

**Project Name/No.: Environmental Compliance,  
Regulatory Permitting, ROW,  
& Utility Coordination for ST203**

**Contract No.:** \_\_\_\_\_

**Project Manager: PW/ M. Hindersinn**

**Approved:** \_\_\_\_\_

**AGREEMENT FOR SERVICES  
BETWEEN THE CITY OF CHINO AND  
MOFFATT & NICHOL**

THIS AGREEMENT FOR SERVICES (herein “Agreement”) is made and entered into this 7<sup>th</sup> day of May, 2024 (“Effective Date”) by and between the City of Chino, a California municipal corporation (“City”) and **Moffatt & Nichol**, a California Corporation (“Consultant”). City and Consultant may be referred to individually as “Party” or collectively as “Parties.”

**RECITALS**

**A.** City has sought, by issuance of a Request for Proposals or Invitation for Bids, the performance of the services defined and described particularly in Article 1 of this Agreement.

**B.** Consultant, following submission of a proposal or bid for the performance of the services defined and described particularly in Article 1 of this Agreement, was selected by the City to perform those services.

**C.** Pursuant to the City of Chino’s Municipal Code, City has authority to enter into and execute this Agreement.

**D.** The Parties desire to formalize the selection of Consultant for performance of those services defined and described particularly in Article 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

**OPERATIVE PROVISIONS**

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

**ARTICLE 1. SERVICES OF CONSULTANT**

**1.1 Scope of Services.**

In compliance with all terms and conditions of this Agreement, the Consultant shall provide those services specified in the “Scope of Services” attached hereto as Exhibit “A” and incorporated herein by this reference, which may be referred to herein as the “services” or “work” hereunder. As a material inducement to the City entering into this Agreement, Consultant represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, competent, and professional manner, and is experienced in performing the work and services contemplated herein. Consultant shall at all times faithfully, competently and to the best of its ability,

experience and talent, perform all services described herein. Consultant covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be both of good quality as well as fit for the purpose intended. For purposes of this Agreement, the phrase “highest professional standards” shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

## **1.2 Consultant’s Proposal.**

The Scope of Services shall include the scope of work included in Consultant’s proposal, which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.

## **1.3 Compliance with Law.**

Consultant shall keep itself informed concerning, and shall render all services hereunder in accordance with, all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

## **1.4 California Labor Law.**

If the Scope of Services includes any “public work” or “maintenance work,” as those terms are defined in California Labor Code Section 1720 *et seq.* and California Code of Regulations, Title 8, Section 16000 *et seq.*, and if the total compensation is \$1,000 or more, Consultant shall pay prevailing wages for such work and comply with the requirements in California Labor Code section 1770 *et seq.* and 1810 *et seq.*, and all other applicable laws, as they pertain to such work, including the following requirements:

(a) DIR Monitoring and Enforcement. The public work and/or maintenance work performed under this Agreement shall be subject to compliance monitoring and enforcement by the Department of Industrial Relations (“DIR”). Consultant shall post job site notices, as prescribed by regulation.

(b) Prevailing Wages. Consultant shall pay prevailing wages to the extent required by Labor Code Section 1771. Pursuant to Labor Code Section 1773.2, copies of the prevailing rate of per diem wages are on file at City Hall and will be made available to any interested party on request. By initiating any work under this Agreement, Consultant acknowledges receipt of a copy of the DIR determination of the prevailing rate of per diem wages, and Consultant shall post a copy of the same at each job site where work is performed under this Agreement.

(c) Penalty for Failure to Pay Prevailing Wages. Consultant shall comply with and be bound by the provisions of Labor Code Sections 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. The Consultant shall, as a penalty to the City, forfeit two hundred dollars (\$200) for each

calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the DIR for the work or craft in which the worker is employed for any public work done pursuant to this Agreement by Consultant or by any subcontractor.

(d) Payroll Records. Consultant shall comply with and be bound by the provisions of Labor Code Section 1776, which requires Consultant and each subcontractor to: keep accurate payroll records and verify such records in writing under penalty of perjury, as specified in Section 1776; certify and make such payroll records available for inspection as provided by Section 1776; and inform the City of the location of the records.

(e) Apprentices. Consultant shall comply with and be bound by the provisions of Labor Code Sections 1777.5, 1777.6, and 1777.7 and California Code of Regulations Title 8, Section 200 *et seq.* concerning the employment of apprentices on public works projects. Consultant shall be responsible for compliance with these aforementioned Sections for all apprenticeable occupations. Prior to commencing work under this Agreement, Consultant shall provide City with a copy of the information submitted to any applicable apprenticeship program. Within sixty (60) days after concluding work pursuant to this Agreement, Consultant and each of its subcontractors shall submit to the City a verified statement of the journeyman and apprentice hours performed under this Agreement.

(f) Eight-Hour Work Day. Consultant acknowledges that eight (8) hours labor constitutes a legal day's work. Consultant shall comply with and be bound by Labor Code Section 1810.

(g) Penalties for Excess Hours. Consultant shall comply with and be bound by the provisions of Labor Code Section 1813 concerning penalties for workers who work excess hours. The Consultant shall, as a penalty to the City, forfeit twenty-five dollars (\$25) for each worker employed in the performance of this Agreement by the Consultant or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the Labor Code. Pursuant to Labor Code section 1815, work performed by employees of Consultant in excess of eight (8) hours per day, and forty (40) hours during any one week shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than one and one-half (1½) times the basic rate of pay.

(h) Workers' Compensation. California Labor Code Sections 1860 and 3700 provide that every employer will be required to secure the payment of compensation to its employees if it has employees. By executing this Agreement, and in accordance with the provisions of California Labor Code Section 1861, Consultant certifies as follows:

“I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.”

(i) Consultant's Responsibility for Subcontractors. For every subcontractor who will perform work under this Agreement, Consultant shall be responsible for such subcontractor's compliance with Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code, and shall make such compliance a requirement in any contract with any subcontractor for work under this Agreement. Consultant shall be required to take all actions necessary to enforce such contractual provisions and ensure subcontractor's compliance, including without limitation, conducting a review of the certified payroll records of the subcontractor on a periodic basis or upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages. Consultant shall diligently take corrective action to halt or rectify any such failure by any subcontractor.

### **1.5 Licenses, Permits, Fees and Assessments.**

Consultant shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes, penalties or interest levied, assessed or imposed against City hereunder.

### **1.6 Familiarity with Work.**

By executing this Agreement, Consultant warrants that Consultant (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Consultant warrants that Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Consultant discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Consultant shall immediately inform the City of such fact and shall not proceed except at Consultant's risk until written instructions are received from the Project Manager.

### **1.7 Software and Computer Services.**

If the Scope of Services includes the provision and/or installation of any software, computer system, or other computer technology, Consultant represents and warrants that it has inspected the City's current infrastructure, equipment, computer system and software and that the software, computer system, or other computer technology provided and/or installed by Consultant under this Agreement is compatible, and shall be fully functional, with such infrastructure, equipment, computer system and software of the City. Consultant acknowledges that the City is relying on the representation by Consultant as a material consideration in entering into this Agreement.

### **1.8 Care of Work.**

The Consultant shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own negligence.

**1.9 Further Responsibilities of Parties.**

Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other.

**1.10 Additional Services.**

City shall have the right, subject to state law and the City's Municipal Code, at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Project Manager to the Consultant, incorporating therein any adjustment in (i) the Contract Sum for the actual costs of the extra work, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Consultant. Any increase in compensation for extra work shall require the approval of City Council unless the City Council has previously authorized the City Manager to approve an increase in compensation and the amount of the increase does not exceed such authorization. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefor. City may in its sole and absolute discretion have similar work done by other contractors. No claims for an increase in the Contract Sum or time for performance shall be valid unless the procedures established in this Section are followed.

**1.11 Special Requirements.**

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

**ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.**

**2.1 Contract Sum.**

Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "C" and

incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed **Three Hundred Sixty-Two Thousand Eight Hundred Ten Dollars and Zero Cents (\$362,810.00)** (the “Contract Sum”), unless additional compensation is approved pursuant to Section 1.10.

## **2.2 Method of Compensation.**

The method of compensation may include: (i) a lump sum payment upon completion; (ii) payment in accordance with specified tasks or the percentage of completion of the services, less contract retention; (iii) payment for time and materials based upon the Consultant’s rates as specified in the Schedule of Compensation, provided that (a) time estimates are provided for the performance of sub tasks, (b) contract retention is maintained, and (c) the Contract Sum is not exceeded; or (iv) such other methods as may be specified in the Schedule of Compensation.

## **2.3 Reimbursable Expenses.**

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the Project Manager in advance, or actual subcontractor expenses of an approved subcontractor pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Consultant at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the work with City is a critical component of the services. If Consultant is required to attend additional meetings to facilitate such coordination, Consultant shall not be entitled to any additional compensation for attending said meetings.

## **2.4 Invoices.**

Each month Consultant shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City’s Director of Finance. By submitting an invoice for payment under this Agreement, Consultant is certifying compliance with all provisions of the Agreement. Consultant shall not invoice City for any duplicate services performed by more than one person.

All invoices shall be submitted by email to **ap@cityofchino.org**. Each invoice is to include:

- (a) Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate.
- (b) Line items for all materials and equipment properly charged to the Services.
- (c) Line items for all other approved reimbursable expenses claimed, with supporting documentation.
- (d) Line items for all approved subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.

- (e) If this Agreement requires prevailing wages, per Section 1.4 of the Agreement, all invoices shall include a copy of Consultant's Certified Payroll and proof that Certified Payroll has been submitted to the DIR. Consultant shall also submit a list of the prevailing wage rates for all employees and subcontractors providing services under this Agreement, as applicable, with Consultant's first invoice. If these rates change at any time during the term of the Agreement, Consultant shall submit a new list of rates to the City with its first invoice following the effective date of the rate change.

City shall independently review each invoice submitted by the Consultant to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Consultant which are disputed by City, or as provided in Section 7.3, City will use its best efforts to cause Consultant to be paid within forty-five (45) days of receipt of Consultant's correct and undisputed invoice; however, Consultant acknowledges and agrees that due to City warrant run procedures, the City cannot guarantee that payment will occur within this time period. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission. Review and payment by City for any invoice provided by the Consultant shall not constitute a waiver of any rights or remedies provided herein or any applicable law.

**2.5 Waiver.**

Payment to Consultant for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Consultant.

**2.6 Contingency of Funds.**

Consultant acknowledges that funding or portions of funding for this Agreement may be contingent upon State budget approval; receipt of funds from, and/or obligation of funds by the State of California to City; or inclusion of sufficient funding for the services hereunder in the budget approved by Chino City Council for each fiscal year covered by this Agreement. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, City may immediately terminate or modify this Agreement without penalty.

**ARTICLE 3. PERFORMANCE SCHEDULE**

**3.1 Time of Essence.**

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

**3.2 Schedule of Performance.**

Consultant shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this

reference. When requested by the Consultant, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Project Manager but not exceeding one hundred eighty (180) days cumulatively.

**3.3 Force Majeure.**

The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Consultant, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the Consultant shall within ten (10) days of the commencement of such delay notify the Project Manager in writing of the causes of the delay. The Project Manager shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Project Manager such delay is justified. The Project Manager’s determination shall be final and conclusive upon the parties to this Agreement. In no event shall Consultant be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant’s sole remedy being extension of the Agreement pursuant to this Section.

**3.4 Term.**

Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect until completion of the services, which shall be no later than June 30, 2025, except as otherwise provided in the Schedule of Performance (Exhibit “D”). This Agreement may be renewed by a written amendment for up to an additional Two (2) One-year (1) terms at the option of the City if the City is satisfied with the quality of services performed by Consultant under this Agreement.

**ARTICLE 4. COORDINATION OF WORK**

**4.1 Representatives and Personnel of Consultant.**

The following principals of Consultant (“Principals”) are hereby designated as being the principals and representatives of Consultant authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

_____	_____
(Name)	(Title)
_____	_____
(Name)	(Title)

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter into this Agreement.

Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. All personnel of Consultant, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the foregoing Principals may not be replaced nor may their responsibilities be substantially reduced by Consultant without the express written approval of City. Additionally, Consultant shall utilize only competent personnel to perform services pursuant to this Agreement. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and subcontractors, if any, assigned to perform the services required under this Agreement. Consultant shall notify City of any changes in Consultant's staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

#### **4.2 Status of Consultant.**

Consultant shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Consultant, nor any of Consultant's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim Consultant may have to any such rights.

#### **4.3 Project Manager.**

The Project Manager shall be **Michele Hindersinn, Principal Engineer** or any other person as may be designated by the Project Manager. It shall be the Consultant's responsibility to assure that the Project Manager is kept informed of the progress of the performance of the services and the Consultant shall refer any decisions which must be made by City to the Project Manager. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Project Manager. The Project Manager shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

#### **4.4 Independent Consultant.**

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Consultant's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Consultant shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed

to be a partner of Consultant in its business or otherwise or a joint venturer or a member of any joint enterprise with Consultant.

#### **4.5 Prohibition Against Subcontracting or Assignment.**

The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Consultant shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Consultant, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Consultant or any surety of Consultant of any liability hereunder without the express consent of City.

### **ARTICLE 5. INSURANCE AND INDEMNIFICATION**

#### **5.1 Insurance Coverages.**

Without limiting Consultant's indemnification of City, and prior to commencement of any services under this Agreement, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City.

(a) General liability insurance. Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

(b) Automobile liability insurance. Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Services to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

(c) Professional liability (errors & omissions) insurance. Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement and Consultant agrees to maintain continuous coverage through a period no less than three (3) years after completion of the services required by this Agreement.

(d) Workers' compensation insurance. Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).

(e) Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall include all of the requirements stated herein.

(f) Additional Insurance. Policies of such other insurance, as may be required in the Special Requirements in Exhibit "B".

## **5.2 General Insurance Requirements.**

(a) Proof of insurance. Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

(b) Duration of coverage. Consultant shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Services hereunder by Consultant, its agents, representatives, employees or subconsultants.

(c) Primary/noncontributing. Coverage provided by Consultant shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

(d) City's rights of enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

(e) Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or that is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

(f) Waiver of subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

(g) Enforcement of contract provisions (non-estoppel). Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

(h) Requirements not limiting. Requirements of specific coverage features or limits contained in this section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. 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 all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

(i) Notice of cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide to City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

(j) Additional insured status. General liability policies shall provide or be endorsed to provide that City and its officers, officials, employees, and agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.

(k) Prohibition of undisclosed coverage limitations. 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.

(l) Separation of insureds. A severability of interests provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

(m) Pass through clause. Consultant agrees to ensure that its subconsultants, 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 and endorsements 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 consultants, subcontractors, and others engaged in the project will be submitted to City for review.

(n) Agency's right to revise specifications. 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 and Consultant may renegotiate Consultant's compensation.

(o) Self-insured retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by City.

(p) Timely notice of claims. Consultant shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

(q) Additional insurance. Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

### **5.3 Indemnification.**

To the full extent permitted by law, Consultant agrees to indemnify, defend and hold harmless the City, its officers, employees and agents ("Indemnified Parties") against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Consultant, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Consultant is legally liable ("indemnitors"), or arising from Consultant's or indemnitors' reckless or willful misconduct, or arising from Consultant's or indemnitors' negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

(a) Consultant will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Consultant will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Consultant hereunder; and Consultant agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Consultant for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Consultant hereunder, Consultant agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

Consultant shall incorporate similar indemnity agreements with its subcontractors and if it fails to do so Consultant shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Consultant in the performance of professional services hereunder. The provisions of this Section do not apply to claims or liabilities occurring as a result of City's sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City's negligence, except that design professionals' indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the design professional. The indemnity obligation shall be binding on successors and assigns of Consultant and shall survive termination of this Agreement.

## **ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION**

### **6.1 Records.**

Consultant shall keep, and require subcontractors to keep, such ledgers, books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Project Manager to evaluate the performance of such services. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Project Manager shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of three (3) years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of Consultant's business, custody of the books and records may be given to City, and access shall be provided by Consultant's successor in interest. Notwithstanding the above, the Consultant shall fully cooperate with the City in providing access to the books and records if a public records request is made and disclosure is required by law including but not limited to the California Public Records Act.

### **6.2 Reports.**

Consultant shall periodically prepare and submit to the Project Manager such reports concerning the performance of the services required by this Agreement as the Project Manager shall require. Consultant hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Consultant

agrees that if Consultant becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Consultant is providing design services, the cost of the project being designed, Consultant shall promptly notify the Project Manager of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Consultant is providing design services, the estimated increased or decreased cost estimate for the project being designed.

### **6.3 Ownership of Documents.**

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the “documents and materials”) prepared by Consultant, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Project Manager or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Consultant will be at the City’s sole risk and without liability to Consultant, and Consultant’s guarantee and warranties shall not extend to such use, reuse or assignment. Consultant may retain copies of such documents for its own use. Consultant shall have the right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom. Moreover, Consultant with respect to any documents and materials that may qualify as “works made for hire” as defined in 17 U.S.C. § 101, such documents and materials are hereby deemed “works made for hire” for the City.

### **6.4 Confidentiality and Release of Information.**

(a) All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the Project Manager.

(b) Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the Project Manager or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered “voluntary” provided Consultant gives City notice of such court order or subpoena.

(c) If Consultant, or any officer, employee, agent or subcontractor of Consultant, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorney’s fees, caused by or incurred as a result of Consultant’s conduct.

(d) Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

## **ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION**

### **7.1 California Law.**

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of San Bernardino, State of California, or any other appropriate court in such county, and Consultant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in the County of San Bernardino, State of California.

### **7.2 Disputes; Default.**

In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, the City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Consultant is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Consultant does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Consultant's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

### **7.3 Retention of Funds.**

Consultant hereby authorizes City to deduct from any amount payable to Consultant (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Consultant's acts or omissions in performing or failing to perform Consultant's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Consultant, or any indebtedness shall exist which shall appear

to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Consultant to insure, indemnify, and protect City as elsewhere provided herein.

#### **7.4 Waiver.**

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Consultant shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

#### **7.5 Rights and Remedies are Cumulative.**

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

#### **7.6 Legal Action.**

In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding any contrary provision herein, Consultant shall file a statutory claim pursuant to Government Code Sections 905 *et seq.* and 910 *et seq.*, in order to pursue a legal action under this Agreement.

#### **7.7 Liquidated Damages.**

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Consultant and its sureties shall be liable for and shall pay to the City the sum of Zero Dollars (\$0) as liquidated damages for each working day of delay in the performance of any service required hereunder. The City may withhold from any monies payable on account of services performed by the Consultant any accrued liquidated damages.

#### **7.8 Termination Prior to Expiration of Term.**

This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this

Contract at any time, with or without cause, upon thirty (30) days' written notice to Consultant, except that where termination is due to the fault of the Consultant, the period of notice may be such shorter time as may be determined by the Project Manager. In addition, the Consultant reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Consultant may determine. Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Project Manager. Except where the Consultant has initiated termination, the Consultant shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Project Manager thereafter in accordance with the Schedule of Compensation or such as may be approved by the Project Manager, except as provided in Section 7.3. In the event the Consultant has initiated termination, the Consultant shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

#### **7.9 Termination for Default of Consultant.**

If termination is due to the failure of the Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Consultant shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Consultant for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

#### **7.10 Attorneys' Fees.**

If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

### **ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION**

#### **8.1 Non-liability of City Officers and Employees.**

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

## **8.2 Conflict of Interest.**

Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this 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 Project Manager. Consultant agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which affects her/his financial interest or the financial interest of any corporation, partnership or association in which (s)he is, directly or indirectly, interested, in violation of any State statute or regulation. The Consultant warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

## **8.3 Covenant Against Discrimination.**

Consultant covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry or other protected class in the performance of this Agreement. Consultant shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry or other protected class.

## **8.4 Unauthorized Aliens.**

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq.*, as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Consultant hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

## **ARTICLE 9. MISCELLANEOUS PROVISIONS**

### **9.1 Notices.**

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City

Manager and to the attention of the Project Manager (with her/his name and City title), City of Chino, 13220 Central Avenue, Chino, California 91710 and in the case of the Consultant, to the person(s) at the address designated on the execution page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

**9.2 Interpretation.**

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

**9.3 Counterparts.**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

**9.4 Integration; Amendment.**

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the parties. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Consultant and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

**9.5 Severability.**

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

**9.6 Warranty & Representation of Non-Collusion.**

No official, officer, or employee of City has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of City participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of

“financial interest” shall be consistent with State law and shall not include interests found to be “remote” or “noninterests” pursuant to Government Code Sections 1091 or 1091.5. Consultant warrants and represents that it has not paid or given, and will not pay or give, to any third party including, but not limited to, any City official, officer, or employee, any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded any agreement. Consultant further warrants and represents that (s)he/it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any City official, officer, or employee, as a result of consequence of obtaining or being awarded any agreement. Consultant is aware of and understands that any such act(s), omission(s) or other conduct resulting in such payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect.

Consultant’s Authorized Initials \_\_\_\_\_

**9.7 Corporate Authority.**

The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) that entering into this Agreement does not violate any provision of any other Agreement to which said party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

**[SIGNATURES ON FOLLOWING PAGE]**

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the date and year first-above written.

**CITY:**

CITY OF CHINO, a municipal corporation

\_\_\_\_\_

Linda Reich, City Manager

**ATTEST:**

\_\_\_\_\_

Natalie Gonzaga, City Clerk

**APPROVED AS TO FORM:**  
ALESHIRE & WYNDER, LLP

\_\_\_\_\_

Fred Galante, City Attorney

**APPROVED AS TO CONTENT:**

\_\_\_\_\_

Hye Jin Lee, PE, Director of Public Works

**CONSULTANT:**  
**MOFFATT & NICHOL:**

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

Address:

Two corporate officer signatures required when Consultant is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer.

**EXHIBIT "A"**

**SCOPE OF SERVICES**

- I. Consultant will perform the Services described in Consultant's Proposal, attached hereto as Exhibit A-1.**
- II. All work product is subject to review and acceptance by the City and must be revised by the Consultant without additional charge to the City until found satisfactory and accepted by City.**

## EXHIBIT “A-1”

### Task 1. Project Management (Environmental)

M&N Staff will be available to attend project meetings with the design team and city staff. These may include meetings to discuss the Scope of work, develop and refine the project, administrative draft document review meetings, focused issue discussion meetings, or meetings with United States Army Corps of Engineers (USACE) and/or Orange County Flood Control District (OCFCD). Consultant will produce presentation materials as necessary and be available to discuss the environmental review process and results of the Draft and Final CEQA IS/MND and NEPA EA/FONSI documents. Consultant will assist staff, at their direction, through the public comment and certification processes and other means of support as may be appropriate.

**Deliverables:** Attendance at project coordination meetings (assumes up to 80 hours).

### Task 2. CEQA Compliance (Environmental)

#### 2.1 Project Description

M&N will update the Project Description based on project updates associated with revised project elements, including environmental footprint, staging, storage, and construction methods. This assumes up to one iteration of City/Team staff review comments. This assumes up to two iterations of City/Team staff review comments. Substantial changes to the Project Description will not occur once approved by the City. If substantial changes occur after approval, additional budget may be required to revise documents for accuracy and consistency.

**Deliverables:** Draft and final revised project description

#### 2.2 Update IS under CEQA (“Draft Environmental Document”)

Update Draft Administrative CEQA IS/MND to include Segment 2 and in compliance with CEQA Statutes and Guidelines, including Appendix G Environmental Checklist. The M&N Team will examine and recommend feasible ways to eliminate or minimize adverse environmental impacts. Based on the information we know at this time, the M&N Team is assuming that this project will not have significant impacts on the environment, and an Environmental Impact Report will not need to be prepared. This task assumes that an Administrative Draft IS/MND will be prepared, and a meeting with the City will be held to address any outstanding issues. This subtask will finish with a public review Draft IS/MND ready for public circulation.

**Deliverables:** Updated CEQA Administrative Draft IS/MND and CEQA Draft IS/MND for Public Circulation.

#### 2.3 Technical Studies

The technical studies will be revised to include the additional project footprint area, including Segment 2. To support the conclusions of the analysis for some of the environmental topical areas, we will provide revised detailed technical studies. The results of the technical studies will be incorporated into the CEQA/NEPA environmental documentation, and the actual technical studies will be included as an attachment to the Draft IS/MND and Draft EA document(s).

The existing draft technical studies prepared by specialty subconsultants will need to be updated: Air Quality and Greenhouse Gas (Entech Consulting Group), Biological Survey, Analysis & Biological Technical Report; Wetland and Waterway Delineation & Report; Burrowing Owl Survey & Report; and Riparian Bird Surveys & Report (Noreas, Inc.), USACE-Compliant Cultural Resources Assessment Report (DUKE CRM), and Noise Study Report (Entech Consulting Group). Based on recent discussions with the City, it was determined that VMT mitigation may be needed, and a specialty firm (STC Traffic) is being added to the team to review traffic documentation to determine VMT impacts from Segments 1 and 2. Task 12 indicates optional tasks for consideration by the City to prepare VMT Approach and VMT Mitigation Memos.

### **Biological Resources**

NOREAS will perform literature reviews and archival records searches, conduct baseline biological surveys (i.e., flora and fauna), conduct habitat assessment for special status species, and delineate the Waters of the US and State. To that end, NOREAS will revise the biological technical reports and conduct biological surveys and compliance activities based on the revised project description, new environmental footprint, and revised permitting regulations. Our experience with riparian birds (Least Bell's Vireo and Southwestern Willow Flycatcher), raptors (Burrowing Owl), critical habitat avoidance, and delineation of Waters of the United States and State will give the team momentum and translate into simplified communication and streamlined execution. These are circumstances unique to the City, San Bernardino County, and Santa Ana RWQCB. Our biologists are exceptionally qualified because they have already been authorized to survey and monitor nesting birds, herpetofauna, wetlands, waterways, rare plants, and special status species by the USACE, USFWS, CDFW, and other resource agencies in CA. Our approach and strategy toward agency coordination are flexible concerning outreach, document transmittal, and direct coordination. We encourage regular communication with clients to ensure we understand their philosophy and expectations before a project begins. NOREAS has established and maintained successful, long-term working relationships with regulatory agencies, resource specialists, and colleagues. These personal relationships have led to expedited permitting timelines and scaled-down compensatory mitigation requirements for various projects.

### **Air Quality Impact and GHG Analysis**

The focus of the construction analysis will be on the pollutants of greatest concern, PM<sub>2.5</sub>, and ozone. The project area is currently nonattainment for ozone and PM<sub>2.5</sub>. Significant increases in these pollutants can lead to adverse health effects and nuisance concerns. PM<sub>2.5</sub> emissions are produced from excavation, grading demolition, vehicle travel, and paved and unpaved surfaces.

The use of diesel-powered construction equipment produces ozone precursor emissions and combustion-related particulate emissions. CalEEMod will be used to quantify emissions from construction and compared to SCAQMD thresholds to determine significance. Greenhouse Gas/Climate Change- Quantification of GHG will be performed to determine emission levels from the construction and operational aspects of the proposed project. CalEEMod will be utilized to estimate CO2 emissions from the construction and operation of the proposed project. The analysis will discuss project implementation measures that can be employed to reduce GHG emissions and potential climate change impacts from the projects. Utilizing the analysis identified above, an Air Quality Technical Report will be prepared in accordance with the provisions of CEQA requirements. Entech will update the Air Quality and GHG Report to respond to the CEQA checklist questions about air quality.

### **Cultural and Paleontological Resources:**

DUKE CRM will build on earlier background and field research to ascertain the presence and/or likelihood of encountering historic properties and/or paleontological resources in compliance with federal and state regulations. Background information has been acquired from the South Central Coastal Information Center regarding cultural resources and the Natural History Museum of Los Angeles County regarding paleontological resources, the Native American Heritage Commission regarding tribal cultural resources, as well as outreach to listed Native American groups and individuals. Field surveys conducted within authorized properties did not identify either cultural or paleontological resources. The current project will review cultural and paleontological resource background information and conduct field investigations within authorized areas not previously investigated. Cultural investigations shall be coordinated with USACE and the City. Cultural resource compliance will be reported in USACE format, which the city shall accept as compliance with CEQA. The report shall document background research, field investigations, and Native American outreach as requested by the USACE. Native American outreach shall include requests for additional consultation according to State Assembly Bill 52 (AB-52). A separate technical report shall report paleontological research and survey results in compliance with CEQA.

### **Noise:**

Entech Consulting Group will perform a construction noise analysis to include the expanded environmental footprint area to predict construction noise levels from the project site to demonstrate compliance with the noise ordinance. Mitigation measures to reduce noise associated with the project's construction will be discussed. Entech will update the Technical Noise Report to respond to the CEQA checklist questions related to noise.

### **Traffic Documentation Review:**

A Traffic Impact Analysis (TIA) Report (May 2023) was prepared for the project and included VMT analysis per City Guidelines in compliance with CEQA and Senate Bill 743. The TIA, though, contains a conflicting result; it found the project increases VMT with no VMT impact. This does not agree with the City's VMT thresholds, which indicate that a VMT increase in the project condition, compared to the no project condition, is an impact and requires mitigation.

This conflict requires resolution for CEQA VMT compliance. Our approach is threefold: (1)

review the TIA to confirm the quantitative VMT analysis and findings, (2) assuming the analysis is correct and there is increased VMT, the conclusion will be corrected to reflect that the project has a VMT impact, and (3) mitigate the VMT impact. The last item is most critical, and the VMT mitigation measures will follow TIA guidelines and “Implement Transportation Demand Management (TDM) measures to reduce VMT generated by the project.” Given subject ambiguity, this is expected to be the clearest and most direct way to mitigate VMT. The project is as much a TDM improvement project as a widening/capacity improvement project based on the extent of pedestrian and bicycle facility improvements on Pine Avenue. These are built-in mitigation features that will offset VMT. We will employ methods to quantify VMT reduction using the Project’s San Bernardino Transportation Analysis Model (SBTAM) runs, state and national online models, and/ or qualitative methods. Ultimately, the VMT review and reduction analysis will support beneficial findings, including reduced traffic congestion and associated GHG emissions, satisfy the City’s General and Specific Plans and performance standards, provide important connections, and enhance safety and access for pedestrians and bicycles to transit and area destinations. Per discussions with the City, at this time, a review of the VMT documentation is included within this task, and the additional steps identified above are included under Optional Task 12 to prepare a VMT Approach Memo and VMT Mitigation Memo (for consideration by the City).

**Deliverables:**

- Draft and final updated Technical Studies (assumes up to two drafts if necessary)
- Updated air quality and greenhouse gas study (Entech Consulting Group)
- Biology – Update Biological Survey, Analysis & Biological Technical Report; Update wetland and waterway Delineation & Report; Update Burrowing Owl Survey & Report; and Update Surveys & Report (Noreas, Inc.)
- Cultural – USACE – Compliant Cultural Resources Assessment Report (Duke CRM)
- Updated Noise Study Report (Entech Consulting Group)
- Traffic Documentation Review (STC Traffic) for input into Draft environmental document
- (Optional) VMT Mitigation Memo (STC Traffic)

**2.4 Prepare and Circulate Public Draft IS/MND**

**Coordination with the City Regarding Public Circulation, Including Preparing and Submitting Required Notices (Including Notice of Intent):**

The City is assumed to be the CEQA Lead Agency. M&N will prepare notices for review/approval of City staff, and M&N will support City staff in submitting the Notice of Intent to Adopt a Mitigated Negative Declaration (NOI) form to the County Clerk and State Clearinghouse. M&N will circulate the Draft IS/MND for a 30-day public review period. We will work with the City to develop a distribution list for the Draft IS/MND, including state and local agencies and other stakeholders for public review and comments. We will prepare the Notice of Completion (NOC) form for distribution to the State Clearinghouse and will draft notices for publication in local newspapers. It is anticipated that a public meeting will not be required.

**Deliverables:**

- Support City during Public Circulation, and print up to 2 hard copies of the Public Review IS/MND
- Prepare Notice of Intent to Adopt a Mitigated Negative Declaration (assumes City will publish newspaper notices)
- Prepare and post Notice of Completion & Environmental Document Transmittal (NOC) at the County Clerk
- File NOC and Summary Form for Electronic Document Submittal with State Clearinghouse

**2.5 Final IS/MND, Mitigation Monitoring, and Reporting Program**

Upon the close of the public review period, M&N will work with the City staff to prepare the Final IS/MND. This may involve preparing detailed responses to comments, depending upon the nature and magnitude of comments received. Additionally, any modifications to the IS/MND will be made to address public comments or other changes to the project or environmental information. After the adoption of the IS/MND, M&N will prepare the Notice of Determination (NOD) and post it to the County Clerk and State Clearinghouse, along with the CDFW filing fee. M&N will prepare a Mitigation Monitoring and Reporting Program (MMRP) that will identify mitigation measures, timing, responsibility for implementation, and monitoring methods. We will work with City staff to identify appropriate responsible parties, methods, and timing. M&N will provide the MMRP with the screen-check Final IS/ MND.

**Prepare Mitigated Negative Declaration (MND) Under CEQA (“Final Environmental Document”):**

Incorporate public comments obtained during public circulation and required updates as the “Draft Environmental Document” becomes the “Final Environmental Document.” M&N and the City will work together to respond to public comments, and M&N will prepare the Final IS/MND for certification.

**Prepare And File Notice of Determination:**

File the Notice of Determination (NOD) with the San Bernardino County Clerk of the Board and State Clearinghouse after the MND is certified. It is assumed that the City will remit the 2024 California Department of Fish and Wildlife document filing fee (\$2,916) and the County of San Bernardino Document Filing fee (\$50).

**Deliverables:**

- Draft and Final CEQA Final Initial Study with mitigated Negative Declaration.
- Draft and Final MMRP.
- Attend and/or Present at up to one City Council Meeting (or support City staff) (as needed).
- Prepare draft and final notice of Determination (NOD) and other State Clearinghouse required transmittal forms.
- Post NOD at County Clerk and State Clearinghouse CEQA submit website.

### **Task 3 Regulatory Permits (Environmental)**

#### **3.1 Permit Applications:**

M&N will prepare applications for a USACE 404 NWP, RWQCB 401 Water Quality Certification, and a CDFW 1602 Agreement. Pending results of Task 2 (biology reports) and agency input, an additional scope/fee may need to be prepared by the M&N Team (if a USACE 404 IP is needed and/or any permits will be required for impacts to federal and/or state endangered/threatened species).

#### **3.2 Agency Coordination and Responses to Agency Comments/ Requests for Information:**

Agency coordination with the USACE, RWQCB, CDFW, and USFWS will be prioritized to identify the permitting requirements for 404, 401, and 1602. Further, M&N will determine if permitting associated with the Federal Endangered Species Act (ESA) and/or CDFW California ESA will be needed.

M&N will coordinate with the agencies and prepare responses to comments to Requests for Information (RFIs). We have assumed time and materials for two rounds of agency RFIs. If additional RFI's are made, M&N may need additional authority to continue permit application processing.

#### **Deliverables:**

- Draft and Final USACE 404 Nationwide Permit, RWQCB 401 Certification, and CDFW 1602 Agreement Applications
- Agency Coordination/Responses to Comments and Agency Request for Information (RFIs)

### **Task 4 USACE Section 408 Permission (Environmental)**

#### **4.1 Prepare EA under NEPA (“Draft Environmental Document”):**

Prepare Draft Administrative NEPA EA, compliant with “USACE Los Angeles District Section 408 Environmental Assessment Guidelines and Template” (dated August 2023). The M&N Team assumes this project will not have a significant impact on the environment, and an Environmental Impact Statement will not need to be prepared. This task assumes that an Administrative Draft EA will be prepared, and a meeting with the City/OCFCD/USACE may be held to address any outstanding issues. This subtask will finish with a public review Draft EA ready for public circulation.

#### **4.2 Coordination with USACE Regarding Public Circulation, including preparing and submitting required Notices:**

The USACE is assumed to be the NEPA Lead Agency. M&N may prepare notices for review/approval of USACE staff. USACE will be responsible for circulating the applicable notices, advertising the project in the newspaper, and/or posting on-site consistent with NEPA requirements. M&N will support the USACE during the required 30-day circulation period, and it is anticipated that a public meeting will not be required.

#### **4.3 Prepare Final EA/FONSI under NEPA (“Final Environmental Document”):**

Incorporate public comments obtained during public circulation and required updates as the “Draft Environmental Document” becomes the “Final Environmental Document.” M&N, USACE, and the City will work together to respond to public comments, and M&N will prepare the Final EA. M&N will prepare a Draft and Final Finding of No Significant Impact (FONSI) for review and approval by USACE.

#### **4.4 (Optional) Combination of CEQA Draft IS/MND & NEPA EA/FONSI:**

There is an optional task to combine CEQA and NEPA environmental documents into a single NEPA/CEQA document, should the USACE and City approve of the combination. If chosen, this combination will benefit and streamline the process, including only having one public circulation period and one (not two) environmental document.

#### **Deliverables:**

- Prepare Admin Draft NEPA Environmental Assessment (assume up to two revisions)
- Prepare Draft NEPA Environmental Assessment for Public Circulation (assume up to two revisions)
- Support City/USACE during public circulation (notices, etc.)
- NEPA Final Environmental Assessment (assume up to two revisions)
- Prepare draft and final Finding of No Signification Impact (FONSI)
- (Optional) Combine CEQA IS/MND and NEPA EA into a single IS/EA (leading to MND/FONSI)

#### **Task 5 Project Management (ROW)**

The key to delivering any project lies in the experience and commitment of its Project Manager. At the beginning of the project, Kim will create a ROW delivery plan that outlines the scope, cost, schedule, risk, approvals, quality, and stakeholder needs of the Project. With this in hand, Kim will be able to monitor the Project's day-to-day operations and provide the City with a weekly status update. Monument will interface with the City, their design team, and their project management team to manage the scope and schedule of the project. Monument will oversee all activities performed under this Contract, including coordination/preparation of meetings, providing periodic progress reports to the City, and maintaining project files. The project manager and utility coordinator will attend bi-weekly meetings with the project teams.

#### **Deliverables:**

- Attendance at project coordination meetings and provide weekly status updates to City

#### **Task 6 USACE Section 408 Permission (ROW)**

Monument will provide ROW support services per the USACE Section 408 Permission Section D (Real Estate Documentation) to determine the USACE lands impacted as a result of this project in compliance with AR 405-80 and Chapter 8, ER 045-1-12 for the following: deed, agreements between the USA, City, Office of the Assessor Property Information Report, and Assessor's Parcel Number (APN).

#### **Deliverables:**

- Provide deed, agreements and Assessor's Parcel Number (APN) consistent with USACE

Section 408 permission section D real estate Documentation.

### **Task 7 Title Services (ROW)**

Monument will utilize Commonwealth Land Title Company to obtain Preliminary Title Reports for impacted parcels, review them for ownership, and determine any unacceptable liens or encumbrances that must be addressed before the property is conveyed to the City. We will order litigation guarantees for any parcels before the eminent domain process begins. After execution and acceptance by both the owner and the City, signed documents will be delivered to Commonwealth Land Title Company, and escrows will be opened. The escrow officer will be instructed to produce a Settlement Statement, which will allow the City to process funds and deposit them into escrow. For partial fee acquisitions and permanent easements, properties with loans will require lender consent or subordination agreement prior to closing escrow. Oftentimes, title companies require support in contacting lenders and processing their requests for consent. Monument has assisted with countless lender consents and title clearances and is committed to ensuring that all escrows are closed promptly, and title insurance is issued. The City will receive the title insurance policy and a final closing package.

#### **Deliverables:**

- Provide title reports for impacted parcels

### **Task 8 Appraisal Services**

Monument will coordinate with Santolucito Dore. We will prepare the Notice of Decision to Appraise letters and assist with scheduling appointments with the property owners if requested. We will also attend the property inspections so we can begin developing a rapport with the property owner early on in the process. Our Team will review the appraisals prior to finalizing the reports.

#### **Deliverables:**

- Prepare NOD to Appraise Letters
- Assist with scheduling appointments with property owner, if requested
- Attend property inspections
- Review appraisals

### **Task 9 Acquisition Services**

Our ROW agents will contact the property owner(s) and, if possible, meet with the owner in person to present the City's offer within two (2) weeks after receipt of the approved appraisal and determination of just compensation by the City. During this meeting, the agent will discuss the project, explain the property rights affecting the property, review the proposed project design, present the offer to purchase, review the salient information in the appraisal report, review the terms of the right-of-way Contract, and answer any questions or concerns the owner may have concerning the process.

Owners will be given a reasonable opportunity to consider offers, present materials they believe are relevant to determining property values, and suggest modifications in the proposed terms and conditions of the purchase. Every reasonable effort will be made to acquire the necessary real property rights expeditiously by negotiations. The right-of-way agent will proactively

communicate with the property owner on a regular basis, meet in person when necessary, and respond to any questions, concerns, or clarifications requested by the property owner. The right-of-way agent will establish a file and maintain a parcel diary/log to record all communications with the property owner and/or the property owner's representative.

Monument will assist the City with owner communication and coordination, primarily with OCFCD, as needed prior to negotiations. Once plats and legals are received and the project has environmental clearance, Monument will coordinate the appraisal process.

**Deliverables:**

- Contact property owner(s) and present the City's offer within two weeks of the approved appraisal
- Coordinate with the property owner(s) on a regular basis to answer questions/clarification
- Establish file and maintain parcel diary/log to record communications with the property owner(s) (or their representative)
- Assist City with Communication and Coordination with OCFCD, as needed
- Coordinate the appraisal process (once plats and legals are received and the Project has environmental clearance)

**Task 10 Escrow Services (ROW)**

Monument will provide the following escrow services: transmission of original documents, review of title report and Memorandum Preparation, preparation of escrow instructions, resolution of financial matters and title issues, deposit and close of escrow and ongoing support and coordination.

**Deliverables:**

- Provide escrow services, including transmission of original documents, review of title report, and Memorandum preparation
- Prepare escrow instructions
- Resolve financial matters and title issues
- Deposit and close escrow
- Ongoing support and Coordination

**Task 11 Utility Coordination and Relocation (ROW)**

Monument's Utility Relocation Team, led by Pete Castelan, has experience providing utility coordination management for agencies throughout the Inland Empire and is familiar with local utility providers. Monument utilizes the Caltrans process for utility coordination as our standard protocol in addressing conflicting utility owners on our projects. Monument will coordinate interviews among the City, the Project Team, stakeholders, and utility owners on utility relocation procedures. The Team will assist with identifying and verifying utilities in the project area and obtain confirmation from the utility owners. This involves preparing and mailing utility verification requests to Owners and follow-up letters requesting as-builts and current information on any existing facilities, including claims of liability. This information, along with performing site verifications and working with design, will be used in identifying all utility locations. Monument will confirm with utility companies that the facilities are located as represented in the

project's utility maps. Monument will coordinate the potholing efforts or field surveys with the utility companies and the design team.

A utility matrix will be prepared to identify utility owners, descriptions of facilities, dispositions (i.e., protect, relocate, abandon), and initial liability determinations. Monument will issue the Relocation Claim Letters and Notice to Owner to relocate in order to coordinate with utility companies for adjustment and/ or relocation of interfering utilities. Our Team will coordinate with affected agencies and utility owners to obtain permits, approvals, and necessary agreements, including Utility Agreements, for relocations.

Monument will coordinate and oversee the potholing process. 18 pothole locations have been identified. We will review and verify with the design team which facilities are considered in conflict based on the potholing report and prepare the conflict matrix.

Monument will continue to coordinate and plan meetings amongst the utility owners, design team, and the City as needed to discuss the project design, the utility conflict, relocation alternatives, and a plan to resolve the conflict.

**Deliverables:**

- Coordinate potholing efforts or field surveys with utility companies and design team
- Prepare utility matrix
- Issue relocation claim letters and notice to owner to relocate utilities
- Coordinate with affected agencies and utility owners to obtain permits, approvals and necessary agreements

**EXHIBIT "B"**

**SPECIAL REQUIREMENTS**

**(Superseding Contract Boilerplate)**

**EXHIBIT “C”**

**SCHEDULE OF COMPENSATION**

- I. Consultant shall be compensated for the services provided under this Agreement in accordance with the budget and rates provided in Exhibit “C-1”.**
- II. Within the budgeted amounts for each Task, and with the approval of the Project Manager, funds may be shifted from one Task subbudget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Services are approved per Section 1.10.**
- III. The City will compensate Consultant for the Services performed upon submission of a valid invoice, as described in Section 2.4.**
- IV. The total compensation for the Services shall not exceed the Contract Sum, as provided in Section 2.1 of this Agreement.**

**EXHIBIT “C-1”**

<b>TASK</b>	<b>DESCRIPTION</b>	<b>TOTAL (\$)</b>
<b>1</b>	<b>Environmental Project Management (Environmental)</b>	<b>\$19,450.00</b>
<b>2</b>	<b>CEQA Compliance (Environmental)</b>	<b>\$108,130.55</b>
<b>3</b>	<b>Regulatory Permits (Environmental)</b>	<b>\$13,460.00</b>
<b>4</b>	<b>USACE 408 (Environmental)</b>	<b>\$73,580.00</b>
<b>5</b>	<b>Project Management (ROW/Utilities)</b>	<b>\$13,310.00</b>
<b>6</b>	<b>USACE 408 (ROW/Utilities)</b>	<b>\$1,640.00</b>
<b>7</b>	<b>Title Services (ROW/Utilities)</b>	<b>\$1,100.00</b>
<b>8</b>	<b>Appraisal Services (ROW/Utilities)</b>	<b>ODC</b>
<b>9</b>	<b>Acquisition Services (ROW/Utilities)</b>	<b>\$24,525.00</b>
<b>10</b>	<b>Escrow services (ROW/Utilities)</b>	<b>\$6,780.00</b>
<b>11</b>	<b>Utility Coordination &amp; Relocation (ROW/Utilities)</b>	<b>\$41,480.00</b>
	<b>ODC Task 2 VMT Analysis</b>	<b>\$10,000.00</b>
	<b>ODC Task 2 VMT Memo (Optional)</b>	<b>\$4,800.00</b>
	<b>ODC Task 4</b>	<b>\$604.00</b>
	<b>ODC Task 6-11</b>	<b>\$43,950.00</b>
	<b>TOTAL:</b>	<b>\$362,809.55</b>

**EXHIBIT “D”**

**SCHEDULE OF PERFORMANCE**

- I. Consultant shall perform all services timely in accordance with the following schedule:**

\*Finalized deadline dates will be contingent upon actualized project schedules, which shall be approved by the City. Consultant will coordinate with City and Project Staff to ensure timely completion of services and adherence to approved task schedules.

- II. The Project Manager may approve extensions for performance of the services in accordance with Section 3.2.**