

12) **Professional Services Agreement with HELIX Environmental Planning, Inc. to Provide Environmental Services for the Murrieta Creek Multi-use Trail Project**

Approve and authorize the City Manager to execute a Professional Services Agreement with HELIX Environmental Planning, Inc. in an amount not to exceed \$331,100 to provide environmental monitoring services for the Murrieta Creek Multi-Use Trail Project in such final form as approved by the City Attorney and authorize the City Manager to execute change orders not to exceed a 10% contingency for unanticipated costs.



REPORT TO CITY COUNCIL

To: Honorable Mayor and Members of the City Council

From: Jason Simpson, City Manager

Prepared by: Remon Habib, City Engineer

Date: May 13, 2025

Subject: Professional Services Agreement with HELIX Environmental Planning, Inc. to Provide Environmental Services for the Murrieta Creek Multi-use Trail Project

Recommendation

Approve and authorize the City Manager to execute a Professional Services Agreement with HELIX Environmental Planning, Inc. in an amount not to exceed \$331,100 to provide environmental monitoring services for the Murrieta Creek Multi-Use Trail Project in such final form as approved by the City Attorney and authorize the City Manager to execute change orders not to exceed a 10% contingency for unanticipated costs.

Background

In 2019, the City applied for and was awarded Active Transportation Program Cycle 4 grant funding to design and construct the Murrieta Creek Multi-Use Trail extending between Skylark Drive and the Lake Levee Trail. Murrieta Creek Trail is a multi-jurisdictional, active transportation trail consistent with the City's General Plan and Eastlake Specific Plan adopted in 2017.

The final design of the Murrieta Creek Multi-Use Trail project has been completed and the project will be in bid for construction. The construction contract is expected to be awarded in late Summer of 2025 with completion of construction anticipated in 2026. Due to the permanent and temporary impacts of the project, the City is required to implement the Habitat Mitigation and Monitoring Plan as the project's mitigation.

Discussion

HELIX Environmental Planning, Inc. (HELIX) was the lead environmental consultant for environmental document approval and final engineering phases. HELIX will provide environmental services as part of the construction phase of the project. Scope of services consist of pre-construction surveys, environmental monitoring, implementation, maintenance, and monitoring of restoration and revegetation of temporarily impacted areas.

Fiscal Impact

The Professional Services Agreement will result into a cost of \$331,100 plus an additional 10% in contingency for a not to exceed amount of \$364,210. The costs associated with this agreement are programmed within the City's CIP budget.

Attachments

Attachment 1 - Agreement
Exhibit A - Proposal

AGREEMENT FOR PROFESSIONAL SERVICES

HELIX Environmental Planning, Inc.

Environmental Services for the Murrieta Creek Multi-Use Trail Project

This Agreement for Professional Services (the "Agreement") is made and entered into as of May 13, 2025, by and between the City of Lake Elsinore, a municipal corporation ("City") and HELIX Environmental Planning, Inc., a Corporation ("Consultant").

RECITALS

A. The City has determined that it requires the following professional services:

Environmental services – pre-construction surveys, environmental monitoring and implementation, maintenance, and monitoring of restoration and revegetation of impacted areas.

B. Consultant has submitted to City a proposal, dated March 4, 2025, attached hereto as Exhibit A ("Consultant's Proposal") and incorporated herein, to provide professional services to City pursuant to the terms of this Agreement.

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

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

AGREEMENT

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

2. Time of Performance.

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

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

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

3. Compensation. Compensation to be paid to Consultant shall be in accordance with the fees set forth in Consultants' Proposal (Exhibit A), which is attached hereto and incorporated herein by reference. In no event shall Consultant's compensation exceed Three Hundred Thirty One Thousand One Hundred dollars (\$331,100) without additional written authorization from the City. Notwithstanding any provision of Consultant's Proposal to the contrary, out of pocket expenses set forth in Exhibit A shall be reimbursed at cost without an inflator or administrative charge. Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.

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

5. Background Checks. At any time during the term of this Agreement, the City reserves the right to make an independent investigation into the background of Consultant's personnel who perform work required by this Agreement, including but not limited to their references, character, address history, past employment, education, social security number validation, and criminal or police records, for the purpose of confirming that such personnel are lawfully employed, qualified to provide the subject service or pose a risk to the safety of persons or property in and around the vicinity of where the services will be rendered or City Hall. If the City makes a reasonable determination that any of Consultant's prospective or then current personnel is deemed objectionable, then the City may notify Consultant of the same. Consultant shall not use that personnel to perform work required by this Agreement, and if necessary, shall replace him or her with a suitable worker.

6. Suspension or Termination.

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

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

7. Plans, Studies, Documents.

a. Ownership of Documents. All plans, studies, documents and other writings prepared by and for Consultant, its officers, employees and agents and subcontractors in the course of implementing this Agreement, except working notepad internal documents, shall become the property of the City upon payment to Consultant for such work, and the City shall have the sole right to use such materials in its discretion without further compensation to Consultant or to any other party. Consultant shall, at Consultant's expense, provide such reports, plans, studies, documents and other writings to City upon written request. City shall have sole determination of the public's rights to documents under the Public Records Act, and any third-party requests of Consultant shall be immediately referred to City, without any other actions by Consultant.

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

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

8. Consultant's Books and Records.

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

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

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

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

9. Independent Contractor.

a. Consultant is and shall at all times remain as to the City a wholly independent contractor pursuant to California Labor Code Section 3353. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the City. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatsoever against City, or bind City in any manner.

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

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

11. Interests of Consultant. Consultant (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered

by this Agreement or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Consultant's services hereunder. Consultant further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this Agreement.

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

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

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

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

13. Compliance with Laws.

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

b. Consultant represents that it has obtained and will maintain at all times during the term of this Agreement all professional and/or business licenses, certifications and/or permits necessary for performing the services described in this Agreement, including a City business license.

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

15. Indemnity. Consultant shall indemnify, defend, and hold harmless the City and its officials, officers, employees, agents, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of

law arises from the sole negligence or willful misconduct of the City or its officers, employees, agents, or volunteers and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

16. Insurance Requirements.

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

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

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

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

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

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

i. Notwithstanding any inconsistent statement in any required insurance policies or any subsequent endorsements attached thereto, the protection offered by all policies, except for Workers' Compensation, shall bear an endorsement whereby it is provided that, the City and its officers, employees, servants, volunteers and agents and independent contractors, including without limitation, the City Manager and City Attorney, are named as additional insureds. Additional insureds shall be entitled to the full benefit of all insurance policies in the same manner and to the same extent as any other insureds and there shall be no limitation to the benefits conferred upon them other than policy limits to coverages.

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

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

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

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

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

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

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

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

If to City: City of Lake Elsinore
 Attn: City Manager
 130 South Main Street
 Lake Elsinore, CA 92530

With a copy to: City of Lake Elsinore
 Attn: City Clerk
 130 South Main Street
 Lake Elsinore, CA 92530

If to Consultant: HELIX Environmental Planning, Inc.
 Attn: Karl Osmundson
 7578 El Cajon Boulevard
 La Mesa, CA 91942

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

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

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

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

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

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

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

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

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

27. Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to

make this Agreement and to bind each respective party. The City Manager is authorized to enter into an amendment or otherwise take action on behalf of the City to make the following modifications to the Agreement: (a) a name change; (b) grant extensions of time; (c) non-monetary changes in the scope of services; and/or (d) suspend or terminate the Agreement.

28. Counterparts. 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.

29. Entire Agreement; Incorporation; Conflict. This Agreement contains the entire understanding between the parties relating to the obligations described herein. All prior or contemporaneous understandings, agreements, representations and statements, oral or written, are superseded in total by this Agreement and shall be of no further force or effect. Consultant's Proposal is incorporated only for the description of the scope of services and/or the schedule of performance and no other terms and conditions from such proposal shall apply to this Agreement unless specifically agreed to in writing. In the event of conflict, this Agreement shall take precedence over those contained in the Consultant's Proposal.

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

[Signatures on next page]

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

"CITY"

CITY OF LAKE ELSINORE, a municipal corporation

"CONSULTANT"

HELIX Environmental Planning, Inc., a Corporation

City Manager

By: Karl Osmundson
Its: Biology Division Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Assistant City Manager

Attachments: Exhibit A – Consultant's Proposal
Exhibit B – List of Subcontractors

EXHIBIT A
CONSULTANT'S PROPOSAL
[ATTACHED]

EXHIBIT B
LIST OF SUBCONTRACTORS
[ATTACHED]

HELIX Environmental Planning, Inc.
7578 El Cajon Boulevard
La Mesa, CA 91942
619.462.1515 tel
619.462.0552 fax
www.helixepi.com



March 4, 2025

Yu Tagai
City of Lake Elsinore
130 S Main Street
Lake Elsinore, CA 92530
ytagai@lake-elsinore.org | 951-674-3124 (x246)

Subject: Letter Proposal/Agreement to Provide Environmental Services for the Murrieta Creek Multi-Use Trail Construction Project

Dear Mr. Tagai:

HELIX Environmental Planning, Inc. (HELIX) is submitting this letter proposal/agreement (Agreement) to the City of Lake Elsinore (City) to provide environmental services for the Murrieta Creek Multi-Use Trail Construction Project (project) located in the City of Lake Elsinore, Riverside County, California. The project includes the construction of a multi-use trail within the vicinity of Murrieta Creek and Lake Elsinore.

SCOPE OF SERVICES

Environmental services consist of pre-construction surveys, environmental monitoring, and implementation, maintenance, and monitoring of restoration and revegetation of temporarily impacted areas. In addition, the project will implement the Habitat Mitigation and Monitoring Plan as mitigation for project impacts.

Task 1 Protocol Burrowing Owl Surveys. HELIX will conduct an updated habitat assessment for burrowing owls for the project site and a 500 foot buffer. The buffer and project area result in a total survey area of approximately 150 acres within California Department of Fish and Wildlife (CDFW) habitat, some of which is not suitable burrowing owl habitat. As suitable burrowing owl habitat is known to occur in the project area, HELIX will conduct a presence/absence survey for burrowing owl (*Athene cunicularia*) in compliance with the project Streambed Alteration Agreement (SAA, EPIMS-RIV-43632-R6). As specified in the SAA, the surveys will be conducted in accordance with the 2006 Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) Burrowing Owl Survey Instructions. The SAA also requires the survey to occur between 30 and 60 days prior to the start of project impacts. A minimum of one site visit must occur, but up to four visits may be required depending on the results of the first site visit. HELIX anticipates four surveys will be required, based on the previous work conducted. HELIX estimates that the survey area of the project site and a 500 foot buffer includes less than 90 acres of potential burrowing owl habitat. The surveys are to occur during the breeding season (March 1 through August 31) at least one week apart, and between 30 to 60 days prior to the start of the project impacts. A report of the survey results will be submitted electronically to the City and CDFW within 10 days of the last survey and no less than 21 days prior to the start of project activities.

Task 2 Pre-construction Burrowing Owl Survey. As required pursuant to the Western Riverside County MSHCP and project mitigation measure BIO-2, HELIX will conduct a pre-construction burrowing owl survey to confirm the presumed absence of the species within potential impact areas of the project. The survey will be conducted in accordance with the March 29, 2006, Burrowing Owl Survey Instructions for the Western Riverside County MSHCP Area. The pre-construction survey is required to occur within 30 days prior to project impacts and consists of a single visit. A letter report with appropriate maps will be provided to the City via e-mail for submittal to the City. A positive survey will require that burrowing owl be avoided and or relocated and burrowing owl plan describing avoidance, relocation, monitoring, minimization and mitigation measures be approved by CDFW. This task does not include a burrowing owl plan. If required, additional authorization would be required to prepare a burrowing owl plan.

Task 3 Pre-Construction Nesting Bird Survey. HELIX will conduct a pre-construction nesting bird survey to determine if active nests are present on or adjacent to the project site. The survey will be conducted within three days prior to initiating activities. The project SAA Measure 2.11 requires the survey to be conducted year-round in areas of CDFW jurisdiction (below the 1,265 foot level). The project mitigation measure Bio-3 requires preconstruction nesting bird surveys to be conducted prior work starting during the breeding season of January 15 to September 15 for the entire alignment. Due to the linear nature of the project, it is anticipated that the timing of the vegetation removal will require multiple surveys. This task includes up to three surveys. The surveys are anticipated to cover a directed search of approximate 60 acres survey comprised of the project area, and up to a 100-foot buffer. Due to overlap of habitat each of the three surveys is anticipated to cover up to 30 acres. Nesting habitat between 100 and 500 feet from the project alignment will be surveyed via binoculars where trees with potential to support nesting raptors occur. Adjacent developed habitat is to be surveyed via binoculars where appropriate. HELIX will provide a brief letter report to the City describing the survey methods and results of the survey, including a map of active nest(s) found during the survey and corresponding setback buffer from the active nest based on the project requirements, species, nest location, and other environmental factors.

An additional pre-construction survey would be required if ground disturbance does not initiate within three days of the pre-construction survey date, which would require additional authorization from the City. This task does not include additional site visits to conduct nest monitoring, determine the status of nests, or time to coordinate with the resource agencies. Due to the time required to determine species, specific nest locations and setting up a buffer, and coordination with the team, this task assumes that no more than five active nests will be identified during the pre-construction nesting bird survey, if more than five nests are located an additional authorization would be required.

Task 4 Paleontological Resources Monitoring and Treatment Plan. For compliance with project Mitigation Measure GEO-1, as a subconsultant to HELIX, the Paleo Services department of the San Diego Natural History Museum (SDNHM) will provide qualified paleontologists to develop a Paleontological Resource Monitoring and Treatment Plan (PRMTP) that will be submitted to the City for approval by the Community Development Director. The qualified paleontologist will monitor the construction activities in accordance with the PRMTP. This task includes 30 days of paleontological monitoring and attendance of meetings over an eight-month period, for a total of 240 hours. This task assumes that fossils will not be discovered. Should fossils be found during the project an additional authorization would be required to cover the cost of processing and preservation of the fossils if required. A post-construction report is included.

Task 5 Worker's Education Awareness Program Brochure and Training. In accordance with SAA Measure 2.8, HELIX will prepare a Worker's Education Awareness Program (WEAP) brochure/fact sheet that will be provided to project personnel during the pre-construction meeting. The WEAP brochure will contain biological information and photographs of the sensitive biological resources that may occur on the project site. It will also contain a brief summary of the general restrictions during construction, requirements prior to commencing and after work finishes each day, invasive species education, contact information for biological, cultural, paleontological monitors, and the Designated Biologist. The WEAP brochure will be provided in English and Spanish. HELIX will give an education training presentation (in English) to the persons employed or otherwise working on the project. The City will be responsible for providing a translator for the WEAP, if needed. This task includes up to 35 copies (30 in English and five in Spanish) of the brochure and up to two training sessions.

Task 6 Cultural Resources (Archaeological) Construction Monitoring. HELIX will provide archaeological monitoring per the requirements of the project's Mitigation Monitoring and Reporting Program (MMRP), specifically Mitigation Measures CUL-1, CUL-2, and CUL-5. This scope includes preparation of a Cultural Resources Monitoring Program (CRMP) in consultation with the consulting tribe and for submittal to the Community Development Director; cultural sensitivity training by a qualified archaeologist at a preconstruction meeting; and monitoring of all initial ground-disturbing activities, including brushing/grubbing, tree removal, trenching, and grading, by a qualified archaeological monitor; daily monitoring notes; and preparation of a monitoring letter report (Phase IV report).

Should any cultural material be encountered, the archaeological monitor will stop work within a 100-foot radius and immediately inform HELIX's principal investigator, the consulting tribe (if a tribal monitor is not present), and the City. Once the archaeologist and the consulting tribe have examined the cultural material, the significance of the discovery shall be discussed with the Community Development Director. If cultural material is identified it may need to be evaluated and treatment/disposition determined. Additional excavation or other research may be required, which may result in additional costs, requiring additional authorization. The scope and cost of additional work would depend on the nature and extent of cultural material encountered. We will notify you immediately if cultural material is encountered.

This scope assumes 40 nine-hour days (360 hours) of monitoring by an archaeologist; this time includes travel to the project site and daily notes. If additional days of monitoring are required to stay in compliance with the MMRP, you will be notified immediately, and additional authorization will be required.

Task 7 Tribal Coordination. Tribal cultural monitors will be retained directly by the City, and that scope and cost are not included in this proposal. However, HELIX cultural resources staff will coordinate with the consulting tribe to keep them apprised of the grading and monitoring schedule and informed of any discoveries that may occur when a tribal monitor is not present. Sixteen hours of a cultural resources project manager's time are assumed over the six to eight month construction period.

Task 8 Biological Construction Monitoring. Under this task, HELIX will provide construction monitoring to help keep activities within the approved project limits. The monitoring will be conducted as required by SAA Measures 2.2, 2.5, 2.6, 2.7, and 2.9. Included in this construction monitoring are the following tasks to be carried out by HELIX:

- a) Pre- Post- and during construction photo documentation;
- b) Supervise the placement of fencing along the approved limits of disturbance;

- c) Help keep construction activities and staging areas are restricted to the approved development area;
- d) Monitor construction activities (as needed) so that construction does not encroach into biologically sensitive areas beyond the approved limits of disturbance;
- e) Assist with inspection of equipment as it arrives to project site;
- f) Conduct daily clearance surveys of the project area prior to project activities to avoid impacts to non-listed terrestrial wildlife;
- g) Monitor the best management practices throughout construction;
- h) Verify that the area outside the established limits of disturbance remains free of trash, parking, or other construction-related activities.

For cost estimate purposes, an eight month construction monitoring period has been assumed with a total of 160 site visits (900 monitoring hours total) by one designated biologist. Monitoring visits are anticipated to be between four and eight hours a day (including travel) depending upon construction activities. Biological construction monitoring will include attending a pre-construction meeting, presenting the environmental training to new crews throughout the project timeframe, as well as ongoing biological construction monitoring including full-time monitoring during project vegetation clearing and daily morning visits within CDFW jurisdiction. If additional hours of monitoring are required, additional authorization would be provided.

Task 9 Management/Meetings and Agency Liaison. HELIX has assumed 90 hours of Sr. Scientist, Project Manager, and Principal Biologist time for management/meetings with the project team, and other applicable agencies, and related advisory services. This task includes submitting the names and qualifications of Designated Biologists, biological monitors, and other qualified personnel to be pre-approved by CDFW prior to surveys as required by the SAA. Commencement of construction notifications to CDFW and Regional Water Quality Control Board (RWQCB) and a single RWQCB annual report to are included in this task. The RWQCB annual report is due on December 6th each year until sign-off of restoration activities. If the City requests additional services that cause HELIX to exceed the time allocated for this task, additional authorization would be required.

Optional Tasks

Task 10 Bird Nest Monitoring. If an active bird nest is identified as part of the pre-construction bird survey described in Task 5, HELIX will conduct daily nest monitoring including documentation of the stage of reproduction and expected fledge date per SAA Measure 2.11.4. This task provided up to three hours a day (including travel time) of nest monitoring for up to six weeks (30 days). This task also includes submitting weekly reports regarding the status of the nest(s) to CDFW. Only the hours used will be billed. When appropriate, the nest monitoring biologist can also conduct the required biological construction monitoring duties to aid in cost reduction. If additional monitoring is required beyond the assumed hours, additional authorization would be required.

Task 11 Least Bell's Vireo Protocol Surveys. For compliance with SAA Measure 2.12, if construction activities are proposed to occur within 1,000 feet of potential least Bell's vireo (*Vireo bellii pusillus*) habitat during the breeding season (April 10 to August 31), then protocol surveys are required to determine the presence/absence of least Bell's vireo. HELIX will conduct surveys for the federally and state listed endangered least Bell's vireo within appropriate habitat within 1,000 feet of project impacts. The surveys will follow the most current U.S. Fish and Wildlife Service (USFWS) protocol, which requires eight surveys at least ten days apart, between April 10 and July 31. As required under the USFWS protocol for conducting vireo surveys, HELIX will

submit a final report to the USFWS and CDFW within 45 days after completing the final survey. Survey results data will also be provided to the U.S. Geological Survey Riparian Bird Working Group. If least Bell's vireo are present and work is proposed to occur within 500 feet of a least Bell's vireo nest, additional mitigation measures, including obtaining California Endangered Species Act (CESA) authorization, are required. This task does not include implementation of the additional measures or obtaining CESA authorization. No additional measures are required if work within 500 feet of occupied least Bell's vireo habitat can be avoided.

SCHEDULE

HELIX will work with the City in a timely and professional manner in accordance with the Terms and Conditions attached and incorporated herein by reference as Exhibit A. These Terms and Conditions are a material part of this Agreement.

COST ESTIMATE AND PAYMENT PROCEDURES

HELIX submits this cost estimate not to exceed \$304,100 without option tasks, or \$331,100 with optional tasks, which is provided below in a breakdown by task. All work shall be invoiced on a time-and-materials basis pursuant to Exhibit B, Schedule of Fees. Payment terms are net 30 days pursuant to the Terms and Conditions referenced herein.

<u>Task Number</u>	<u>Task Name</u>	<u>Cost</u>
1	Burrowing Owl Surveys	\$15,400
2	Pre-construction Burrowing Owl Survey	6,550
3	Pre-Construction Nesting Bird Surveys	12,400
4	Paleontological Resources Monitoring and Treatment Plan	37,100
5	Worker's Education Awareness Program Brochure and Training	8,850
6	Cultural Resources (Archaeological) Construction Monitoring	46,500
7	Tribal Coordination	2,500
8	Biological Construction Monitoring	154,900
9	Management/Meetings and Agency Liaison	<u>19,900</u>
Subtotal without Optional Tasks		\$304,100
Optional Tasks		
10	Bird Nest Monitoring	\$11,950
11	Least Bell's Vireo Protocol Surveys	<u>15,050</u>
Subtotal with Optional Tasks		\$331,100

ASSUMPTIONS AND LIMITATIONS

The following assumptions and limitations are a material component of this Agreement.

- City will provide HELIX with current available digital baseline data and project plans for producing all maps and graphics, which should be submitted in one of the following formats: .dxf, .dwg (AutoCAD), .dgn (Microstation), .shp (ArcView shapefiles), .gdb (ArcGIS geodatabase) or .kmz (Google Earth). In some cases, .pdf files will be acceptable.
- Costs associated with public meetings, biological surveys not specifically described above, and/or permit preparation and processing ("additional work") are not included within the scope of services required of HELIX under this Agreement.

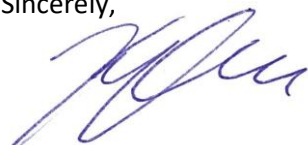
- City will pay any required CDFW environmental review fees and County filing fees.
- City will identify all potential off-site components associated with the project prior to HELIX conducting the site assessment.
- Native American monitoring will be contracted directly by the City and is not included in this scope of work.
- Assumes that the cultural resources and paleontological monitoring will be negative and a letter report will be sufficient documentation of the monitoring effort. If cultural and/or paleontological material is encountered, it may need to be evaluated and treatment/disposition determined. Additional excavation or other research may be required, which may result in additional costs, requiring additional authorization. The scope and cost of additional work would depend on the nature and extent of cultural material encountered. We will notify you immediately if cultural material is encountered.
- HELIX is committed to meeting accessibility requirements for the ADA and Section 508 of the Rehabilitation Act for public-facing digital document deliverables.

EXECUTION OF AGREEMENT

This quote is good for 30 days from the date of this letter. This Agreement will become a contract upon HELIX's receipt of this original, including any Exhibits, signed by an authorized representative of the City.

We look forward to working with you on this project. If you have any questions concerning this Agreement, please contact your Project Manager Rob Hogenauer at (562)537-2426 or RobertH@helixepi.com, or me at (619) 462-1515 or KarlO@helixepi.com.

Sincerely,



Karl Osmundson
Biology Division Manager/Principal Biologist

Enclosures: Exhibit A, Terms and Conditions
 Exhibit B, Schedule of Fees

I hereby authorize HELIX to begin work in accordance with this Agreement and the attached Terms and Conditions and Schedule of Fees.

CITY OF LAKE ELSINORE

A ____ corporation, OR a ____ limited liability company, OR a ____ general partnership or limited partnership (select one).

Signed by: _____ Printed: _____

Title: _____ Date: _____

To expedite Agreement processing, the following information is **required**:

<u>Project Manager</u>	<u>Accounts Payable</u>
Name: _____	Contact/Name: _____
Address (if different from p.1) _____ _____	Address (if different from p.1) _____ _____
Phone: _____	Phone: _____
Email: _____	Email: _____

Murrieta Creek Multi-Use Trail Construction

Please email/mail the signed Agreement and all pages to your HELIX Project Manager. If using your own contract format, please attach and return it with this Agreement.

For retainer payment, please remit to Stephanie Johnston, Controller:

Address: HELIX Environmental Planning, Inc.
ATTN: Controller
7578 El Cajon Boulevard
La Mesa, CA 91942
Email/Phone: StephanieJ@helixepi.com | (619) 462-1515

The following Terms and Conditions are made a part of the letter agreement/proposal (Agreement) between HELIX and Client and supersede any conflicting Terms and Conditions proposed by Client, unless HELIX agrees to such Terms and Conditions in writing.

ARTICLE 1. SCOPE OF WORK AND STANDARD OF PERFORMANCE

HELIX will perform the work outlined in the Agreement and any services approved by Client under Article 3 (the Services). HELIX will strive to perform the Services in a manner consistent with that level of care and skill ordinarily exercised by reputable members of HELIX's profession practicing at the time under similar conditions in the geographic area of Client's project. HELIX makes no other representation, expressed or implied, nor no other warranty or guarantee under this Agreement or in any report, opinion or document provided hereunder.

ARTICLE 2. COMPENSATION

Client agrees to pay HELIX compensation for the Services in accordance with the rates set forth in Exhibit B. HELIX shall invoice Client monthly or as otherwise agreed. Client agrees to pay HELIX within thirty (30) days of the date of invoice. If payment is not paid when due, then such sum shall bear interest at 1½ percent per month on the unpaid balance, not to exceed the maximum legal rate of interest.

ARTICLE 3. CHANGES AND ADDITIONAL WORK

Client may request or HELIX may recommend or request, verbally or in writing, a change in the scope in excess of or in addition to the Services ("additional work"). As soon as practical after such request or recommendation, HELIX shall forward to Client a proposal of the costs for such additional work and any adjustment to the payment schedule and time for performance. Client shall approve or disapprove the proposal, in writing. If approved, HELIX shall perform the extra work in accordance with the Terms and Conditions herein.

Notwithstanding the foregoing, however, if Client verbally approves the extra work and HELIX has performed the same, then Client agrees to pay HELIX the amount and pursuant to the payment schedule as set forth in its proposal.

ARTICLE 4. LIMITATION OF LIABILITY

Recognizing the relative risks and benefits of the project for which the Services are being performed, Client agrees to limit the liability of HELIX, its directors, officers, employees, agents, and subcontractors for any and all injuries, claims, losses, expenses, or damages (including incidental or consequential damages) arising out of or in any way related to the Services or the project hereunder, to the lesser of (a) fifty thousand dollars (\$50,000) or (b) the total compensation for the Services hereunder. Such liability includes HELIX's negligence, errors or omissions, strict liability, and breach of contract or warranty. Any claim against HELIX hereunder shall be brought within one (1) year of the completion of the Services herein.

ARTICLE 5. TERMINATION

Either party may terminate this Agreement, either in whole or in part, without cause, by giving the other party thirty (30) days written notice. In such event, Client will pay HELIX for all work performed by it prior to the notice of termination.

In the event of a default, the non-defaulting party shall give the defaulting party ten (10) days' written notice of default. "Default" includes Client's failure to pay HELIX sums due, including additional work pursuant to Article 3. The defaulting party's failure to cure the breach within said ten- (10-) day period shall constitute a material breach of this Agreement and termination of the Agreement.

ARTICLE 6. SUSPENSION OF WORK

Client may suspend the Services, in whole or in part, by giving HELIX reasonable, written notice specifying the work to be suspended. Upon receipt of notice, HELIX shall suspend the work requested and Client shall pay for all Services through the date of suspension and any costs incurred by HELIX in suspending the work.

Thereafter, Client may notify HELIX of its intent to recommence the suspended Services. HELIX will promptly provide Client with any adjusted costs and schedule and, upon Client approval, HELIX shall recommence the Services previously suspended.

ARTICLE 7. PROPRIETARY INFORMATION

HELIX agrees not to disclose to any third person, nor use for the benefit of anyone other than Client, any data, records, financial information, or other confidential or proprietary information, marked as such in writing, arising out of or related to the performance of the Services (Proprietary Information). Client similarly agrees not to disclose to any third person, nor use for the benefit of anyone, Proprietary Information of HELIX.

ARTICLE 8. COMPLIANCE WITH LAWS

HELIX shall comply with and observe applicable federal, state, and local laws, ordinances, rules, and regulations having jurisdiction over HELIX or the performance of the Services in effect during the term of this Agreement.

ARTICLE 9. FORCE MAJEURE

Client will grant extensions of time and increase the compensation to HELIX to the extent that HELIX's performance hereof is delayed due to an uncontrollable force. The term "uncontrollable force" shall mean any cause beyond the control of HELIX making it impracticable or unable to perform such obligation, including but not limited to natural catastrophes, restraint by court order or public authority, and action or nonaction by, or inability to obtain the necessary authorizations or approvals from, any governmental agency or authority which, by exercise of due diligence, HELIX (a) could not reasonably have been expected to obtain or (b) has been unable to overcome. HELIX will notify Client immediately of any such delay or anticipated delay, and Client will extend the date of performance for a period equal to the time lost by reason of the delay and will make an equitable adjustment to the compensation in Article 2.

ARTICLE 10. INSURANCE

HELIX maintains the following insurance: (a) Workers' Compensation insurance – statutory limits; (b) Comprehensive Automobile Insurance – combined bodily injury and property damage limit of one million dollars (\$1,000,000) each occurrence; (c) Comprehensive General Liability Insurance – combined bodily/personal injury and property damage limit of one million dollars (\$1,000,000); (d) Professional Liability & Contractors Pollution Legal Liability – limit of one million dollars (\$1,000,000) each occurrence; and (e) Excess Umbrella Liability – limit of two million dollars (\$2,000,000) each occurrence. Upon Client's request, HELIX will furnish evidence that such insurances are in effect. If additional coverage or increased limits of liability is desired, Client may make such request prior to the start of work. HELIX will attempt to obtain the requested coverage or limits, and Client agrees to pay for any additional costs of insurance within ten (10) days of the date of invoice.

ARTICLE 11. AVAILABILITY OF LAND, DATA, AND DIFFERING SITE CONDITIONS (for contracts involving field or construction services)

Client shall furnish the site or obtain access to any site not owned by Client. Client shall notify HELIX of any encumbrances or restrictions specifically related to use of the site with which HELIX must comply in performing the Services. Client will obtain in a timely manner and pay for any fees or charges associated with site access or the encumbrances. Client shall furnish HELIX with a current legal description of the lands upon which the Services are to be performed and Client's interest therein as necessary for giving notice of or filing a mechanic's lien against such lands.

HELIX may rely upon the accuracy of the data contained in Reports and Drawings furnished to it by Client or Client's engineer. Reports and Drawings are defined as (a) reports of explorations and tests of subsurface conditions at or contiguous to the site that have been used by the engineer in documents provided to HELIX; and (b) drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (including underground facilities) that Client or Client's engineer has used in preparing documents provided to HELIX.

If HELIX believes that any subsurface or physical conditions at or contiguous to the site that are uncovered or revealed either (a) is of such a nature as to establish that data on which HELIX is entitled to rely as provided above is materially inaccurate; or (b) is of such a nature as to require a change in the contract; or (c) differs materially from that shown or indicated in documents provided to HELIX by Client or others; or (d) is of an unusual nature and differs materially from conditions ordinarily encountered in work of the character provided for in this contract, then HELIX shall promptly, after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any work in connection therewith (except in the event of an emergency), notify Client or its engineer in writing about such conditions. Thereafter, Client or Client's engineer will investigate the conditions. If the existence of the differing site conditions causes an increase in HELIX's cost of or time required for performance of the work, HELIX will receive an equitable adjustment to the contract price and schedule.

HELIX will not be responsible for any hazardous environmental conditions uncovered or revealed at the site. If such conditions are encountered, HELIX shall immediately stop all work and notify Client or Client's engineer. HELIX shall not be required to resume work in connection with such conditions until Client has obtained any required permits and advised HELIX in writing of such conditions and any affected area is or has been rendered safe for the resumption of work; or has specified any special conditions under which such work may be resumed safely; and HELIX shall receive an adjustment to the contract schedule and price accordingly.

ARTICLE 12. GOVERNING LAW AND ARBITRATION

This Agreement shall be governed by, and construed in accordance with, the laws of the State of California. Any controversy or claim arising out of or relating to this Agreement shall be settled by binding arbitration administered by and pursuant to the Commercial Rules of the American Arbitration Association then in effect. Any such proceedings shall take place in San Diego, California. In any action or proceeding hereunder, the prevailing party shall be entitled to recover attorneys' fees, filing fees, expert witness fees, and other costs of arbitration or suit.

ARTICLE 13. NOTICES

Any notice from one party to another shall be in writing and delivered personally, by facsimile or by United States mail, registered or certified, return receipt requested, postage fully pre-paid, to the addresses as set forth in the Agreement to the attention of the signatory of this Agreement.

Any notice shall be deemed delivered upon personal service or, if mailed, on the delivery date or attempted delivery date shown on the return receipt. If any party changes its address, such party shall notify the other party as provided in this article.

ARTICLE 14. MISCELLANEOUS

14.1 Successors and Assigns: This Agreement is binding upon and shall inure to the benefit of the parties and their respective successors-in-interest, assigns, and transferees. Neither party can assign this Agreement without the prior written consent of the other party.

14.2 Counterparts: This Agreement may be signed in two or more counterparts, each of which shall constitute an original, but all of which shall be one in the same document.

With the Agreement, these Terms and Conditions and any attached Exhibits constitute the complete and entire contract between the parties and supersedes any previous communications, representations, or agreement, whether oral or written, with respect to the subject matter hereof.

HOURLY RATES

Principal	\$300-325	Director of Operations	\$220
Principal Planner	\$250-310	Safety Manager	\$215
Principal Biologist/Regulatory Specialist	\$235-310	Senior Construction Project Manager	\$260-310
Principal Noise/Air Quality Specialist	\$220-235	Construction Project Manager I-III	\$155-200
Principal Landscape Architect	\$220-250	Assistant Construction Project Manager	\$125
Principal Cultural Resources Specialist	\$220-250	Construction Foreman	\$104
Senior Noise/Air Quality Specialist	\$175-230	Land Manager	\$104
Senior Project Manager	\$185-230	Equipment Manager	\$104
Senior Environmental Planner	\$160-210	Operator	\$158
Senior Scientist/Regulatory Specialist	\$165-205	Irrigation Technician	\$140
Project Manager	\$145-\$185	Senior Restoration Supervisor	\$153
Assistant Project Manager	\$100-145	Restoration Supervisor I-II	\$131-147
Regulatory Specialist	\$130-150	Assistant Restoration Supervisor	\$110
Environmental Compliance Specialist	\$195	Restoration Foreman	\$104
Environmental Planner	\$110-145	Restoration Lead	\$86
Biologist	\$120-165	Restoration Technician I-III	\$61-80
Noise/Air Quality Specialist	\$135-170	Nursery Manager	\$140
Senior Archaeologist/Architectural Historian	\$125-170	Nursery Technician	\$55
Senior Archaeology Field Director	\$135-145		
Archaeology Field Director	\$125-135		
Asst. Archaeology Field Director	\$95-120		
Staff Archaeologist/Architectural Historian	\$90-135		
Landscape Architect	\$140-190		
Landscape Designer	\$110-140		
Senior GIS Specialist	\$160-190		
GIS Specialist/Graphics Specialist	\$115-150		
Operations Manager	\$100-140		
Technical Editor	\$115-125		
Word Processor	\$90-100		
Clerical	\$75-85		

CONSULTING SERVICES Consulting services performed by HELIX typically include, but are not necessarily limited to, office, field, meetings, hearings, and travel time. Consulting services for expert witness review, deposition, and/or testimony will be provided at one and one-half times our standard rates. Overtime also may be charged at one and one-half times our standard rates. Rates are subject to change on a yearly basis.

PAYMENT Invoices will be submitted monthly. Payment on invoices is due within 30 days of receipt.

DIRECT COSTS Certain identifiable direct costs will be charged to the project at cost plus ten percent. Examples of direct costs include subconsultants, vehicle or equipment rentals, airplane and train fares, parking, per diem and lodging, mileage (at IRS rates), communications, reproduction, and supplies. A 4-wheel drive premium will be charged at \$25 per project day. There will be additional charges for use of noise monitors, GPS, and other field equipment, as well as for plotting, color printing, and aerial photographs.