

## RESOLUTION NO. 2011-99

### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK AUTHORIZING AND APPROVING A CONSULTANT SERVICES AGREEMENT WITH ENVIRONMENTAL SCIENCE ASSOCIATES (ESA) FOR PREPARATION OF ENVIRONMENTAL DOCUMENTS FOR THE NORTHEAST SPECIFIC PLAN AREA

WHEREAS, the City desires to obtain consultant services for additional environmental work and the preparation of environmental documents in connection with the Northeast Specific Plan area; and

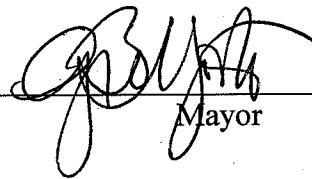
WHEREAS, Environmental Science Associates ("ESA") is qualified to perform these services.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Rohnert Park that it does hereby authorize and approve an agreement by and between Environmental Science Associates (ESA), a California corporation, and the City of Rohnert Park, a municipal corporation, for preparation of environmental documents for the Northeast Specific Plan area.

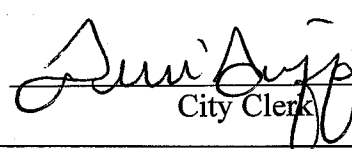
**BE IT FURTHER RESOLVED** that the City Manager is hereby authorized and directed to take all actions to effectuate this agreement for and on behalf of the City of Rohnert Park, including execution, if necessary, in substantially similar form to the agreement attached hereto as Exhibit "A," subject to minor modifications by the City Manager or City Attorney.

**DULY AND REGULARLY ADOPTED** this 25<sup>th</sup> day of October, 2011.

**CITY OF ROHNERT PARK**

  
\_\_\_\_\_  
Mayor

**ATTEST:**

  
\_\_\_\_\_  
City Clerk



AHANOTU: <u>AYE</u>	CALLINAN: <u>ABSENT</u>	MACKENZIE: <u>AYE</u>	STAFFORD: <u>AYE</u>	BELFORTE: <u>AYE</u>
AYES: (4)		NOES: (0)		ABSENT: (1) ABSTAIN: (0)

**City of Rohnert Park**  
130 Avram Ave.  
Rohnert Park, CA 94928

## **CONSULTANT SERVICES AGREEMENT**

THIS AGREEMENT is entered into, as of the \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between the CITY OF ROHNERT PARK ("City"), a California municipal corporation, and Environmental Science Associates ("Consultant"), a California corporation.

### Recitals

WHEREAS, City desires to obtain preparation of environmental document services in connection with the North East Specific Plan area;

WHEREAS, Consultant hereby warrants to the City that Consultant is skilled and able to provide such services described in Section 3 of this Agreement; and

WHEREAS, City desires to retain Consultant pursuant to this Agreement to provide the services described in Section 3 of this Agreement.

### Agreement

NOW, THEREFORE, in consideration of their mutual covenants, the parties hereto agree as follows:

1. Incorporation of Recitals. The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth herein in full.

2. Project Coordination.

A. City. The City Manager or his/her designee, shall represent City for all purposes under this Agreement. The Planning and Building Manager is hereby designated as the Project Manager. The Project Manager shall supervise the progress and execution of this Agreement.

B. Consultant. The Consultant shall assign Karl Heisler to have overall responsibility for the progress and execution of this Agreement for Consultant.

3. Scope and Performance of Services

A. Scope of Services. Subject to such policy direction and approvals as the City through its staff may determine from time to time, Consultant shall perform the services set out in the "Scope of Work" attached hereto as Exhibit A and incorporated herein by reference.

B. Time of Performance. The services of Consultant are to commence upon receipt of a written notice to proceed from City, but in no event prior to receiving a fully

executed agreement from City and obtaining and delivering the required insurance coverage, and satisfactory evidence thereof, to City. The services of Consultant are to be completed not later than June 30, 2012. Consultant shall perform its services in accordance with the schedule attached hereto as Exhibit A, and incorporated herein by reference. Any changes to these dates in either this Section 3 or Exhibit A must be approved in writing by the Project Manager.

C. Standard of Quality. City relies upon the professional ability of Consultant as a material inducement to entering into this Agreement. All work performed by Consultant under this Agreement shall be in accordance with all applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.

4. Compensation and Method of Payment.

A. Compensation. The compensation to be paid to Consultant, including both payment for professional services and reimbursable expenses, shall be at the rate and schedules attached hereto as Exhibit A, and incorporated herein by reference. However, in no event shall the amount City pays Consultant exceed Eighteen Thousand Seven Hundred Forty-Five Dollars (\$18,745.00). Payment by City under this Agreement shall not be deemed a waiver of unsatisfactory work, even if such defects were known to the City at the time of payment.

B. Timing of Payment. Progress payments will be tied to completion of tasks so that all payments are proportional to the work completed. A copy of the progress payment schedule is attached to the rate and schedules set forth in Exhibit A.

C. Changes in Compensation. Consultant will not undertake any work that will incur costs in excess of the amount set forth in Paragraph 4(A) without prior written amendment to this Agreement.

D. Taxes. Consultant shall pay all taxes, assessments and premiums under the federal Social Security Act, any applicable unemployment insurance contributions, Workers Compensation insurance premiums, sales taxes, use taxes, personal property taxes, or other taxes or assessments now or hereafter in effect and payable by reason of or in connection with the services to be performed by Consultant.

E. No Overtime or Premium Pay. Consultant shall receive no premium or enhanced pay for work normally understood as overtime, i.e., hours that exceed forty (40) hours per work week, or work performed during non-standard business hours, such as in the evenings or on weekends. Consultant shall not receive a premium or enhanced pay for work performed on a recognized holiday. Consultant shall not receive paid time off for days not worked, whether it be in the form of sick leave, administrative leave, or for any other form of absence.

F. Litigation Support. Consultant agrees to testify at City's request if litigation is brought against City in connection with Consultant's work product. Unless the action is brought by Consultant or is based upon Consultant's negligence, City will compensate Consultant for the preparation and the testimony at Consultant's standard hourly rates, if requested by City and not part of the litigation brought by City against Consultant.

5. Amendment to Scope of Work. City shall have the right to amend the Scope of Work within the Agreement by written notification to the Consultant. In such event, the compensation and time of performance shall be subject to renegotiation upon written demand of either party to the Agreement. Consultant shall not commence any work exceeding the Scope of Work without prior written authorization from the City. Failure of the Consultant to secure City's written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the contract price or time due, whether by way of compensation, restitution, quantum meruit, etc. for work done without the appropriate City authorization.

6. Term. This Agreement shall commence upon its execution by both parties and shall continue in full force and effect until completed, amended pursuant to Section 21, or otherwise terminated as provided herein.

7. Inspection. Consultant shall furnish City with every reasonable opportunity for City to ascertain that the services of Consultant are being performed in accordance with the requirements and intentions of this Agreement. All work done and all materials furnished, if any, shall be subject to the Project Manager's inspection and approval. The inspection of such work shall not relieve Consultant of any of its obligations to fulfill the Agreement as prescribed.

8. Ownership of Documents. Title to all plans, specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products compiled by the Consultant under the Agreement shall be vested in City, none of which shall be used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written consent of the City. Basic survey notes and sketches, charts, computations, and other data prepared or obtained under the Agreement shall be made available, upon request, to City without restriction or limitations on their use. Consultant may retain copies of the above-described information but agrees not to disclose or discuss any information gathered, discussed or generated in any way through this Agreement without the written permission of City during the term of this Agreement, unless required by law.

9. Employment of Other Consultants, Specialists or Experts. Consultant will not employ or otherwise incur an obligation to pay other consultants, specialists or experts for services in connection with this Agreement without the prior written approval of the City.

10. Conflict of Interest.

A. Consultant covenants and represents that neither it, nor any officer or principal of its firm, has, or shall acquire any investment, income, business entity, interest in real property, or other interest, directly or indirectly, which would conflict in any manner with the interests of City, hinder Consultant's performance of services under this Agreement, or be affected in any manner or degree by performance of Consultant's services hereunder. Consultant further covenants that in the performance of the Agreement, no person having any such interest shall be employed by it as an officer, employee, agent, or subcontractor without the express written consent of the City. Consultant agrees to at all times avoid conflicts of interest, or the appearance of any conflicts of interest, with the interests of the City in the performance of the Agreement.

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

(1) will conduct research and arrive at conclusions with respect to its rendition of information, advice, recommendation, or counsel independent of the control and direction of the City or of any City official, other than normal contract monitoring; and

(2) possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendation, or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

11. Liability of Members and Employees of City. No member of the City and no other officer, elected official, employee or agent of the City shall be personally liable to Consultant or otherwise in the event of any default or breach of the City, or for any amount which may become due to Consultant or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

12. Indemnity. To the fullest extent permitted by law, Consultant hereby agrees to defend (by counsel reasonably satisfactory to the City), indemnify, and hold harmless the City, its officers, elected officials, employees, agents, and volunteers from and against any and all claims, demands, damages, costs, liabilities, or obligations brought on account of or arising out of any acts, errors, or omissions of Consultant, its officers, employees, agents, and subcontractors undertaken pursuant to this Agreement excepting liabilities due to the sole negligence or willful misconduct of City. The City has no liability or responsibility for any accident, loss, or damage to any work performed under this Agreement whether prior to its completion and acceptance or otherwise. Consultant's duty to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in California Civil Code § 2778. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable by or for Consultant under Worker's Compensation, disability or other employee benefit acts or the terms, applicability or limitations of any insurance held or provided by Consultant and shall continue to bind the parties after termination/completion of this agreement. This indemnification shall be regardless of and not in any way limited by the insurance requirements of this contract. This indemnification is for the full period of time allowed by law and shall survive the termination of this agreement.

13. Consultant Not an Agent of City. Consultant, its officers, employees and agents shall not have any power to bind or commit the City to any decision.

14. Independent Contractor. It is expressly agreed that Consultant, in the performance of the work and services agreed to be performed by Consultant, shall act as and be an independent contractor and not an agent or employee of City; and as an independent contractor, Consultant shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Consultant hereby expressly waives any claim it may have to any such rights.

15. Compliance with Laws.

A. General. Consultant shall use the standard of care in its profession to comply with all applicable federal, state, and local laws, codes, ordinances, and regulations. Consultant represents and warrants to City that it has and 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 for Consultant to practice its profession. Except as otherwise allowed by City in its sole discretion, Consultant and all subconsultants shall have acquired, at their expense, a business license from City in accordance with Chapter 5.04 of the Rohnert Park Municipal Code prior to City's issuance of an authorization to proceed with the Services. Such license(s) must be kept valid throughout the term of this Agreement. The City is not responsible or liable for Consultant's failure to comply with any or all of the requirements contained in this paragraph.

B. Workers' Compensation. Consultant certifies that it is aware of the provisions of the California Labor Code which require every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Consultant certifies that it will comply with such provisions before commencing performance of the Agreement and at all times in the performance of the Agreement.

C. Prevailing Wage. Consultant and Consultant's subconsultants (if any) shall, to the extent required by the California Labor Code, pay not less than the latest prevailing wage rates to workers and professionals as determined by the Director of Industrial Relations of the State of California pursuant to California Labor Code, Part 7, Chapter 1, Article 2. Copies of the applicable wage determination are on file at the City's office of the City Clerk.

D. Injury and Illness Prevention Program. Consultant certifies that it is aware of and has complied with the provisions of California Labor Code § 6401.7, which requires every employer to adopt a written injury and illness prevention program.

E. City Not Responsible. City is not responsible or liable for Consultant's failure to comply with any and all of its requirements under this section and Agreement.

F. Waiver of Subrogation. Consultant and Consultant's insurance company agree to waive all rights of subrogation against City, its officers, elected officials, employees, agents and volunteers for losses paid under Consultant's workers' compensation insurance policy which arise from the work performed by Consultant for the City.

16. Confidential Information. All data, documents, discussions or other information developed or received by or for Consultant in performance of this Agreement are confidential and not to be disclosed to any person except as authorized by the City, or as required by law.

17. Assignment; Subcontractors; Employees

A. Assignment. Consultant shall not assign, delegate, transfer, or convey its duties, responsibilities, or interests in this Agreement or any right, title, obligation, or interest in or to the same or any part thereof without the City's prior written consent. Any assignment without such approval shall be void and, at the City's option, shall immediately cause this Agreement to terminate.

B. Subcontractors; Employees. Consultant shall be responsible for employing or engaging all persons necessary to perform the services of Consultant hereunder. No subcontractor of Consultant shall be recognized by the City as such; rather, all subcontractors

are deemed to be employees of the Consultant, and Consultant agrees to be responsible for their performance. Consultant shall give its personal attention to the fulfillment of the provisions of this Agreement by all of its employees and subcontractors, if any, and shall keep the work under its control. If any employee or subcontractor of Consultant fails or refuses to carry out the provisions of this Agreement or appears to be incompetent or to act in a disorderly or improper manner, it shall be discharged immediately from the work under this Agreement on demand of the Project Manager.

18. Insurance. Without limiting consultant's indemnification provided herein, Consultant shall comply with the requirements set forth in Exhibit C to this Agreement.

19. Termination of Agreement; Default.

A. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the City upon 5-days' written notice to Consultant.

B. If Consultant fails to perform any of its obligations under this Agreement within the time and in the manner herein provided or otherwise violate any of the terms of this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice. In such event, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred hereunder, an amount which bears the same ratio to the total fees specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total fee; provided, however, that the City shall deduct from such amount the amount of damages, if any, sustained by City by virtue of the breach of the Agreement by consultant.

C. In the event this Agreement is terminated by City without cause, Consultant shall be entitled to any compensation owing to it hereunder up to the time of such termination, it being understood that any payments are full compensation for services rendered prior to the time of payment.

D. Upon termination of this Agreement with or without cause, Consultant shall turn over to the City Manager immediately any and all copies of studies, sketches, drawings, computations, and other data, whether or not completed, prepared by Consultant or its subcontractors, if any, or given to Consultant or its subcontractors, if any, in connection with this Agreement. Such materials shall become the permanent property of the City. Consultant, however, shall not be liable for the City's use of incomplete materials nor for the City's use of complete documents if used for other than the project contemplated by this Agreement.

20. Suspension. The City shall have the authority to suspend this Agreement and the services contemplated herein, wholly or in part, for such period as it deems necessary due to unfavorable conditions or to the failure on the part of the Consultant to perform any provision of this Agreement. Consultant will be paid for satisfactory Services performed through the date of temporary suspension.

21. Merger; Amendment. This Agreement constitutes the complete and exclusive statement of the agreement between the City and Consultant and shall supersede all prior

negotiations, representations, or agreements, either written or oral. This document may be amended only by written instrument, signed by both the City and Consultant. All provisions of this Agreement are expressly made conditions.

22. Interpretation. This Agreement shall be interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a party on the ground that said party was solely or primarily responsible for drafting the language to be interpreted.

23. Litigation Costs. If either party becomes involved in litigation arising out of this Agreement or the performance thereof, the court in such litigation shall award reasonable costs and expenses, including attorneys' fees, to the prevailing party. In awarding attorneys' fees, the court will not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses, and attorneys' fees paid or incurred in good faith.

24. Time of the Essence. Time is of the essence of this Agreement.

25. Written Notification. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent by prepaid, first class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 72 hours from the time of mailing if mailed as provided in this section.

If to City:                      City Manager  
   City of Rohnert Park - City Hall  
   130 Avram Avenue  
   Rohnert Park, CA 94928

If to Consultant:              Karl Heisler, Project Director  
   Environmental Science Associates  
   225 Bush Street, Suite 1700  
   San Francisco, CA 94104

26. 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 the City and 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.

B. 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 Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to the City for inspection 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.

C. The 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 the City Manager's office.

27. Agreement Binding. The terms, covenants, and conditions of this Agreement shall apply to, and shall bind, the heirs, successors, executors, administrators, assigns, and subcontractors of both parties.

28. Equal Employment Opportunity. Consultant is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. Consultant will not discriminate against any employee or applicant for employment because of race, age, sex, creed, color, sexual orientation, marital status or national origin. Consultant will take affirmative action to ensure that applicants are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status, or national origin. Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

29. City Not Obligated to Third Parties. The City shall not be obligated or liable for payment hereunder to any party other than the Consultant.

30. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

31. Severability. If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.

32. Exhibits. The following exhibits are attached to this Agreement and incorporated herein by this reference:

- A. Exhibit A: Scope of Work/Schedule of Performance and Compensation
- B. Exhibit B: NOT USED
- C. Exhibit C: Insurance Requirements

33. 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.

34. News Releases/Interviews. All Consultant and subconsultant news releases, media interviews, testimony at hearings and public comment shall be prohibited unless expressly authorized by the City.

35. Applicable Law; Venue. This Agreement shall be construed and interpreted according to California law. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of Sonoma, California.

36. Authority. Each individual executing this Agreement on behalf of one of the parties represents that he or she is duly authorized to sign and deliver the Agreement on behalf of such party and that this Agreement is binding on such party in accordance with its terms.

37. STATEMENT OF ECONOMIC INTEREST. If City determines Consultant comes within the definition of Consultant under the Political Reform Act (Government Code §87100), Consultant shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with the Clerk of the City of Rohnert Park disclosing Consultant and/or such other person's financial interests.

IN WITNESS WHEREOF, the City and Consultant have executed this Agreement as of the date first above written.

CITY OF ROHNERT PARK

CONSULTANT

By: \_\_\_\_\_  
City Manager  
Date: \_\_\_\_\_  
Per Resolution No. 2011-\_\_\_\_ adopted by the Rohnert  
Park City Council at its meeting of \_\_\_\_\_

By: Paul F. Hurdle  
Title: Community Development Mgr. (S.F.)  
Date: October 12, 2011

CONSULTANT

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

ATTEST:

By: \_\_\_\_\_  
City Clerk

## EXHIBIT A

### Scope of Work/Schedule of Performance and Compensation



225 Bush Street  
Suite 1700  
San Francisco, CA 94104  
415.896.5900 phone  
415.896.0332 fax

Exhibit A  
1 of 5  
www.esassoc.com

September 6, 2011

**BY E-MAIL AND U.S. MAIL**

Marilyn Ponton  
City of Rohnert Park Planning Department  
140 Avram Avenue  
Rohnert Park, CA 94928

**Subject: Request for New Contract for Northeast Area Specific Plan EIR**

Dear Ms. Ponton:

I am writing in response to your request for a budget to complete the Final EIR for the Northeast Area Specific Plan. As we have previously discussed, it is difficult to estimate the precise effort that will be involved, given that we do not know the details of the final project description. However, below we present a qualified estimate, based upon assumptions concerning the work that will be required.

Assuming no substantive changes in the project description and a lesser level of City comment by than that to which we responded in preparation of the Screencheck FEIR, I estimate that completion of the Final EIR would cost approximately \$10,300, broken down as indicated on the attached spreadsheet. Concerning costs to date, we are requesting \$8,445, as explained in our letter of April 26, 2011 (attached); this is also included on the attached spreadsheet. As we have noted previously, the amount previously expended incorporates a 5 percent discount, while the hourly labor rates for work going forward are based on billing rates reduced below our standard rates.

Our total requested amount is \$18,745. I propose that, once City staff determines the precise nature of the project to be carried forward in the FEIR, ESA and City staff discuss any potential revisions to the FEIR and determine, prior to the start of any work by ESA, whether those changes would exceed the effort anticipated above.

Concerning the City's insurance requirements, ESA has the required coverages.

Please do not hesitate to contact me should you have any questions about this request.

Sincerely,

Karl F. Heisler  
Community Development Manager, San Francisco

## Northeast Rohnert Park Specific Plan EIR - Proposal for Contract Modification for Final EIR

											TOTAL COSTS		
	Karl Heister Project Director	Paul Mitchell Project Director	Cory Barringhaus Project Manager	Other Technical Staff (blended rate)	Word Processing/Editorial/Graphics	Production	ESA TOTAL HOURS	ESA TOTAL LABOR COST	W-Trans (Traffic Subconsultant)	ESA Burden on Direct Costs (15%)			
Services/Tasks													
Work to Date	EFFORT IN HOURS	\$/hr Rate	\$185	\$165	\$130	\$145.50	\$100	\$70					
Final EIR, Administrative Draft #1 (7/26/10)			30.5	188.75	15.5	3.5	4	242.25	\$32,455	\$585	\$88	\$33,128	
Final EIR, Administrative Draft #2 (9/29/10)			34	30.5	9	0.5		74.00	\$10,935		\$0	\$10,935	
TOTAL EFFORT (Hours)			0	64.5	219.25	24.5	4	4	316.25				
SUBTOTAL: LABOR COSTS (\$)			\$0	\$10,643	\$28,503	\$3,565	\$400	\$280		\$43,390	\$585	\$88	\$44,063
DIRECT COSTS (\$)												\$792	
TOTAL COSTS (\$) FOR FEIR TO DATE												\$44,855	
LESS BUDGETED COST FOR FEIR												\$31,325	
LESS AMOUNT BY WHICH DEIR WAS COMPLETED UNDER BUDGET												\$4,640	
NET FOR WORK COMPLETED TO DATE												\$8,890	
Less 5 percent												(\$444)	
AMOUNT OF REQUESTED MODIFICATION FOR WORK TO DATE												\$8,445	

Future Work	EFFORT IN HOURS	\$/hr Rate	\$175	\$165	\$125	\$0.00	\$105	\$85					
Final EIR, Administrative Draft #3 (screencheck)			4	8	30				42	\$5,770		\$0	\$5,770
Final EIR, last revisions in response to staff comments			2	2	6				10	\$1,430		\$0	\$1,430
Production of Final EIR							4	8	12	\$1,100		\$0	\$1,100
TOTAL EFFORT (Hours)			6	10	36	0	4	8	64				
SUBTOTAL: LABOR COSTS (\$)			\$1,050	\$1,650	\$4,500	\$0	\$420	\$680		\$8,300	\$0	\$0	\$8,300
DIRECT COSTS (\$)												\$2,000	
TOTAL COSTS (\$) TO COMPLETE FINAL EIR												\$10,300	

GRAND TOTAL OF CONTRACT MODIFICATION REQUESTED													\$18,745
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225 Bush Street  
Suite 1700  
San Francisco, CA 94104  
415.896.5900 phone  
415.896.0332 fax

www.esassoc.com

April 26, 2011

Marilyn Ponton  
City of Rohnert Park Planning Department  
140 Avram Avenue  
Rohnert Park, CA 94928

**Subject: Request for Interim Contract Amendment for Northeast Area Specific Plan EIR**

Dear Ms. Ponton:

As we recently discussed by telephone, ESA is requesting an interim contract amendment to permit the City to pay ESA for costs incurred to date in preparation of the Northeast Specific Plan (NESP) EIR. Given that the project remains on hold pending City staff discussions with the project applicant concerning the definition of the proposal that will be presented to the City Council, we are hopeful that the City and the applicant will be in accord with our request. This letter outlines the tasks and associated costs through submittal of the Administrative Final EIR #2 (Screencheck) and explains the reasons why our costs have exceeded the project budget.

When the Draft EIR was published and made available for public circulation in January 2010, total costs incurred by ESA were approximately \$301,100. At that time the project was well within our overall budget of \$337,056, and more than \$4,600 below our contracted cost for completion of the Draft EIR, as revised through Modification No. 4 (see attached spreadsheet).

While ESA has strived to remain as time- and cost-efficient as possible on the NESP Final EIR, actual overall effort required to prepare the Administrative Final EIR has been greater than originally anticipated. Our proposal and our contract reflect an estimate of approximately \$31,325 for completion of the Final EIR, including preparation of the Mitigation Monitoring and Reporting Program (MMRP). The foregoing contract cost estimate assumed 268 staff hours, at an average cost of approximately \$95 per hour, would be needed to complete the Final EIR, including document publication, with an additional \$3,450 in direct costs (plus \$2,455 for the MMRP).

To date, since publication of the DEIR, we have devoted more than 315 staff hours to preparation of the Final EIR. The additional effort has been required beyond the budgeted amount to adequately respond to the number, range and complexity of agency/public comments received on the Draft EIR. Additionally, our contracted scope of work assumed the preparation of a single Administrative Final EIR, whereas we have completed two drafts to date, and we anticipate that an additional draft will be necessary prior to publication of the Final EIR. Finally, as you know, our original contract was signed some seven-and-one-half years ago, and our staff rates have increased since that time; the average hourly cost of staff time expended to date on the FEIR is approximately \$150.

Of the effort on the Final EIR, 284 hours have been expended by Paul Mitchell and Cory Barringhaus, the two key staff members working on the EIR. Other substantive contributions have been made by two staff biologists (14.5 hours) and our senior geohydrologist (6 hours). Thus, in addition to the sheer number of hours spent, the staff time expended on the Final EIR has been weighted more towards senior staff than assumed in our proposal.



Marilyn Ponton  
April 26, 2011  
Page 2

Our total costs for the Final EIR thus approximate \$44,850, or some \$13,500 in excess of the budgeted amount. Because the DEIR was completed for nearly \$5,000 less than the budgeted amount, however, our total costs to date exceed the contract total of \$337,055.50 by about \$8,890.

As of today, we have billed the City a total \$335,130 (\$1,925 less than the contract ceiling), which includes costs through submittal to the City of the Administrative Final EIR #1 on July 26, 2010, as well as submittal of the Administrative Final EIR #2 (Screencheck) on September 29, 2010. Our total costs for Screencheck FEIR alone were nearly \$11,000, for approximately 73 hours' effort and reimbursable costs, and this was the task that ultimately exceeded our contract amount. (Total costs since that time are less than \$250.)

As you know, ESA has not billed the City for these excess costs pending the anticipated submittal of a final contract amendment necessary to get the Final EIR through certification. At this point, however, we have not received comments from the City on the Screencheck FEIR, which was submitted to the City more than six months ago. In addition, we do not yet have firm indication from the City regarding when we can expect to receive these comments and subsequently proceed with publication of the Final EIR, or of the ultimate design of the project that goes to the Council.

Therefore, in order to recover our costs incurred to date, we would greatly appreciate the receipt of an interim contract amendment for costs that exceed the budget (\$8,890).

Please do not hesitate to contact me should you have any questions about this request.

Sincerely,

A handwritten signature in cursive script that reads "Karl F. Heisler".

Karl F. Heisler  
Community Development Manager, San Francisco

# Northeast Rohnert Park Specific Plan EIR – Contract Summary

	Date	Total	DEIR	FEIR	Notes
Original Contract	10/16/2003	\$198,100.00	\$166,775.00	\$31,325.00	DEIR includes WSA; FEIR includes MMRP
Modification #1	9/16/2005	\$10,040.00	\$10,040.00		Traffic, AQ, and Noise Analysis for 2012
Modification #2	6/13/2006	\$22,746.50	\$22,746.50		Traffic analysis for US 101/Wilfred Dowdell interchange, Penngrove-Cotati intersections, University District plan consistency; add'l. biology analysis re: revised Specific Plan.
Modification #3	2/26/2008	\$84,972.00	\$84,972.00		Analysis in connection with revised Specific Plan (Nov. 2007)
Modification #4	2/10/2009	\$21,197.00	\$21,197.00		Analysis in connection with revised Specific Plan (Oct. 2008)
Total		\$337,055.50	\$305,730.50	\$31,325.00	



EXHIBIT B  
[NOT USED]

## EXHIBIT C

### INSURANCE REQUIREMENTS for Consultant Services Agreement

*Prior to the beginning of and throughout the duration of the Work, Consultant will maintain insurance in conformance with the requirements set forth below. Consultant will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, Consultant agrees to amend, supplement or endorse the existing coverage to do so. Consultant acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to City in excess of the limits and coverage required in this agreement and which is applicable to a given loss, will be available to City.*

*Consultant shall provide the following types and amounts of insurance:*

General Liability Insurance using Insurance Services Office "Commercial General Liability" policy form CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review but in no event less than \$2,000,000 (Two Million Dollars) per occurrence.

Business Auto Coverage on ISO Business Auto Coverage form CA 0001 including symbol 1 (Any Auto) or the exact equivalent. Limits are subject to review, but in no event to be less than \$2,000,000 (Two Million Dollars) per accident. If Consultant owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Consultant or Consultant's employees will use personal autos in any way on this project, Consultant shall provide evidence of personal auto liability coverage for each such person.

Workers Compensation on a state-approved policy form providing statutory benefits as required by law with employer's liability limits no less than \$1,000,000 (One Million Dollars) per accident or disease.

Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverages. Any such coverage provided under an umbrella liability policy shall include a drop down provision providing primary coverage above a maximum \$25,000 self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. Policy shall contain a provision obligating insurer at the time insured's liability is determined, not requiring actual payment by the insured first. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to City for injury to employees of Consultant, subconsultants or others involved in the Work. The scope of coverage provided is subject to approval of City following receipt of proof of insurance as required herein. Limits are subject to review but in no event less than \$2,000,000 (Two Million Dollars) per occurrence.

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the consultant and "Covered Professional Services" as designated in the policy must specifically include work performed under this agreement. The policy limit shall be no less than \$1,000,000 (One Million Dollars) per claim and in the aggregate. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend. The policy retroactive date shall be on or before the effective date of this agreement.

*Insurance procured pursuant to these requirements shall be written by insurers that are admitted carriers in the state of California and with an A.M. Bests rating of A- or better and a minimum financial size VII.*

General conditions pertaining to provision of insurance coverage by Consultant. Consultant and City agree to the following with respect to insurance provided by Consultant.

1. Consultant agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds the City, its officers, elected officials, employees, agents, and volunteers using standard ISO endorsement No. CG 20 10 or an approved equivalent. If completed operations coverage is excluded, the policy must be endorsed to include such coverage. Consultant also agrees to require all contractors, and subcontractors to do likewise.
2. No liability insurance coverage provided to comply with this Agreement shall prohibit Consultant, or Consultant's employees, or agents, from waiving the right of subrogation prior to a loss. Consultant agrees to waive subrogation rights against City regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractors to do likewise.
3. The worker's compensation policy is to be endorsed with a waiver of subrogation. The insurance company, in its endorsement, agrees to waive all rights of subrogation against the City, its officers, elected officials, employees, agents, and volunteers for losses paid under the terms of this policy which arise from the work performed by the named insured for the City.
4. All insurance coverage and limits provided by Contractor and available or applicable to this agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operations limits the application of such insurance coverage.
5. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.
6. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor.
7. All coverage types and limits required are subject to approval, modification and additional requirements by the City, as the need arises. Consultant shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect City's protection without City's prior written consent.
8. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to Consultant's general liability policy, shall be delivered to City at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, City has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other agreement and to pay the premium. Any premium so paid by City shall be charged to and promptly paid by Consultant or deducted from sums due Consultant, at City option.

9. Certificate(s) are to reflect that the insurer will provide 30 days notice to City of any cancellation of coverage. Consultant agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the certificate.
10. It is acknowledged by the parties of this agreement that all insurance coverage required to be provided by Consultant or any subcontractor, is intended to apply first and on a primary, non-contributing basis in relation to any other insurance or self insurance available to City.
11. Consultant agrees to ensure that subcontractors, and any other party involved with the project who is brought onto or involved in the project by Consultant, provide the same minimum insurance coverage required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with subcontractors and others engaged in the project will be submitted to City for review.
12. Consultant agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any contractor, subcontractor, Architect, Engineer or other entity or person in any way involved in the performance of work on the project contemplated by this agreement to self-insure its obligations to City. If Consultant's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the City. At that time the City shall review options with the Consultant, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.
13. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the City will negotiate additional compensation proportional to the increased benefit to City.
14. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.
15. Consultant acknowledges and agrees that any actual or alleged failure on the part of City to inform Consultant of non-compliance with any insurance requirement in no way imposes any additional obligations on City nor does it waive any rights hereunder in this or any other regard.
16. Consultant will renew the required coverage annually as long as City, or its employees or agents face an exposure from operations of any type pursuant to this agreement. This obligation applies whether or not the agreement is canceled or terminated for any reason. Termination of this obligation is not effective until City executes a written statement to that effect.
17. Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A

coverage binder or letter from Consultant's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to City within five days of the expiration of the coverages.

18. The provisions of any workers' compensation or similar act will not limit the obligations of Consultant under this agreement. Consultant expressly agrees not to use any statutory immunity defenses under such laws with respect to City, its officers, elected officials, employees, agents, and volunteers.
19. Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.
20. These insurance requirements are intended to be separate and distinct from any other provision in this agreement and are intended by the parties here to be interpreted as such.
21. The requirements in this Section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Section.
22. Consultant agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Consultant for the cost of additional insurance coverage required by this agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
23. Consultant agrees to provide immediate notice to City of any claim or loss against Consultant arising out of the work performed under this agreement. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.

## CERTIFICATE OF CONSULTANT

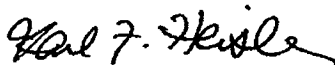
I HEREBY CERTIFY that I am the Community Development Manager (S.F.) and a duly authorized representative of the firm of Environmental Science Associates, whose address is 225 Bush Street, Suite 1700, San Francisco, CA 94104, and that neither I nor the above firm I here represent has:

- a) Employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit to secure this Agreement.
- b) Agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the Agreement; or
- c) Paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the Agreement;

Except as here expressly stated (if any);

I acknowledge that this certificate is subject to applicable State and Federal laws, both criminal and civil.

October 12, 2011  
Date

  
Signature