup>th</sup> Year Mitigation and Monitoring Report (prepared by Jericho Systems) to USACE and CDFW.

Effort: 10 man-hours

- b. Coordination with the Riverside Land Conservancy (RLC) (<http://www.riversidelandconservancy.org/>) to become the holder of the mitigation site through the establishment of a conservation easement. WSP USA will coordinate with RLC on behalf of the City to assist with the facilitation only, excluding the preparation of the conservation easement), the following process:



- Phase I. Due Diligence (provide approach, characterization of site & compliance) and Preparation of Letter of Intent (LOI). This document is anticipated to be a 1-4 page document;
- Phase II. WSP USA will review and provide comments on the following documents prepared by the RLC:
  - Conservation Easement Agreement;
  - The legal review;
  - The Baseline Report.
- Conveyance. Upon completion of Phase II and execution of easement agreement, WSP USA will coordinate with RLC to confirm their estimate of the funding required for the completion of Phases I and II leading to the establishment for the site is appropriate.

Effort: 15 man-hours

- c. Existing Support Documents for the Conservation Easement. Once the City receives the cost estimates from RLC, WSP USA will gather and provide to RLC the documents needed for the evaluation of the conservation easement requirements. (The Evaluation Phase is Phase 1 of the process, which can extend up to 60 days [this is an estimate provided by RLC]). The following existing documents will include:
- i. The Environmental Report (IS/EA),
  - ii. The 404 permit
  - iii. The 1602 Agreement
  - iv. The Habitat Mitigation and Monitoring Plan prepared for the site
  - v. 5 years mitigation and monitoring reports

This task also includes coordination with Jericho Systems to address technical questions from the RLC. WSP USA will be responsible for the facilitation to ensure technical questions are addressed by Jericho Systems.

Effort: 15 man-hours

- d. The Baseline Document. Upon completion of the evaluation of the existing supporting documents, the RLC will prepare a baseline document as an agreement to be signed by the City. The baseline document would include the conditions and legal requirements for the RLC to take hold of the site and long term maintenance responsibilities in-perpetuity. WSP USA will review and provide comments on the Baseline Document along with the Jericho Systems and provide technical support to the City for their negotiations of the final terms of the agreement with the RLC.

Effort: 10 man-hours

- e. Phase II – Regulatory Agencies – USACOE and CDFW. The RLC will begin Phase II of the process which includes the preparation of the legal documents and coordination with the regulatory agencies for approval of the documents, including the establishment of the Conservation Easement, and transfer of the



site to the RLC. Phase I and Phase II typically require a period of 12-18 months to complete. The RLC will utilize the USACE templates to prepare the following documents: Long Term Mitigation Plan, Conservation Easement Deed, Declaration of Restrictive Covenants, and financial documents for the endowment. WSP USA along with technical support with Jericho Systems will review and provide comments on the documents on behalf of the City for their negotiations of the final terms of the agreements with the Regulatory Agencies-USACE & CDFW.

Effort: 10 man-hours

- f. Environmental Site Assessment (ESA) Evaluation. The RLC typically requests that a Phase 1 ESA report is prepared for the site prior to taking hold of the property. An ESA was prepared in 2011, however, due to the age of the data, it may be necessary to update the record search. This task only includes the evaluation of the existing ESA and an updated record search. If additional changes are necessary, WSP USA will provide a separate scope and fee for providing an update to the ESA.

Effort: 25 man-hours; ODC: \$1,250

- g. Review and Submittal of the 6th Annual Habitat Mitigation & Monitoring Report. WSP USA will work with the City to submit this to USACE for approval and release of Letter of Credit. WSP USA will coordinate with USACE on the comments/review/approval (one review is anticipated).

Effort: 8 man-hours

2. Compliance with 404 Permit Regarding Impacts within the OHWM:

As a result of the request from USACE to conduct additional invasive species removal, WSP USA will review, comment and submit the required compliance (prepared by Jericho) associated with the USACE request. The duration would be for the 2 years of invasive species removal within the project site. The compliance is anticipated to be 1 report, and WSP will conduct 1 review and provides comments to Jericho.

- i. The USACE has determined that a 404 permit modification is required and the following mitigation has been requested in e-mail. WSP USA will review and comment on the 404 permit modification prepared by USACE to maintain compliance with the City's existing permit.
- ii. WSP USA will review and comment on the final documentation prepared by Jericho Systems who is contracted directly with City for the removal task, however, WSP USA will review and provide comments on the Invasive Species Report and overall compliance requirements of the invasive species removal criteria requested by USACE.

Effort: 15 man-hours



The total effort for these tasks is estimated to be 140 man-hours (\$25,510.00), with an ODC estimate of \$1,450 to include records research, travel, reproduction, courier services.

The fee for this effort is estimated to be \$26,960.00.

The schedule for completion of this effort will be 24 months.

**Assumptions:**

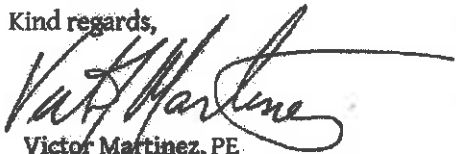
- Two field visits (2 staff x 4 hours each = 8 man-hours)
- Six conference calls with City (2 staff x 2 hours each x 6 meetings = 24 man-hours)
- Environmental Site Assessment Record Search (\$1,250)

**The deliverables will be:**

1. 6th Annual Habitat Mitigation & Monitoring Report.
2. Letter of Intent (LOI).
3. Review comments on the Conservation Easement Agreement, legal review, and preparation of Baseline Report.
4. Review comments on the Estimate of the funding required for the completion of Phases I and II leading to the established for the site.
5. Addressing technical questions from the RLC.
6. Review comments on the Final terms of the agreement with the RLC on behalf of the City.
7. Review comments on the Long Term Mitigation Plan, Conservation Easement Deed, Declaration of Restrictive Covenants, and financial documents for the endowment as prepared by RLC.
8. Updated record search and determination if there's a need to re-submit a full ESA.
9. Review comments on the Final documentation and coordination with the USACE for the compliance with the 404 Permit Regarding Impacts within the OHWM; review comments on the Invasive Species Report.

Please review the above scope, fee, schedule and deliverables and let me know if you have any questions.

Kind regards,

  
Victor Martinez, PE  
Area Manager

CST:LA:BM

cc: Basem Muallem

**AMENDMENT NUMBER: ONE**  
**TO**  
**CONSULTANT/PROFESSIONAL SERVICES PROVIDER**  
**AGREEMENT**  
**BY AND BETWEEN**  
**CITY OF VICTORVILLE**  
**AND**  
**WSP USA INC.**  
**FOR**  
**LA MESA/NISQUALLI 404 PERMIT COMPLIANCE – PERMIT MODIFICATION AND**  
**MITIGATION SITE COORDINATION,**  
**PROJECT ESC18-016**

THIS AMENDMENT (the "Amendment") is made and entered in to this 3rd day of June, 2020, by and between the City of Victorville, a municipal corporation, organized and existing in the County of San Bernardino under and by virtue of the laws of the State of California (hereinafter referred to as "City"), and **WSP USA Inc., a corporation**, hereinafter referred to as "Consultant", City and Consultant are sometimes hereinafter referred to individually as a "Party" and collectively referred to as the "Parties" for **La Mesa/Nisqualli 404 Permit Compliance – Permit Modification and Mitigation Site Coordination, Project ESC18-016.**

**Recitals**

1. **WHEREAS**, the City has a Consultant/Professional Services Provider Agreement (hereinafter referred to as the "Original Agreement") with the Consultant to provide **Mesa/Nisqualli 404 Permit Compliance – Permit Modification and Mitigation Site Coordination, Project ESC18-016; and**
2. **WHEREAS**, it is the desire of the Parties to issue Amendment One (1) to amend the Original Agreement as follows:
  - a. Section 3., Compensation, is being amended to include an increase of \$30,330.00, thereby amending the total cumulative compensation from a not to exceed \$26,960 to \$57,290.00; and
  - b. Sections 2 and 4., Proposal, are being amended to include additional services set forth in Consultant's Proposal dated March 17, 2020, attached hereto as Exhibit A1, and incorporated as part of this Agreement by this reference.
  - c. Section 6., Term of Agreement, is being amended to exercise Option 1 of 1, one-year period, amending the Term of the Agreement to commence January 1, 2020 and expire December 31, 2020; and
  - d. **Now therefore**, in consideration of the covenants, conditions, and promises contained herein and for such other good and valuable consideration, receipt of which is hereby acknowledged, the Parties are willing to amend the Original Agreement as stated below.

## **Contract Amendment**

### **Section 2. – SCOPE OF WORK – is amended as follows:**

“Consultant shall provide to the City those additional services set forth in Consultant’s Proposal, dated March 17, 2020, attached hereto as Exhibit A1, and incorporated as part of this Agreement by this reference.”

### **Section 3. – COMPENSATION – is amended as follows:**

“The City shall pay to Consultant a sum not to exceed **Fifty-seven Thousand Two Hundred Ninety and 00/100 dollars (\$57,290.00)** for faithful performance of the services to be rendered under this Agreement.....”

### **Section 4. – COST PROPOSAL – is amended as follows:**

“The City shall pay Consultant, for the additional services, as provided in the Consultant’s Proposal dated March 17, 2020, for the added Services, attached hereto as Exhibit A1, and incorporated as part of this Agreement by this reference.”

### **Section 6. – TERM OF AGREEMENT - is amended as follows:**

The City hereby amends the Term of Agreement to commence on January 1, 2020 (the “Commencement Date”) and expire on December 31, 2020 (the “Termination Date”).”

Except as amended herein, the terms and conditions of the Original Agreement and all previous amendments remain in full force and effect.

(SIGNATURES ON NEXT PAGE)

IN WITNESS WHEREOF, the parties hereto have caused the amendment to the Agreement to be entered as of the dates written below.

PARTY OF THE FIRST PART

PARTY OF THE SECOND PART

THE CITY OF VICTORVILLE

WSP USA INC.

By:   
Gloria Garcia,  
Mayor

By:   
Jason Majzoub,  
Vice President, Area Manager

Dated: 6-3-2020

Dated: May 14, 2020

ATTEST


By:   
Charlene Robinson,  
City Clerk

Dated: 6-4-2020

THE CITY OF VICTORVILLE

APPROVED AS TO STANDARD FORM

By:   
Chuck Buquet,  
Risk Manager

By:   
Andre de Bortnowsky,  
City Attorney

Dated: 6/2/2020

Dated: 6.3.20



March 17, 2020

Brian Gengler  
City Engineer  
City of Victorville  
14343 Civic Drive  
Victorville, CA 92392

**Subject: Proposed Scope Modification for the La Mesa/Nisqualli 404 Permit Compliance/Modification and Mitigation Site Coordination**

Dear Mr. Gengler:

Please accept this proposal for modification of the third-party parcel coordination contract for the I-15 La Mesa Nisqualli mitigation parcel. The below additional scope of services is submitted for your review.

**1. Mitigation Site Compliance**

- a. **HMMP Modification.** Based on the 5-year monitoring reports, Annual Beard grass has been an issue at the offsite mitigation parcel. If not treated, the site cannot meet the success criteria. The USACE has recommended that the HMMP success criteria be modified to account for the beard grass. The recommendation is to modify the success criteria for beard grass so all other invasive species are treated, and there remains an accurate accounting of the site conditions. WSP, with assistance from Jericho, will update the performance criteria in the HMMP and submit the revised HMMP for ACOE review and approval. This effort will require updating chapters referring to the maintenance plan, mitigation goals and objectives, success criteria, and monitoring plan. This task will include one (1) round of reviews and revisions from the City to complete the update and addressing revisions requested by the ACOE to obtain a revised permit.

**Estimate of Effort: 20 labor-hours**

- b. **Letter Request.** In conjunction with updates to the HMMP, the USACE has requested that the City submit a request to modify the USACE 404 permit to clarify the expectation for invasive species and the success criteria as identified in the updates to the HMMP. WSP, with assistance from Jericho, will draft a letter request to the ACOE for modification of the 404 Permit acknowledging the change in performance criteria as outlined in the HMMP. WSP will submit the letter to the City for review prior to sending to the USACE for action. This effort includes one (1) round of review/revisions from the City and required updates/revisions requested by the ACOE as needed to obtain a revised permit.

**Estimate of Effort: 16 labor-hours**





## 2. Conservation Easement

- a. **Environmental Site Assessment (ESA) Evaluation.** Original scope for this item covered evaluation of the existing ESA and an updated records search. Due to the age of the previously prepared ISA (2011), the report will require updating. The ASTM standard (ASTM E1527-13: Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process), and more specifically Section 4.6: *Continued Viability of Environmental Site Assessment* of the standard, requires that certain components of the assessment be updated if the information is more than 180 days old, and if the assessment is more than one (1) year old, the entire assessment requires updating. Since WSP is the original author of the Phase I Report, the update will require less effort as all the historical information and parts of the original write-up can be re-used. A new site reconnaissance will be needed, along with a new records search, interviews (2 anticipated), local agency record requests and cleanup liens search (included in the database record search package). WSP will conduct the site reconnaissance, database review and summary, interviews and cleanup liens review. WSP will update the report to meet current ASTM standards. The effort assumes one (1) round of reviews and revisions based on City comments and addressing questions/requests for clarification/minor report revisions from the RLC to satisfy their needs in taking hold of the property.

Estimate of Effort: 52 labor-hours

- b. **Baseline Conditions Survey.** Based on review of the conservation site title report, legal counsel for the Rivers and Land Conservancy (RLC) identified several exceptions that could have material and adverse impacts on the Conservation Values of the property. RLC's legal counsel recommended that each of the exceptions be reviewed to determine whether an exercise of rights permitted by these exceptions would create issues for the Conservation Values of the property. If there is no evidence of any use or if the use is determined not to impact the Conservation Values of the property, then RLC's legal counsel noted the exception would be acceptable. RLC has requested that WSP conduct a baseline conditions survey to determine whether any of the identified rights are being exercised. Therefore, WSP proposes to conduct a site reconnaissance to determine whether there is evidence of any such rights being exercised. WSP will inspect the site and document with pictures and a written description existing baseline conditions, such as ingress/egress to neighboring parcels, concentrated drainage across property lines, apparent encroachments, utility lines, dumping, new or old foundations, flood control improvements, etc.

Estimate of Effort: 20 labor-hours

- c. **Easement Area Natural Condition.** Per direction from the USACE, Exhibit F of the Conservation Easement needs to follow the example provided by RLC, which is an exhibit of the natural/existing condition of the conservation site. The exhibit includes easement area, identified wetlands, habitat areas, tract map information, and built conditions (fencing, sewer lines, storm drains, etc.). WSP will develop the required exhibit using parcel map data or ALTA from the City, if available.

Estimate of Effort: 30 labor-hours



3. **Project Management, Project Administration, QA/QC, and bi-weekly coordination meeting with the City and R&LC.** Along with PM, PA, and QA/QC, WSP will continue to facilitate bi-weekly (every other week) coordination meetings with the City and R&LC through the completion of the project. Estimated 6 months of bi-weekly meetings, for a total of 12 meetings to include preparation for the meeting and meeting follow-up action items.

**Estimate of Effort: 78 labor-hours**

**The total effort for these tasks is estimated to be 216 labor-hours (\$29,965) and an ODC estimate of \$365.**

**The total amount is estimated to be \$30,330.**

**Assumptions:**

- One (1) round of reviews/comments from City per deliverable
- One (1) site visit
- Two (2) interviews

**Deliverables:**

- Revised Habitat Mitigation Monitoring Plan (HMMP)
- ACOE 404 Permit Modification Letter Request
- Updated Environmental Site Assessment (ESA)
- Site Reconnaissance Letter of Findings
- Conservation Easement, Exhibit F – Natural Condition of Easement Area

**If you have any questions or require additional information, please call the project manager, Chris Turnage, at (909) 386-2832.**

**Kind regards,**

A handwritten signature in blue ink, appearing to read 'J. Majzoub', written over a horizontal line.

**Jason Majzoub, PE  
Vice President/Area Manager  
CST/td  
Encl.**

**cc: Chris Turnage  
Theresa Dickerson**

**AMENDMENT NUMBER: TWO**  
**TO**  
**CONSULTANT/PROFESSIONAL SERVICES PROVIDER**  
**AGREEMENT**  
**BY AND BETWEEN**  
**CITY OF VICTORVILLE**  
**AND**  
**WSP USA INC.**  
**FOR**  
**LA MESA/NISQUALLI 404 PERMIT COMPLIANCE – PERMIT MODIFICATION AND**  
**MITIGATION SITE COORDINATION,**  
**PROJECT ESC18-016**

THIS AMENDMENT (the “Amendment”) is made and entered in to this 1st day of December, 2020, by and between the City of Victorville, a municipal corporation, organized and existing in the County of San Bernardino under and by virtue of the laws of the State of California (hereinafter referred to as “City”), and **WSP USA Inc., a corporation**, hereinafter referred to as “Consultant”, City and Consultant are sometimes hereinafter referred to individually as a “Party” and collectively referred to as the “Parties” for **La Mesa/Nisqualli 404 Permit Compliance – Permit Modification and Mitigation Site Coordination, Project ESC18-016**.

**Recitals**

1. **WHEREAS**, the City has a Consultant/Professional Services Provider Agreement (hereinafter referred to as the “Original Agreement”) with the Consultant to provide **Mesa/Nisqualli 404 Permit Compliance – Permit Modification and Mitigation Site Coordination, Project ESC18-016**; and
2. **WHEREAS**, on or about June 3, 2020, Amendment One (1) was issued to the Original Agreement to amend Section 3, Compensation, cumulative not to exceed sum from \$26,960.00 to \$57,290.00; revise Sections 2 and 4, Proposal to include additional services; and amend Section 6, Term of Agreement to expire December 31, 2020; and
3. **WHEREAS**, it is the desire of the Parties to issue Amendment Two (2) to the Original Agreement to amend Section 3., Compensation, to include an increase of \$36,631.00 (as approved by City Council at their meeting held November 3, 2020), thereby amending the total cumulative compensation from a not to exceed \$57,290 to \$93,921.00; and amend Section 6, Term of Agreement to expire June 30, 2021; and
4. **NOW THEREFORE**, in consideration of the covenants, conditions, and promises contained herein and for such other good and valuable consideration, receipt of which is hereby acknowledged, the Parties are willing to amend the Original Agreement as stated below.

## **Contract Amendment**

**Section 3. – COMPENSATION** – is amended as follows:

“The City shall pay to Consultant a cumulative sum not to exceed **Ninety-three Thousand Nine Hundred Twenty-one and 00/100 dollars (\$93,921.00)** for faithful performance of the services to be rendered under this Agreement.....”

**Section 6. – TERM OF AGREEMENT** – is amended as follows:

“The City hereby amends the Term of Agreement to expire on June 30, 2021 (the “Termination Date”).

Except as amended herein, the terms and conditions of the Original Agreement and all previous amendments remain in full force and effect.

(SIGNATURES ON NEXT PAGE)


IN WITNESS WHEREOF, the parties hereto have caused the amendment to the Agreement to be entered as of the dates written below.


PARTY OF THE FIRST PART

PARTY OF THE SECOND PART

THE CITY OF VICTORVILLE

WSP USA INC.

By:   
Gloria Garcia,  
Mayor

By:   
Jason Majzoub,  
Vice President, Area Manager

Dated: 12/8/2020

Dated: 12/1/2020


ATTEST


By:   
Charlene Robinson,  
City Clerk

Dated: 12/8/2020

THE CITY OF VICTORVILLE

APPROVED AS TO STANDARD FORM

By:   
Chuck Buquet,  
Risk Manager

By:   
Andre de Bortnowsky,  
City Attorney

Dated: \_\_\_\_\_

Dated: 12/2/20


IN WITNESS WHEREOF, the parties hereto have caused the amendment to the Agreement to be entered as of the dates written below.

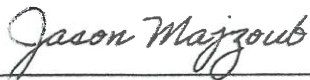
PARTY OF THE FIRST PART

PARTY OF THE SECOND PART

THE CITY OF VICTORVILLE

WSP USA INC.

By:   
Gloria Garcia,  
Mayor

By:   
Jason Majzoub,  
Vice President, Area Manager

Dated: 12/8/2020

Dated: 12/1/2020

ATTEST


By:   
Charlene Robinson,  
City Clerk

Dated: 12/8/2020

THE CITY OF VICTORVILLE

APPROVED AS TO STANDARD FORM

By:   
Chuck Buquet,  
Risk Manager

By:   
Andre de Bortnowsky,  
City Attorney

Dated: 12/15/2020

Dated: 12/2/20

**AMENDMENT NUMBER: THREE**  
**TO**  
**CONSULTANT/PROFESSIONAL SERVICES PROVIDER**  
**AGREEMENT**  
**BY AND BETWEEN**  
**CITY OF VICTORVILLE**  
**AND**  
**WSP USA INC.**  
**FOR**  
**LA MESA/NISQUALLI 404 PERMIT COMPLIANCE – PERMIT MODIFICATION AND**  
**MITIGATION SITE COORDINATION,**  
**PROJECT ESC18-016**

THIS AMENDMENT (the “Amendment”) is made and entered in to this 9<sup>th</sup> day of March, 2022 by and between the City of Victorville, a municipal corporation, organized and existing in the County of San Bernardino under and by virtue of the laws of the State of California (hereinafter referred to as “City”), and **WSP USA Inc., a corporation**, hereinafter referred to as “Consultant”, City and Consultant are sometimes hereinafter referred to individually as a “Party” and collectively referred to as the “Parties” for **La Mesa/Nisqualli 404 Permit Compliance – Permit Modification and Mitigation Site Coordination, Project ESC18-016**.

**Recitals**

1. **WHEREAS**, the City has a Consultant/Professional Services Provider Agreement (hereinafter referred to as the “Original Agreement”) with the Consultant to provide **Mesa/Nisqualli 404 Permit Compliance – Permit Modification and Mitigation Site Coordination, Project ESC18-016**; and
2. **WHEREAS**, on or about June 3, 2020, Amendment One (1) was issued to the Original Agreement to amend Section 3, Compensation, cumulative not to exceed sum from \$26,960.00 to \$57,290.00; revise Sections 2 and 4, Proposal to include additional services; and amend Section 6, Term of Agreement to expire December 31, 2020; and
3. **WHEREAS**, on or about December 1, 2020, Amendment Two (2) to the Original Agreement to amend Section 3., Compensation, to include an increase of \$36,631.00 (as approved by City Council at their meeting held November 3, 2020), thereby amending the total cumulative compensation from a not to exceed \$57,290 to \$93,921.00; and amend Section 6, Term of Agreement to expire June 30, 2021; and
4. **WHEREAS**, it is the desire of the Parties to issue Amendment Three (3) to the Original Agreement to amend Section 3., Compensation, to include an increase of \$42,659.00 for additional services, thereby amending the total cumulative compensation from a not to exceed \$93,921.00 to \$136,580; revise Sections 2 and 4, Proposal to include additional services; and amend Section 6, Term of Agreement to expire June 30, 2023; and

5. **NOW THEREFORE**, in consideration of the covenants, conditions, and promises contained herein and for such other good and valuable consideration, receipt of which is hereby acknowledged, the Parties are willing to amend the Original Agreement as stated below.

### **Contract Amendment**

**Section 2. – PROPOSAL** – is amended as follows:

“Consultant shall provide to the City those additional services as set forth in the Consultant’s Proposal dated December 22, 2021, attached here to as Exhibit A-2, and incorporated as part of this Agreement by this reference.”

**Section 3. – COMPENSATION** – is amended as follows:

“The City shall pay to Consultant a cumulative sum not to exceed **One Hundred Thirty-Six Thousand Five Hundred Eighty and 00/100 dollars (\$136,580.00)** for faithful performance of the services to be rendered under this Agreement.....”

**Section 4. – PROPOSAL** – is amended as follows:

“The City shall pay Consultant for those additional services set forth in Consultant’s Proposal dated December 22, 2021, attached hereto as Exhibit A-2 and hereby incorporated as part of this agreement by this reference.”

**Section 6. – TERM OF AGREEMENT** – is amended as follows:

“The City hereby amends the Term of Agreement to expire on June 30, 2023 (the “Termination Date”).

Except as amended herein, the terms and conditions of the Original Agreement and all previous amendments remain in full force and effect.

(SIGNATURES ON NEXT PAGE)



IN WITNESS WHEREOF, the parties hereto have caused the amendment to the Agreement to be entered as of the dates written below.

PARTY OF THE FIRST PART

PARTY OF THE SECOND PART

THE CITY OF VICTORVILLE

WSP USA INC.

By: 

Debra Jones,  
Mayor

By: 

Victor Martinez,  
Vice President, Area Manager

Dated: 15 Mar 2022

Dated: 2/9/2022 | 2:08 PM PST

ATTEST

By: 

Jennifer Thompson,  
City Clerk

Dated: 3/14/2022

THE CITY OF VICTORVILLE

APPROVED AS TO STANDARD FORM

By: 

Lee Brown,  
Risk Manager

By: 

Andre de Bortnowsky,  
City Attorney

Dated: 3/2/2022 | 9:19 AM PST

Dated: 3/3/2022 | 11:47 AM PST

**Certificate Of Completion**

Envelope Id: F6570C0FC39944CE83D39F0452F713ED

Status: Completed

Subject: WSP USA Inc. - Amendment 3 for La Mesa Nisqualli 404 Permit Compliance, ESC18-016

Source Envelope:

Document Pages: 50

Signatures: 2

Envelope Originator:

Certificate Pages: 5

Initials: 0

Elizabeth Salcido

AutoNav: Enabled

esalcido@victorvilleca.gov

EnvelopeId Stamping: Enabled

IP Address: 24.182.14.221

Time Zone: (UTC-08:00) Pacific Time (US &amp; Canada)

**Record Tracking**

Status: Original

Holder: Elizabeth Salcido

Location: DocuSign

3/1/2022 10:45:34 AM

esalcido@victorvilleca.gov

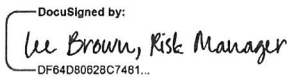
**Signer Events**

Lee Brown, Risk Manager

lbrown@victorvilleca.gov

Security Level: Email, Account Authentication  
(None)**Signature**

DocuSigned by:



DF64D80628C7481...

Signature Adoption: Pre-selected Style

Using IP Address: 172.58.21.26

Signed using mobile

**Timestamp**

Sent: 3/1/2022 10:52:09 AM

Viewed: 3/2/2022 9:19:07 AM

Signed: 3/2/2022 9:19:17 AM

**Electronic Record and Signature Disclosure:**

Accepted: 10/11/2021 5:21:06 PM

ID: d0cd0868-bb63-41c4-a882-7988bb0f3eb3

Andre de Bortnowsky, City Attorney

andre@gdblawoffices.com

Partner

Security Level: Email, Account Authentication  
(None)

DocuSigned by:



BB99CFEF322E42C...

Signature Adoption: Pre-selected Style

Using IP Address: 24.43.91.238

Sent: 3/2/2022 9:19:19 AM

Resent: 3/3/2022 11:16:02 AM

Viewed: 3/3/2022 11:46:18 AM

Signed: 3/3/2022 11:47:42 AM

**Electronic Record and Signature Disclosure:**

Accepted: 9/14/2021 8:07:41 AM

ID: 89fd4926-8d5b-469d-a54e-529db0d246c7

**In Person Signer Events****Signature****Timestamp****Editor Delivery Events****Status****Timestamp****Agent Delivery Events****Status****Timestamp****Intermediary Delivery Events****Status****Timestamp****Certified Delivery Events****Status****Timestamp****Carbon Copy Events****Status****Timestamp**

Rayne Cisneros

rcisneros@gdblawoffices.com

Security Level: Email, Account Authentication  
(None)**COPIED**

Sent: 3/2/2022 9:19:19 AM

**Electronic Record and Signature Disclosure:**

Accepted: 12/16/2021 3:19:39 PM

ID: d90571bb-d5ad-4761-8724-75d4194259be

**Witness Events****Signature****Timestamp**

**Certificate Of Completion**

Envelope Id: 193D5210740048BBB5A2F006E7564D26

Status: Completed

Subject: WSP USA, Inc. - Amendment 3 for 404 Permit Compliance, Project ESC18-016

Source Envelope:

Document Pages: 6

Signatures: 1

Envelope Originator:

Certificate Pages: 4

Initials: 0

Elizabeth Salcido

AutoNav: Enabled

esalcido@victorvilleca.gov

EnvelopeId Stamping: Enabled

IP Address: 24.182.14.221

Time Zone: (UTC-08:00) Pacific Time (US &amp; Canada)

**Record Tracking**

Status: Original

Holder: Elizabeth Salcido

Location: DocuSign

2/9/2022 1:51:36 PM

esalcido@victorvilleca.gov

**Signer Events**

Victor Martinez, Vice President, Area Manager

victor.martinez@wsp.com

Security Level: Email, Account Authentication  
(None)**Signature**

DocuSigned by:

 Victor Martinez, Vice President, Area Manager

0F9C91CBC8F141C...

Signature Adoption: Pre-selected Style

Using IP Address: 76.94.26.227

**Timestamp**

Sent: 2/9/2022 1:54:30 PM

Viewed: 2/9/2022 2:07:45 PM

Signed: 2/9/2022 2:08:30 PM

**Electronic Record and Signature Disclosure:**

Accepted: 2/9/2022 2:07:45 PM

ID: 4aa95a23-ba9a-448a-b601-dbeb56f7c574

**In Person Signer Events****Signature****Timestamp****Editor Delivery Events****Status****Timestamp****Agent Delivery Events****Status****Timestamp****Intermediary Delivery Events****Status****Timestamp****Certified Delivery Events****Status****Timestamp****Carbon Copy Events****Status****Timestamp****Witness Events****Signature****Timestamp****Notary Events****Signature****Timestamp****Envelope Summary Events****Status****Timestamps**

Envelope Sent

Hashed/Encrypted

2/9/2022 1:54:31 PM

Certified Delivered

Security Checked

2/9/2022 2:07:45 PM

Signing Complete

Security Checked

2/9/2022 2:08:30 PM

Completed

Security Checked

2/9/2022 2:08:30 PM

**Payment Events****Status****Timestamps****Electronic Record and Signature Disclosure**

EXHIBIT A-2, AMENDMENT 3, CONSULTANT'S PROPOSAL/PROJECT ESC18-016



Brian Gengler, City Engineer  
City of Victorville  
14343 Civic Drive  
Victorville, CA 92392

December 22, 2021

**Subject: Proposed Scope Modifications for the La Mesa/Nisqualli Long-Term Management Plan, Conservation Easement and Project Coordination**

Dear Mr. Gengler:

Please accept this proposal for modification of the third-party parcel coordination contract for the I-15 La Mesa Nisqualli mitigation parcel. The below additional scope of services is submitted for your review.

1. Project Management (PM), Project Administration (PA), Quality Assurance/Quality Control (QA/QC):
  - a. Task includes review of monthly effort, preparation of monthly invoices, progress reporting, set-up and facilitation of agency meetings and quality assurance of deliverables.

Estimate of Effort: 46 labor-hours
2. Additional coordination with Army Corps of Engineers (ACOE) by WSP Environmental Permitting staff:
  - a. Coordinate with Rivers & Lands Conservancy (R&LC) for the items requested by ACOE: Endowment agreement updated by R&LC to include language related to two (2) sub-accounts.
  - b. Review revised Endowment agreement with costs for sub-accounts (R&LC).
  - c. Review updated language in Long Term Management Plan (LTMP). Submit revised LTMP to ACOE.
  - d. Coordinate with ACOE Legal Counsel to update Conservation Easement (CE) to be consistent with LTMP revised language.
  - e. Coordinate with ACOE for the final review of the endowment agreement when the LTMP and CE are consistent.
  - f. Coordinate with R&LC with preparing a 'mitigation services agreement' for land management per ACOE requirements for City review, then ACOE review.
  - g. Continue the close-out process for Permit Special Conditions #2 and #6. For Special Condition #2, update remarks column of ACOE submittal checklist with submittal dates and resubmit to ACOE for sign-off. Once the LTMP is approved, work with ACOE to obtain sign off on Special Condition #6.
  - h. Continue responding to ACOE inquiries and requests for information.

Estimate of Effort: 44 labor-hours



3. Additional coordination with California Department of Fish and Wildlife (CDFW) by WSP Environmental Permitting staff:
  - a. Set up meeting with CDFW, ACOE, and R&LC to discuss agreements and division of responsibilities.
  - b. Coordinate with CDFW to close out mitigation requirements and obtain concurrence on LTMP and CE.
  - c. Assist the City with the close out of the 2081 permit requirements.
  - d. Assist the City with the close out of the 1600 permit requirements.
  - e. Review the LTMP/PAR language to ensure it meets the Corps' request to clarify roles and responsibilities regarding site management and mitigation services, as well as structuring the endowment agreement to protect the long-term management investment.

Estimate of Effort: 44 labor-hours

4. Bi-weekly coordination Meetings

- a. Continue bi-weekly meetings until June 30, 2022. Anticipate 14 meetings total. Task includes meeting preparation and follow up on action items.

Estimate of Effort: 84 labor-hours

The total effort for these tasks is estimated to be 218 labor-hours (\$42,397) and an ODC estimate of \$262. The schedule for completion will be seven (7) months or per the agreed-to schedule.

Assumptions:

- One (1) round of reviews/comments from ACOE per deliverable
- One (1) round of reviews/comments from ACOE Office of Counsel
- Fourteen (14) bi-weekly coordination meetings with City and R&LC
- Two (2) coordination meetings with agencies (ACOE, CDFW)

Deliverables:

- Updated Endowment Agreement
- Mitigation Services Agreement
- Revised Long-Term Management Plan
- Revised Conservation Easement
- Close-out confirmations from ACOE for Special Conditions #2 and #6
- Close-out confirmation from CDFW for the 2081 and 1600 Permits
- Meeting minutes with Action Items

Exclusions:

- Off-site Annual Survey Report



If you have any questions or require additional information, please call the project manager, Chris Turnage, at (909) 386-2832.

Kind regards,

A handwritten signature in cursive script, appearing to read 'Victor J. Martinez'.

Victor J. Martinez, PE  
Vice President/District Transportation Business Leader

Cc: Chris Turnage, PE, Theresa Dickerson

**AMENDMENT NUMBER: FOUR**  
**TO**  
**CONSULTANT/PROFESSIONAL SERVICES PROVIDER**  
**AGREEMENT**  
**BY AND BETWEEN**  
**CITY OF VICTORVILLE**  
**AND**  
**WSP USA INC.**  
**FOR**  
**LA MESA/NISQUALLI 404 PERMIT COMPLIANCE – PERMIT MODIFICATION AND**  
**MITIGATION SITE COORDINATION,**  
**PROJECT ESC18-016**

THIS AMENDMENT (the “Amendment”) is made and entered in to this 13TH day of February, 2023 by and between the City of Victorville, a municipal corporation, organized and existing in the County of San Bernardino under and by virtue of the laws of the State of California (hereinafter referred to as “City”), and **WSP USA Inc., a corporation**, hereinafter referred to as “Consultant”, City and Consultant are sometimes hereinafter referred to individually as a “Party” and collectively referred to as the “Parties” for **La Mesa/Nisqualli 404 Permit Compliance – Permit Modification and Mitigation Site Coordination, Project ESC18-016**.

**Recitals**

1. **WHEREAS**, the City has a Consultant/Professional Services Provider Agreement (hereinafter referred to as the “Original Agreement”) with the Consultant to provide **Mesa/Nisqualli 404 Permit Compliance – Permit Modification and Mitigation Site Coordination, Project ESC18-016**; and
2. **WHEREAS**, on or about June 3, 2020, Amendment One (1) was issued to the Original Agreement to amend Section 3, Compensation, cumulative not to exceed sum from \$26,960.00 to \$57,290.00; revise Sections 2 and 4, Proposal to include additional services; and amend Section 6, Term of Agreement to expire December 31, 2020; and
3. **WHEREAS**, on or about December 1, 2020, Amendment Two (2) to the Original Agreement to amend Section 3., Compensation, to include an increase of \$36,631.00 (as approved by City Council at their meeting held November 3, 2020), thereby amending the total cumulative compensation from a not to exceed \$57,290 to \$93,921.00; and amend Section 6, Term of Agreement to expire June 30, 2021; and
4. **WHEREAS**, on or about March 9, 2022 Amendment Three (3) to the Original Agreement was approved to amend Section 3., Compensation, to include an increase of \$43,659.00 for additional services, thereby amending the total cumulative compensation from a not to exceed \$93,921.00 to \$137,580; and revise Sections 2 and 4, as well as the Proposal to include additional services; and amend Section 6, Term of Agreement to expire June 30, 2023; and

5. **WHEREAS**, it is the desire of the Parties to issue Amendment No. 4 to the Original Agreement (as amended) to amend Section 3. thereof Compensation, to include an increase of \$54,246.00 for additional services related to the permit requirements from the environmental resource agencies, specifically the U.S. Army Corps of Engineers (USACOE) 404 Dredge and Fill permit; the Lahontan Regional Water Quality Control Board for Water Quality Certification Permit; and the California Department of Fish and Wildlife (CDFW) 1602 Streambed Alteration Permit. The total cumulative compensation will increase from the not exceed the amount of \$136,580.00 to \$190,876.00
6. **WHEREAS**, it is the desire of the Parties to amend the term of the Original Agreement so that it expires on June 30, 2024.
7. **NOW THEREFORE**, in consideration of the covenants, conditions, and promises contained herein and for such other good and valuable consideration, receipt of which is hereby acknowledged, the Parties are willing to amend the Original Agreement as stated below.

#### **Contract Amendment**

The Parties agree that the compensation provisions as set forth in the Original Agreement shall be amended as follows:

**Section 3. – COMPENSATION** – is amended as follows:

“The City shall pay to Consultant a cumulative sum not to exceed **One Hundred Ninety Thousand Eight Hundred Seventy Six and 00/100 dollars (\$190,876.00)** for faithful performance of the services to be rendered under this Agreement.....”

**Section 6. – TERM OF AGREEMENT** - is amended as follows:

“The City hereby amends the Term of the Agreement to expire on June 30, 2024 (the “Termination Date”).”

The increase in Compensation is to cover the increase in permitting costs as described in Recital 5 hereof.

Except as amended herein, the terms and conditions of the Original Agreement and all previous amendments remain in full force and effect.

(SIGNATURES ON NEXT PAGE)



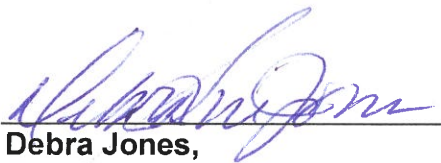
**IN WITNESS WHEREOF**, the parties hereto have caused the amendment to the Agreement to be entered as of the dates written below.

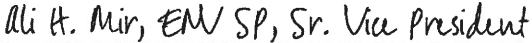
PARTY OF THE FIRST PART

PARTY OF THE SECOND PART

**THE CITY OF VICTORVILLE**

**WSP USA INC.**

By:   
**Debra Jones,**  
**Mayor**

DocuSigned by:  
By:   
**Ali H. Mir, ENV SP,**  
**Senior Vice President,**  
**Transportation Business Lines Leader**

Dated: 14 Feb 2023

Dated: 2/13/2023 | 2:16 PM PST


**ATTEST**

By:   
**Jennifer Thompson,**  
**City Clerk**

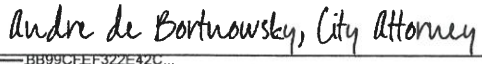

Dated: 2/14/2023

**THE CITY OF VICTORVILLE**

**APPROVED AS TO STANDARD FORM**

DocuSigned by:  
By:   
**John Preston,**  
**Risk Manager**

Dated: 2/15/2023 | 8:40 AM PST

DocuSigned by:  
By:   
**Andre de Bortnowsky,**  
**City Attorney**  
Dated:  2/15/2023 8:40am

**Certificate Of Completion**

Envelope Id: D1A88F8654984DAB88C5EB24846E49E6

Status: Completed

Subject: WSP Amend 4 for La Mesa/Nisqualli 404 Permit Compliance - Permit Mod. &amp; Mitigation Site Coordination

Source Envelope:

Document Pages: 3

Signatures: 1

Envelope Originator:

Certificate Pages: 4

Initials: 0

Elizabeth Salcido

AutoNav: Enabled

esalcido@victorvilleca.gov

Envelopeld Stamping: Enabled

IP Address: 24.182.14.221

Time Zone: (UTC-08:00) Pacific Time (US &amp; Canada)

**Record Tracking**

Status: Original

Holder: Elizabeth Salcido

Location: DocuSign

2/13/2023 1:57:51 PM

esalcido@victorvilleca.gov

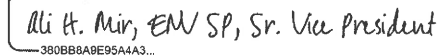
**Signer Events**

Ali H. Mir, ENV SP, Sr. Vice President

ali.mir@wsp.com

Security Level: Email, Account Authentication  
(None)**Signature**

DocuSigned by:

Ali H. Mir, ENV SP, Sr. Vice President  
300BB8A9E95A4A3...

Signature Adoption: Pre-selected Style

Using IP Address: 99.59.236.40

Signed using mobile

**Timestamp**

Sent: 2/13/2023 2:02:09 PM

Viewed: 2/13/2023 2:16:12 PM

Signed: 2/13/2023 2:16:41 PM

**Electronic Record and Signature Disclosure:**

Accepted: 2/13/2023 2:16:12 PM

ID: c18bcd2b-9271-4d35-8c6a-8c007a51865d

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	2/13/2023 2:02:09 PM
Certified Delivered	Security Checked	2/13/2023 2:16:12 PM
Signing Complete	Security Checked	2/13/2023 2:16:41 PM
Completed	Security Checked	2/13/2023 2:16:41 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

**Certificate Of Completion**

Envelope Id: 1AED4C1AD5FF4B099A3546639ED8B3AF

Status: Completed

Subject: WSP Amend 4 for La Mesa/Nisqualli 404 Permit Comp. - Mod &amp; Mitigation Site Coordination, ESC18-016

Source Envelope:

Document Pages: 52

Signatures: 2

Envelope Originator:

Certificate Pages: 5

Initials: 1

Elizabeth Salcido

AutoNav: Enabled

esalcido@victorvilleca.gov

EnvelopeId Stamping: Enabled

IP Address: 24.182.14.221

Time Zone: (UTC-08:00) Pacific Time (US &amp; Canada)

**Record Tracking**

Status: Original

Holder: Elizabeth Salcido

Location: DocuSign


2/14/2023 3:40:19 PM

esalcido@victorvilleca.gov

**Signer Events**

John Preston

jpreston@victorvilleca.gov

Security Level: Email, Account Authentication  
(None)**Signature**DocuSigned by:  
  
335769DAECAB41A...Signature Adoption: Pre-selected Style  
Using IP Address: 172.248.121.34**Timestamp**

Sent: 2/14/2023 3:44:26 PM

Viewed: 2/15/2023 8:31:31 AM

Signed: 2/15/2023 8:40:07 AM

**Electronic Record and Signature Disclosure:**

Accepted: 2/11/2021 11:49:41 AM

ID: 8c7d130e-2e71-4a87-9660-058ce66e8274

Andre de Bortnowsky, City Attorney

andre@gdblawoffices.com

Partner

Security Level: Email, Account Authentication  
(None)DocuSigned by:  
  
BB99CFEF322E42C...Signature Adoption: Pre-selected Style  
Using IP Address: 174.243.227.85

Sent: 2/15/2023 8:40:11 AM

Viewed: 2/15/2023 8:41:45 AM

Signed: 2/15/2023 8:43:13 AM

**Electronic Record and Signature Disclosure:**

Accepted: 9/14/2021 8:07:41 AM

ID: 89fd4926-8d5b-469d-a54e-529db0d246c7

**In Person Signer Events****Signature****Timestamp****Editor Delivery Events****Status****Timestamp****Agent Delivery Events****Status****Timestamp****Intermediary Delivery Events****Status****Timestamp****Certified Delivery Events****Status****Timestamp****Carbon Copy Events****Status****Timestamp**

Rayne Cisneros

rcisneros@gdblawoffices.com

Security Level: Email, Account Authentication  
(None)**COPIED**

Sent: 2/15/2023 8:43:17 AM

**Electronic Record and Signature Disclosure:**

Accepted: 12/16/2021 3:19:39 PM

ID: d90571bb-d5ad-4761-8724-75d4194259be

**Witness Events****Signature****Timestamp**