**Those persons wishing to speak on any item included on the agenda, or on any matter within the subject matter jurisdiction of the City Council, are invited fill out and submit to the City Clerk a "Request to Speak" form (name and address optional) which is available at the entrance to the City Council Chambers. Additionally, members of the public may submit electronic inquiries or comments by submitting emails to CityClerk@cityofchino.org**

**If you require a reasonable accommodation to participate in this meeting per your rights under the Americans with Disabilities Act or for any other reason, please contact the City Clerk's Office (909) 334-3306, at least 48 hours prior to the advertised starting time of the meeting.**

**Any documents produced by the City and distributed to a majority of the City Council regarding any item on this agenda will be made available in the City Clerk's Office during normal business hours at City Hall located at 13220 Central Avenue, Chino. In addition, such documents will be posted on the City's website at www.cityofchino.org**

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# CHINO CITY COUNCIL
# SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY
# CITY HALL COUNCIL CHAMBERS
# 13220 CENTRAL AVENUE
# CHINO, CA 91710

## TUESDAY, MAY 21, 2024

## REGULAR MEETING

## AGENDA

## OPEN SESSION – 6:00 PM

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## ROLL CALL

Mayor Eunice M. Ulloa, Mayor Pro Tem Karen C. Comstock, Council Member Curtis Burton, Council Member Christopher Flores, Council Member Marc Lucio.

## FLAG SALUTE

## CEREMONIALS

National Public Works Week. Proclamation for National Public Works Week, May 19-25, 2024.

Retirement Recognition. James E. Jenkins, Director of Airports for San Bernardino County.

Business of the Month. Award of Business of the Month for May 2024 to M.K. Smith Chevrolet.

## PRESENTATION

San Bernardino County Transportation Authority (SBCTA). Receive a Presentation from Dr. Raymond Wolfe, Executive Director, SBCTA.

## AGENDA ADDITIONS/REVISIONS

## PUBLIC ANNOUNCEMENTS

***This is the time and place for the Mayor to inform the public of all upcoming events and past occurrences of communitywide interest and concern.***

**PUBLIC COMMENTS**

***This is the time and place for the general public to address the City Council about subjects that do not appear elsewhere on the agenda. Due to Council policy and Brown Act requirements, action will not be taken on any issues not on the Agenda. Ordinance No. 97-08 (Chino Municipal Code Section 2.04.090) limits speakers to no more than five (5) minutes in which to address Council, except as provided under Government Code 54954.3(b)(2). If more than three (3) persons seek to address the same agenda item or the same subject matter, the Mayor shall establish a maximum period of time not to exceed thirty (30) minutes.***

**CONSENT CALENDAR**

***At this time, members of the public may present testimony as to why an item should be removed from the Consent Calendar for separate discussion. Unless a member of the public or City Council requests that an item be removed from the Consent Calendar, all items will be acted upon as a whole and by one vote. Items placed on the Consent Calendar represent routine expenditures and/or actions that support ongoing City operations.***

1. Warrants. Approve expenses as audited and within budget for warrants 770480 to 770748, and Electronic Fund Transfers 519232E to 519313E, totaling $6,523,702.22.

2. Minutes. Regular Meeting Minutes for May 7, 2024 (All Members Present).

3. Elected City Officials' Report Regarding Travel, Training, and Meetings. Receive and file the Elected City Officials' Report reflecting City Council business related expenses incurred by the City.

4. Property Tax Allocation for Annexation - LAFCO Reorganization (Detachment/Annexation from County Service Area 70) No. 3269 - Ramona Francis Annexation. Adopt Resolution No. 2024-023, determining the amount of property tax revenues to be exchanged between and among the City of Chino and the County of San Bernardino, resulting from the jurisdictional change described by LAFCO 3269 (PL23-0014, Annexation).

5. Local Hazard Mitigation Plan Consultant Agreement. Award a contract to Integrated Solutions Consulting, Inc. in the amount of $78,750 for the purpose of updating the City of Chino's Local Hazard Mitigation Plan.

6. Pine Avenue Improvements Project (ST203) - Professional Services Agreement with Moffatt & Nichol. Award a Professional Services Agreement in the amount of $362,810 to Moffatt & Nichol, Long Beach, CA, for Consulting Services for Environmental Compliance, Regulatory Permitting, Right of Way, and Utility Coordination.

7. Euclid Bridge Avenue Project (ST243) - Professional Services Agreement with Project Partners, Laguna Hills, CA for Project Management Services. Approve an appropriation of $426,000 from the Transportation Fund (320) backfilled by the General Fund (100) reserves with a corresponding increase to the project budget and award a Professional Services Agreement to Project Partners for $426,000.

8. Benson Reservoir Improvement Project (WA213) - Professional Services Agreement - Dudek, Encinitas, CA for Engineering Design and Bid Support Services. Award a Professional Services Agreement to Dudek for $694,851 for Engineering Design and Bid Support Services for the Benson Reservoir Improvement Project (WA213) and authorize expenditures up to $83,916 for project management services.

9. Acceptance of CalRecycle Used Oil Payment Program (OPP14) Grant funds. Authorize the acceptance of an award of funds from the State Department of Resources, Recycling and Recovery (CalRecycle) Used Oil Payment Program (OPP14) for $13,034.

10. Final Acceptance of Public Improvements for PL18-0038 Special Conditional Use Permit, Tang & Sung Investment LLC (Wing Lee Farms), located at 13625 Yorba Avenue. Accept public improvements as complete for PL18-0038 Special Conditional Use Permit; authorize release of the performance bond and initiate the warranty bond; and authorize the City Manager to execute the necessary documents on behalf of the City.

11. Final Acceptance of Public Improvements for Site Approval PL16-0671, G&SS Restaurant Corporation (Andy's Burger), located at 4616 Riverside Drive Avenue. Accept public improvements as complete for Site Approval PL16-0671; authorize release of the performance bond and initiate the warranty bond; and authorize the City Manager to execute the necessary documents on behalf of the City.

**NEW BUSINESS**

12. Naming of Falloncrest Community Park Site. Approve "Stueve Family Park" as the name of the 6.99-acre public park located west of East Preserve Loop, south of the Southern California Edison (SCE) Easement, and north of Bickmore Avenue.

    Staff Report By: Jeffrey Benson, Parks & Capital Projects Manager

    RECOMMENDATION: Adopt the name "Stueve Family Park" as the name of the new community park set to be part of the Falloncrest development.

13. Transportation Right-of-Way ADA Improvements Project (ST173) and the Street Rehabilitation FY 23-24 Project (ST241) - Approve a Construction Contract with CT & T Concrete Paving Inc., Professional Services Agreement with Leighton Consulting, Inc., and Authorize Expenditures for Construction Management Services and Overtime Inspection Costs. Various approvals for the Transportation Right-of-Way ADA Improvements Project (ST173) and Street Rehabilitation FY 23-24 Project (ST241).

    Staff Report By: Eduardo Diaz, Associate Engineer

    RECOMMENDATION: Approve the 1) appropriation of $3,165,486 to the Transportation Fund (320) for the Street Rehabilitation FY2023-2024 Project (ST241), with a corresponding year-end transfer in the same amount from the General Fund (100) reserves; 2) award a construction contract to CT&T Concrete Paving Inc., Diamond Bar, CA for the Transportation Right-of-Way ADA Improvements Project (ST173) and the Street Rehabilitation FY 23-24 Project (ST241) for $2,645,501.07 and authorize up to $264,551 (10% of the contract amount) for construction contingencies for a total amount not to exceed $2,910,052.07; 3) award a Professional Services Agreement with Leighton Consulting, Inc. Rancho Cucamonga, CA, for Geotechnical Engineering Services for the Transportation Right-of-Way ADA Improvements Project (ST173) and the Street Rehabilitation FY2023-2024 Project (ST241) for $54,223; 4) authorize expenditures of up to $191,210 for construction management services, and $10,000 for overtime inspection costs for the Transportation Right-of-Way ADA Improvements Project (ST173) and the Street Rehabilitation FY2023-2024 Project (ST241); and 5) authorize the City Manager to execute the necessary documents on behalf of the City.

14. Kimball Avenue Median Improvements Project. Approve a Cooperative Agreement between the City of Chino and San Bernardino County for the Kimball Avenue Median Improvements Project; Award a Construction Contract to Metrocell Construction and Professional Services Agreement with AESCO, Inc.

Staff Report By: Dennis Ralls, City Traffic Engineer

RECOMMENDATION: Approve the 1) establishment of a new CIP project entitled “Kimball Avenue Median Improvement Project”, G7241 with a total project budget of $319,323.40; 2) appropriate $319,323.40 to the Transportation Fund (320), with a corresponding increase in grant revenue from the County of San Bernardino American Plan Rescue Act (ARPA) Funds and $4,999.40 backfill from the General Fund (100) reserves; 3) approve a Cooperative Agreement between the City of Chino and San Bernardino County to establish reimbursement obligations for the Kimball Avenue Median Improvements Project G7241 for $314,324; 4) award a Construction Contract for $250,399.40 to Metrocell Construction Inc., Ontario, CA for the Kimball Avenue Median Improvements Project and authorize up to $25,040 (10% of the contract amount) for construction contingencies for a total amount not to exceed $275,439.40; 5) approve a Professional Service Agreement with AESCO, Inc., Huntington Beach, CA for Geotechnical Engineering Services for the Kimball Avenue Median Improvements Project for $13,184; 6) authorize expenditures of up to $15,700.00 for construction management services, $10,000 for design services and $5,000 for overtime inspection costs; and 7) authorize the City Manager to execute all necessary documents on behalf of the City.

15. Ordinance 2024-008 Adding Chapter 12.24, "Limitation on Use of City Property", to the Chino Municipal Code. Approve the introduction of Ordinance No. 2024-008, an Ordinance of the City Council of the City of Chino, California, adding Chapter 12.24, Limitation on Use of City Property, to the Chino Municipal Code.

Staff Report By: Fred Galante, City Attorney

RECOMMENDATION: Approve the introduction of Ordinance No. 2024-008, to be read by number and title only and waive further reading of the Ordinance, adding Chapter 12.24, “Limitation on Use of City Property”, to the Chino Municipal Code, to permit the City to establish limits on access to City owned or controlled properties, to be established via Resolution.

***ORDINANCE 2024-008 - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHINO, CALIFORNIA, ADDING CHAPTER 12.24 (LIMITATION ON USE OF CITY PROPERTY) TO THE CHINO MUNICIPAL CODE***

16. Resolution Amending the City's Classification and Salary Schedule. Adopt Resolution No. 2024-024 amending the City’s Classification and Salary Schedule to add positions that will enhance the support of essential City services.

Staff Report By: Linda Reich, City Manager

RECOMMENDATION: Adopt Resolution No. 2024-24 amending the Classification and Salary Schedule to add the following positions and appropriate funds in the FY 2024-25 Mid-Term Budget: One (1) Sergeant; one (1) Corporal; two (2) Police Officer; one (1) Principal Engineer; two (2) Associate Engineer; one (1) Information Technology Analyst (GIS); one (1) Assistant Parks and Capital Projects Manager; one (1) Facilities Maintenance Technician; one (1) Human Resources and Risk Management Analyst; and one (1) Management Analyst (Administration/Economic Development).

**MAYOR AND COUNCIL REPORTS**

***This is the time and place for the Mayor and Council Members to report on prescheduled Council Committee Assignment Meetings that were held since the last Regular Council Meeting, and any other items of interest. Upon request by an individual Council Member, the City Council may choose to take action on any of the subject matters listed below.***

Mayor Ulloa

Mayor Pro Tem Comstock

Council Member Burton

17. Community Support Fund - Council Member Burton. Approve community support fund contribution to Chaffey College Foundation.

    Staff Report By: Council Member Burton

    RECOMMENDATION: Approve a community support fund contribution of $375 to Chaffey College Foundation.

Council Member Flores

Council Member Lucio

City Manager's Report

City Attorney's Report

Police Chief's Report

Fire Chief's Report

**ADJOURN**

The next Regular Meeting of the City Council will be held on Tuesday, June 4, 2024 at 6:00 p.m. (Closed Session no earlier than 4:00 p.m. if necessary) in these Council Chambers.

I, Natalie Gonzaga, City Clerk of the City of Chino, hereby declare that on Thursday, May 16, 2024 this agenda was posted on the south window of Chino City Hall and this agenda together with all of the agenda reports and related documents were posted on the City's website at www.cityofchino.org by myself or under my direction.

ngonzaga

Natalie Gonzaga, City Clerk.

# MEMORANDUM
# CITY OF CHINO
# PUBLIC WORKS DEPARTMENT

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**CITY COUNCIL MEETING DATE: MAY 21, 2024**

**TO:** **LINDA REICH, CITY MANAGER**

**FROM:** **HYE JIN LEE, PE, DIRECTOR OF PUBLIC WORKS**

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**SUBJECT**

National Public Works Week, May 19-25, 2024

# CHINO

# Proclamation

***WHEREAS**, public works professionals focus on infrastructure, facilities, and services that are of vital importance to sustainable and resilient communities and the public health, high quality of life, and well-being of the citizens of the City of Chino; and*

***WHEREAS,** these infrastructures, facilities, and services could not be provided without the dedicated efforts of public works professionals, who are engineers, managers, and employees at all levels of government and the private sector, who are responsible for rebuilding, improving, and protecting our nation's transportation, water supply, water treatment and solid waste systems, public buildings, and other structures and facilities essential for our citizens; and,*

***WHEREAS,** it is in the public interest for the citizens, civic leaders, and children in the City of Chino to gain knowledge and maintain ongoing interest and understanding of the importance of public works and public works programs in their respective communities; and,*

***WHEREAS,** the year 2024 marks the 64th annual National Public Works Week sponsored by the American Public Works Association/Canadian Public works Association be it now,*

***NOW, THEREFORE, I, EUNICE M. ULLOA, MAYOR OF THE CITY OF CHINO,** do hereby designate the week of **May 19–25, 2024, as:***

***NATIONAL PUBLIC WORKS WEEK***

*I urge all citizens to join with representatives of the American Public Works Association and government agencies in activities, events, and ceremonies designed to pay tribute to our public works professionals, engineers, managers, and employees and to recognize the substantial contributions they make to protecting our national health, safety, and advancing quality of life for all.*

***PRESENTED THIS 21st DAY OF MAY 2024.***

Eunice M. Ulloa

EUNICE M. ULLOA, Mayor

ATTEST:

ngonzaga

NATALIE GONZAGA, City Clerk

CITY OF CHINO
WHERE EVERYTHING GROWS
INCORPORATED 1910

# MEMORANDUM
# CITY OF CHINO
# ADMINISTRATION DEPARTMENT

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**CITY COUNCIL MEETING DATE: MAY 21, 2024**

**TO:** **MAYOR AND CITY COUNCIL MEMBERS, CITY OF CHINO**

**FROM:** **LINDA REICH, CITY MANAGER**

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**SUBJECT**

Retirement Recognition - James E. Jenkins, Director of Airports for San Bernardino County.

# MEMORANDUM
# CITY OF CHINO
# ADMINISTRATION DEPARTMENT

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**CITY COUNCIL MEETING DATE: MAY 21, 2024**

**TO:** **MAYOR AND CITY COUNCIL MEMBERS, CITY OF CHINO**

**FROM:** **LINDA REICH, CITY MANAGER**

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**SUBJECT**

Award of Business of the Month for May 2024.

# MEMORANDUM
# CITY OF CHINO
# ADMINISTRATION DEPARTMENT

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**CITY COUNCIL MEETING DATE: MAY 21, 2024**

**TO:** **MAYOR AND CITY COUNCIL MEMBERS, CITY OF CHINO**

**FROM:** **LINDA REICH, CITY MANAGER**

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**SUBJECT**

Receive a Presentation from Dr. Raymond Wolfe, Executive Director, SBCTA.

# MEMORANDUM
# CITY OF CHINO
# FINANCE DEPARTMENT

**CITY COUNCIL MEETING DATE: MAY 21, 2024**

**TO:** **LINDA REICH, CITY MANAGER**

**FROM:** **ROB BURNS, DIRECTOR OF FINANCE**

## SUBJECT

Warrants.

## RECOMMENDATION

Approve expenses as audited and within budget for warrants 770480 to 770748, and Electronic Fund Transfers 519232E to 519313E, totaling $6,523,702.22.

## FISCAL IMPACT

Sufficient funds have been included in the Fiscal Year 23-24 Operating Budget.

## CITY OF CHINO MISSION / VISION / VALUES / STRATEGIC ISSUES

The recommendation detailed above further the City's values and strategic issues that serve as key pillars on which identified priorities, goals, and action plans are built, by fostering:

- Financial Stability

| | |
|---|---|
| Revenue: | Expenditure: |
| Transfer In: | Transfer Out: |

## BACKGROUND

As prescribed by Government Code Sections 37202 and 37208, the following demand registers are herewith submitted for Council ratification:

| NO. | WARRANTS | DATE | FY | AMOUNT |
|---|---|---|---|---|
| 1. | 70480 | 4/22/24 | 23-24 | $17,000.00 |
| 2. | 770481 – 770617 | 4/25/24 | 23-24 | $1,947,786.69 |
| 3. | 770618 – 770748 | 5/2/24 | 23-24 | $631,329.04 |
| 4. | 519232E – 519281E | 4/26/24 | 23-24 | $2,486,390.57 |
| 5. | 519282E – 519309E | 5/3/24 | 23-24 | $1,434,459.56 |
| 6. | 519310E – 519313E | 5/3/24 | 23-24 | $6,736.36 |

E: Electronic Fund Transfer

| | |
|---|---|
| **TOTAL** | **$6,523,702.22** |

## ISSUES/ANALYSIS

See attached exhibit for detailed information on warrants exceeding $50,000.

RB:hm

Attachment

# CITY OF CHINO
## A/P Warrant Register Over $50,000

| Check Number | Check Date | Vendor Name | Description | Amount |
|---|---|---|---|---|
| 770498 | 04/25/2024 | C P CONSTRUCTION CO INC | KIMBALL AVE IMPROVEMENTS-PRESERVE | $142,296.23 |
| 770564 | | MERITAGE HOMES | DIF REIMB STORM DRAIN | $1,178,914.00 |
| 770585 | | PIPE TEC, INC. | SEWER MAIN LINE REPAIR | $92,900.00 |
| 770611 | | WASTE MANAGEMENT | COLLECTION SERVICES | $187,028.23 |
| 519239 | 04/26/2024 | CALGON CARBON CORPORATION | WATER TREATMENT | $55,841.60 |
| 519242 | | CHINO VALLEY INDEPENDENT FIRE DISTRICT | FIRE PROTECTION SERVICES | $1,395,000.00 |
| 519243 | | CIVICA LAW GROUP, APC | LEGAL SERVICES | $58,364.56 |
| 519258 | | INLAND EMPIRE UTILITIES AGENCY | RECYCLED WATER | $65,380.74 |
| 519259 | | HUMANE SOCIETY OF POMONA VALLEY | ANIMAL CONTROL SERVICES | $53,157.50 |
| 519261 | | MERCHANTS LANDSCAPE SERVICES INC | LANDSCAPE MAINTENANCE | $57,553.02 |
| 519277 | | WATER FACILITIES AUTHORITY | IMPORTED WATER | $352,202.42 |
| 519281 | | YUNEX LLC | TRAFFIC SIGNAL MAINTENANCE | $293,942.37 |
| 770620 | 05/02/2024 | ALL AMERICAN ASPHALT | CITYWIDE SLURRY SERVICES | $104,850.30 |
| 770629 | | C.E. MECHANICAL, INC. | CITYWIDE HVAC REPAIRS | $57,382.95 |
| 770664 | | HAZEN AND SAWYER | EWTF EXPANSION | $108,481.86 |
| 770721 | | RUSSELL & LAZARUS, APC | RELEASE OF CLAIMS | $150,000.00 |
| 519290 | 05/03/2024 | FISHER SCIENTIFIC CO LLC | CITY CONSIDERATION 1/1/24 - 3/31/24 | $568,423.53 |
| 519295 | | INLAND EMPIRE UTILITIES AGENCY | SEWAGE TREATMENT SERVICE | $762,396.82 |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| **18** | | | **TOTAL** | **$5,684,116.13** |

# MEMORANDUM
# CITY OF CHINO
# ADMINISTRATION DEPARTMENT

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**CITY COUNCIL MEETING DATE: MAY 21, 2024**

**TO:** **LINDA REICH, CITY MANAGER**

**FROM:** **NATALIE GONZAGA, CITY CLERK**

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**SUBJECT**

Regular Meeting Minutes for May 7, 2024 (All Members Present).

**CHINO CITY COUNCIL**
**SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY**
**REGULAR MEETING - CITY HALL COUNCIL CHAMBERS**
**13220 CENTRAL AVENUE**
**CHINO, CA 91710**

**TUESDAY, MAY 7, 2024**

# MINUTES

**CLOSED SESSION – 5:00 PM**
**OPEN SESSION – 6:00 PM**

## CALL TO ORDER

The May 7, 2024, Regular Meeting of the Chino City Council / Successor Agency to the Redevelopment Agency was called to order at 5:00 pm by Mayor Eunice M. Ulloa in the Council Chambers.

## ROLL CALL

**PRESENT:** Mayor Eunice M. Ulloa, Mayor Pro Tem Karen C. Comstock, Council Member Curtis Burton, Council Member Christopher Flores, and Council Member Marc Lucio

**ABSENT:** NONE.

## CLOSED SESSION PUBLIC COMMENTS

There were no requests to speak.

## CLOSED SESSION

City Attorney Fred Galante read into the record the items listed on the Closed Session agenda.

1. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Government Code Section 54956.9 Number of Potential Cases: One

2. EXISTING LITIGATION: Stubbie Barr v. City of Chino
(San Bernardino Superior Court Case No. CIVSB 2323286)

The City Council recessed to Closed Session at 5:01 p.m. and concluded at 5:57 p.m. The City Council reconvened the meeting at 6:04 p.m.

## FLAG SALUTE

Council Member Flores led the assembly in reciting the Pledge of Allegiance.

**CEREMONIALS**

National Mental Health Awareness Month. Proclaim May 2024 as National Mental Health Awareness Month.

Mayor Ulloa read into the record the Proclamation designating May 2024 as National Mental Health Awareness Month in Chino. Angie Garcia, Chino Community Services, Parks & Recreation Coordinator, and Kyoni Cummings, Education Coordinator, NAMI Greater Los Angeles County-Pomona Valley were present to accept the Proclamation.

Presentations

2024 Hall of Fame Award Recipient. Recognition of the 2024 Hall of Fame Award Recipient: Glenn E. Duncan.

Mayor Ulloa called up Chino Valley Historical Society President Lynda Flathers and First Vice President Steve Halstead who presented the 2024 Hall of Fame Award for Mr. Glenn E. Duncan. Mrs. Cindy Duncan and family were present to accept the award in memory and honor of Mr. Duncan. Mayor Ulloa announced the award would be displayed at the Chino Community Building.

Teen Advisory Committee. Recognition of the Teen Advisory Committee Members: Elena Rossen, Amy Dinh, Bridget Moore, Kendall Baldrias, Enrico Hernandez, Neil Jatakia, Kale Lo, Aurora Moore, Adrian Mora, Karisia Rojas, Ximena Tapia, and Isabella Zhong.

Mayor Ulloa called up Brissa Sanchez, City of Chino Community Services Parks and Recreation Coordinator, who presented certificates of recognition to City of Chino Teen Advisory Committee members.

Mayor's Home Beautification Award. Presentation of Mayor's Home Beautification Award for May 2024.

Mayor Ulloa announced the May 2024 Mayor's Home Beautification Award winner as Mary and Michael Ragland of Leticia Way in Chino, who were unable to attend the meeting to accept their award, but ensured staff will deliver their award to them.

**REPORT OUT OF CLOSED SESSION**

City Attorney Fred Galante reported out of closed session as follows:

1. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION
Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Government Code Section 54956.9 Number of Potential Cases: One

**Motioned by Council Member Lucio, seconded by Council Member Burton, to approved and authorize a settlement agreement with Bonadiman Water Inc. in the amount of $115,000, in exchange for a full release and waiver of any future claims for delay damages related to the Chino and Mountain Avenue storm drain project. The motion carried by the following vote:**

**AYES: ULLOA, COMSTOCK, BURTON, FLORES, AND LUCIO**

**NOES: NONE.**

**ABSENT: NONE.**

2. EXISTING LITIGATION: Stubbie Barr v. City of Chino (San Bernardino Superior Court Case No. CIVSB 2323286)

The City Council received a brief update, provided direction, and no further reportable action was taken.

**AGENDA ADDITIONS/REVISIONS**

City Manager Linda Reich reported there were no additions or revisions to the agenda.

**PUBLIC ANNOUNCEMENTS**

Mayor Ulloa issued a reminder about the following scheduled community events:

Bike Day is Saturday, May 11th, from 7:30 a.m. to 11:00 a.m. at Ruben S. Ayala Park in Chino. This family-friendly event, presented by Healthy Chino and the Chino Police Department, promises fun for all ages with a special family bike ride. For more details, visit www.cityofchino.org/bikeday.

The American Legion Elmer C. Jertberg Post 299, in partnership with the City of Chino, is hosting their annual Memorial Day event on Monday, May 27, 2024, from 10:00 a.m. to 11:00 a.m. at the Community Building, 5443 B Street, to honor the brave men and women who have sacrificed their lives for our freedom. For more information, please contact the Carolyn Owens Community Center at 909-334-3258.

**PUBLIC COMMENTS**

Pastor Charlie Wong, CrossPoint Church Chinese Congregation, provided the invocation.

Todd Corbin, new Executive Director of Chino Basin Watermaster, provided an introduction.

Heather Parsons, Chaffey College, provided an update and announced the upcoming Chaffey College Foundation golf tournament.

Melissa Compani, Representative, Fourth District County Supervisor Hagman, announced updates and upcoming events hosted by Supervisor Hagman.

Mike Cargile, provided an introduction and spoke in opposition of the prison transfer at California Institute for Men.

Diane Boudreaux, Chino resident, asked the City Council to consider the Stark property $1 transfer from the State Department of Corrections to the State Department of Education/California Polytechnic University of Pomona Agriculture Program as an avenue to help preserve the City's agricultural roots.

Michael Gales, Chino resident, spoke in support of the Chino Police Department and thanked the Mayor for protecting the community.

Chino resident, expressed concern regarding truck traffic in The Preserve and requested information on the CIM petition.

Mayor Ulloa invited a student from Ontario Christian High School to the lectern for an introduction.

**CONSENT CALENDAR**

1. Warrants. Approve expenses as audited and within budget for warrants 770160 to 770479, and Electronic Fund Transfers 519100E to 519231E, totaling $7,280,833.77.

2. Minutes. Regular Meeting Minutes for April 16, 2024 (All Members Present).

3. Elected City Officials' Report Regarding Travel, Training, and Meetings. Receive and file the Elected City Officials' Report reflecting City Council business related expenses incurred by the City.

4. Notice of Completion - CDBG Alley Project (G6220). Accept the CDBG Alley Project (G6220), with Wheeler Paving, Inc., Riverside, CA, Contract No.2024-074, as complete and authorize the Director of Public Works to file the Notice of Completion.

5. Vendor Cap Increase - Towner Filtration. Approve a vendor cap increase with Towner Filtration in the amount of $13,000 for a total not-to-exceed amount of $63,000 for the purchase of micron filter cartridges used in the water treatment process at the City's water treatment facilities.

6. Vendor Cap Increase - CityGreen Consulting, LLC. Approve a vendor cap increase with CityGreen Consulting, LLC., in the amount of $14,250 for a total not-to-exceed amount of $64,250 for software program assistance under Senate Bill (SB) 1383 mandates for commercial properties.

7. Final Acceptance of Public Improvements for Tract Map No. 20172 - Pulte Homes Company, LLC, generally located south of Bickmore Avenue, north of Pine Avenue, west of Rincon Meadows, and east of future Mayhew Avenue in The Preserve Specific Plan area. Accept public improvements as complete for Tract Map No. 20172; authorize release of the performance bond and initiate the warranty bond; and authorize the City Manager to execute the necessary documents on behalf of the City.

8. Amendments to Memorandum of Understanding and Summary of Benefits. Approve Resolution No. 2024-022 amending the Memorandum of Understanding for the American Federation of State, Country and Municipal Employees (AFSCME) and the Summary of Benefits for Unrepresented Sworn Management.

**Motion by Council Member Flores, seconded by Mayor Pro Tem Comstock, to approve the Consent Calendar items 1-8 as presented. The motion carried by the following vote:**

**AYES:** **ULLOA, COMSTOCK, BURTON, FLORES, AND LUCIO**

**NOES:** **NONE.**

**ABSENT:** **NONE.**

**NEW BUSINESS**

9. Traffic Signal Installation at Eucalyptus & Fern Project (TR240). Award a construction contract to Elecnor Belco Electric, Inc., Chino, CA, in the amount of $1,146,360 and authorize $114,636 for construction project contingencies, for a total contract not to exceed $1,260,996.

   Staff Report By: Hye Jin Lee, PE, Director of Public Works

RECOMMENDATION: Award a construction contract to Elecnor Belco Electric, Inc., Chino, CA, for Project TR240 - Traffic Signal Modification at Eucalyptus/Fern in the amount of $1,146,360 and authorize $114,636 for construction project contingencies, for a total contract not to exceed $1,260,996; and authorize the City Manager to execute all necessary documents on behalf of the City.

Albert Espinoza, City Engineer, provided a presentation on the item.

Council Member Lucio spoke regarding the history of the project.

Council Member Burton asked when the project is anticipated to be completed and Hye Jin Lee, Director of Public Works, responded Spring of 2025.

**Motion by Mayor Pro Tem Comstock, seconded by Council Member Burton, to Award a construction contract to Elecnor Belco Electric, Inc., Chino, CA, for Project TR240 - Traffic Signal Modification at Eucalyptus/Fern in the amount of $1,146,360 and authorize $114,636 for construction project contingencies, for a total contract not to exceed $1,260,996; and authorize the City Manager to execute all necessary documents on behalf of the City. The motion carried by the following vote:**

**AYES: ULLOA, COMSTOCK, BURTON, FLORES, AND LUCIO**

**NOES: NONE.**

**ABSENT: NONE.**

## MAYOR AND COUNCIL REPORTS

Mayor Ulloa

10. Community Support Fund - Mayor Ulloa. Approve community support fund contributions for multiple non-profits and community groups for the Fiscal Year 2023-24.

Staff Report By: Mayor Ulloa

RECOMMENDATION: Approve community support fund contributions of $250 to American Cancer Society - Making Strides, $125 to Boy Scout Troop 201, $125 to Boy Scout Troop 205, $250 to Chino American Little League, $250 to Chino National Little League, $250 to Chino AYSO Region 67, $250 to Chino Youth Boxing Foundation, $250 to Chino Girls Fastpitch, $250 to Chino High School Sports Booster, $250 to Chino Kiwanis Club; $250 to Chino Neighborhood House, $250 to Chino Police Explorer's Post #211, $250 to Chino Pop Warner, $250 to Chino Valley Soroptimist, $250 to Chino Youth Museum, $250 to Don Lugo High School Sports Booster, $250 to Food for Life Ministry, $250 to HOPE Family Resource Center, $250 to Isaish's Rock, $250 to Rancho del Chino Rotary Club, and $250 to UChooz Positive Youth.

**Motion by Council Member Flores, seconded by Council Member Lucio, to Approve community support fund contributions of $250 to American Cancer Society - Making Strides, $125 to Boy Scout Troop 201, $125 to Boy Scout Troop 205, $250 to Chino American Little League, $250 to Chino National Little League, $250 to Chino AYSO Region 67, $250 to Chino Youth Boxing Foundation, $250 to Chino Girls Fastpitch, $250 to Chino High School Sports Booster, $250 to Chino Kiwanis Club; $250 to Chino Neighborhood House, $250 to Chino Police Explorer's Post #211, $250 to Chino Pop Warner, $250 to Chino Valley Soroptimist, $250 to Chino Youth Museum, $250 to Don Lugo High School Sports Booster, $250 to Food for Life Ministry, $250 to HOPE Family**

**Resource Center, $250 to Isaish's Rock, $250 to Rancho del Chino Rotary Club, and $250 to UChooz Positive Youth. The motion carried by the following vote:**

**AYES: ULLOA, COMSTOCK, BURTON, FLORES, AND LUCIO**

**NOES: NONE.**

**ABSENT: NONE.**

Mayor Ulloa reported on the following meetings and events since the last meeting that included the Omnitrans Plans and Program Committee meeting; filmed Mayor messages; Volunteer Recognition dinner; KCAL news interview regarding California Institute for Men (CIM) concerns; Chino Valley Unified School District meeting to present a district award; Southern California Water Coalition Board of Director's meeting and quarterly luncheon; Zoom meeting regarding redistricting small communities; City Manager meeting; meeting with San Bernardino County Transportation Authority General Manager Ray Wolfe; The Preserve walking tour; Chino Desalter Authority Finance Committee meeting; Kiwanis Corn Feed Run Car Show; Habitat for Humanity Community Builder Award event; Celebration of Life for Pastor Moses Rodriguez; Montclair Mayor John Dutrey meeting regarding the unhoused; Chino Hills State of the City; Omnitrans Board of Directors meeting; National Day of Prayer; Chino Desalter Board of Director's meeting; Inland Empire Utility Agency Board of Directors meeting; Senior Center May Birthday Celebration, Rancho del Chino's Bingo night; Press Conference regarding CIM concerns; and Closed Session.

Mayor Pro Tem Comstock

Mayor Pro Tem Comstock reported on the following meetings and events attended since the last meeting that included the Cal Cities Conference; Community Services Commission meeting; Kiwanis Corn Feed Run Car Show; Celebration of Life for Pastor Moses Rodriguez; Press Conference regarding the CIM concerns and encouraged residents to get involved in support of the activities to advocate against the transfer of level four inmates at CIM; Congratulated the Glenn Duncan family for the Hall of Fame award; Congratulated the Teen Advisory Committee for their accomplishments; and wished all mothers in the community a Happy Mother's Day.

Council Member Burton

11. Community Support Fund - Council Member Burton. Approve community support fund contribution to Food for Life Ministry, Rancho Del Chino Rotary Club, and Trail Life Troop 2678.

Staff Report By: Council Member Burton

RECOMMENDATION: Approve community support fund contribution of $500 to Food for Life Ministry, $500 to Trail Life Troop 2678, and $250 to Rancho del Chino Rotary Club.

**Motion by Council Member Flores, seconded by Council Member Lucio, to Approve community support fund contribution of $500 to Food for Life Ministry, $500 to Trail Life Troop 2678, and $250 to Rancho del Chino Rotary Club. The motion carried by the following vote:**

**AYES: ULLOA, COMSTOCK, BURTON, FLORES, AND LUCIO**

**NOES: NONE.**

**ABSENT: NONE.**

Council Member Burton reported on the following meetings and events attended since the last

meeting that included the Cal Cities Conference and provided a report on the meetings attended, noting he was disappointed with the California Department of Corrections and Rehabilitation Director for the response towards the City of Chino's concern and expressed the need for the community's support; City Manager meeting; Meeting with City Consultant; Community Services, Parks & Recreation Commission meeting; Roundtable meeting with Senator Young Kim; meeting with resident regarding the Downtown Civic Center Master Plan; Kiwanis Corn Feed Run Car Show; San Bernardino County Transportation Authority meeting; water meeting with Dave Crosley; City Manager meeting; National Day of Prayer; City of Chino Corporate Challenge and thanked City staff for their excellent work coordinating the event; City Manager meeting; meeting with resident; and Closed Session.

Council Member Flores

12. Community Support Fund - Council Member Flores. Approve community support fund contribution to Rancho del Chino Rotary Club.

Staff Report By: Council Member Flores

RECOMMENDATION: Approve community support fund contribution of $250 to Rancho del Chino Rotary Club.

**Motion by Mayor Pro Tem Comstock, seconded by Council Member Burton, to Approve community support fund contribution of $250 to Rancho del Chino Rotary Club. The motion carried by the following vote:**

**AYES: ULLOA, COMSTOCK, BURTON, FLORES, AND LUCIO**

**NOES: NONE.**

**ABSENT: NONE.**

Council Member Flores reported on the following meetings and events attended since the last meeting that included the Kiwanis Corn Feed Run Car Show; congratulated the Glenn Duncan family for the Hall of Fame award; celebration of Life for Pastor Moses Rodriguez; congratulated Teen Advisory Committee Member Elena Rossen for being accepted to Notre Dame; wish all mothers a Happy Mother's Day; and announced he will participate in the City of Chino Corporate Challenge.

Council Member Lucio

Council Member Lucio reported on the following meetings and events attended since the last meeting that included a disaster management training for electrical power systems; Kiwanis Corn Feed Run Car Show; disaster management for public service training; City Manager meeting; Southern California Association of Governments (SCAG) Conference in Palm Springs; Knights of Columbus Golf Tournament; City Manager meeting; meeting with the Mayor regarding agricultural land; addressed social media remarks and explained the misconception between an inmate serving a life sentence versus an inmate who is on death row; and spoke against the level 4 inmates in the CIM.

City Manager's Report

City Manager Reich recognized May 5-11, 2024, as Professional Municipal Clerk’s Week; thanked City staff for a successful Kiwanis Corn Feed Run Car Show; thanked City staff for participating in the City of Chino Corporate Challenge.

City Attorney's Report

City Attorney Galante provided a report on Senate Bill 9, regarding affordable housing.

Police Chief's Report

Deputy Chief Bjelland thanked the Mayor and the Council Members for their leadership as they address the concerns associated with CIM, stating the Chino Police Department is trained on prison response and have contingencies planned to protect the City; reported the Police Department Crime Prevention Unit provided a presentation at the Senior Center regarding crime trends targeting seniors; and announced May 13-17, 2024 is Police Week.

Fire Chief's Report

Fire Chief Dave Williams announced the Chino Valley Fire District Fire Station 68 groundbreaking ceremony will take place on May 30, 2024.

**ADJOURN**

The meeting adjourned at 7:51 p.m. The next Regular Meeting of the City Council will be held on Tuesday, May 21, 2024 at 6:00 p.m. (Closed Session no earlier than 4:00 p.m. if necessary) in these Council Chambers.

APPROVED AND ADOPTED THIS 21ST DAY OF MAY 2024.

_____
EUNICE M. ULLOA, MAYOR

ATTEST:

_____
NATALIE GONZAGA, CITY CLERK

**********

(These minutes are not official until signed.)

# MEMORANDUM
# CITY OF CHINO
# ADMINISTRATION DEPARTMENT

**CITY COUNCIL MEETING DATE: MAY 21, 2024**

**TO:** **LINDA REICH, CITY MANAGER**

**FROM:** **NATALIE GONZAGA, CITY CLERK**

## SUBJECT

Elected City Officials' Report Regarding Travel, Training, and Meetings.

## RECOMMENDATION

Receive and file the Elected City Officials' Report reflecting City Council business related expenses incurred by the City.

## FISCAL IMPACT

Sufficient funding is available in the adopted Fiscal Year 2023-24 Operating Budget.

## CITY OF CHINO MISSION / VISION / VALUES / STRATEGIC ISSUES

The recommendation detailed above furthers the City's values and strategic issues that serve as key pillars on which identified priorities, goals, and action plans are built, by fostering:

- Superior Customer Service
- Responsible Long-Range Planning
- Exemplary Leadership
- Public Service Excellence through Internal and External Partnerships

| | |
|---|---|
| Revenue: | Expenditure: 1002000-43320 |
| Transfer In: | Transfer Out: |

## BACKGROUND

In accordance with Government Code Sections 53232.2 and 53232.3, implementing Assembly Bill (AB) 1234 on January 1, 2006, the City adopted Resolution No. 2005-093 establishing a Business-Related Expense Policy. On December 6, 2016, the City approved Resolution No. 2016-075 adopting the latest revisions to this policy. In addition to requiring local agencies to adopt a business-related expense policy, AB 1234 requires that Elected Officials provide a brief report on meetings attended at the expense of the local agency at the next regular meeting of the legislative body.

## ISSUES/ANALYSIS

In response to AB 1234, a report regarding Elected City Officials' Travel, Training, and Meetings (Exhibit A) was created and is placed on the City Council Agenda Consent Calendar, as needed. The documents that pertain to the items listed on Exhibit A are available for public inspection at the City Clerk's office located in City Hall at 13220 Central Avenue, Chino, CA.

Attachment – Exhibit A

| Event Date | Meeting Purpose and Subject Matter | Location | City Official Attendees |
|---|---|---|---|
| May 16-17, 2024 | City County 2024 Conference | Lake Arrowhead, CA | Mayor Ulloa<br>Mayor Pro Tem Comstock<br>Council Member Burton<br>Council Member Flores<br>Council Member Lucio |

# MEMORANDUM
# CITY OF CHINO
# DEVELOPMENT SERVICES DEPARTMENT

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**CITY COUNCIL MEETING DATE: MAY 21, 2024**

**TO:** **LINDA REICH, CITY MANAGER**

**FROM:** **WARREN MORELION, AICP, DIRECTOR OF DEVELOPMENT SERVICES**

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## SUBJECT

Property Tax Allocation for Annexation – LAFCO Reorganization (Detachment/Annexation from County Service Area 70) No. 3269 – Ramona Francis Annexation.

## RECOMMENDATION

Adopt Resolution No. 2024-023, determining the amount of property tax revenues to be exchanged between and among the City of Chino and the County of San Bernardino, resulting from the jurisdictional change described by LAFCO 3269 (PL23-0014, Annexation).

## FISCAL IMPACT

The attached Resolution will transfer future property tax revenues from the County of San Bernardino to the City of Chino, beginning with $56,022 for Fiscal Year 2024-2025. The additional property tax revenue will be added to the budget in FY 2024-2025. Tax revenues will increase in subsequent years as properties become developed within the annexed area.

## CITY OF CHINO MISSION / VISION / VALUES / STRATEGIC ISSUES

The recommendation detailed above will further the City's values and strategic issues that serve as key pillars on which identified priorities, goals, and action plans are built, by fostering:

- Responsible Long-Range Planning

| | |
|---|---|
| Revenue: 1001000-51005 | Expenditure: |
| Transfer In: Click or tap here to enter text. | Transfer Out: Click or tap here to enter text. |

## BACKGROUND

On July 5, 2023, the City Council initiated the Ramon Francis Annexation as part of the process of annexing one of the various islands located within the City's Sphere of Influence from the unincorporated area of San Bernardino County. The annexation area consists of mostly single-family residential zoned parcels on approximately 145 acres of land, generally located near the intersection of Ramona and Francis Avenues (Exhibit A). The intent of the annexation is to annex one of the unincorporated islands to help clean up the City's boundaries and to clarify how these areas are to be serviced by the City. The proposed annexation area is currently comprised of mostly single-family homes with some animal keeping, vacant land, various agricultural uses, the Baitul Hameed Mosque and a small market. In addition to initiating the annexation in July 2023, the City also approved the Prezone (PL23-0014) of the annexation area to Residential/Agricultural (RD2), Residential, 4.5 dwelling units/Acre (RD4.5) and Public (P) consistent with the City's General Plan land use designations. The annexation will go into effect once the annexation is formally approved by the Local Agency Formation Commission (LAFCO) tentatively scheduled for September 18, 2024. If approved, the annexation will be final 30 days following LAFCO approval.

## ISSUES/ANALYSIS

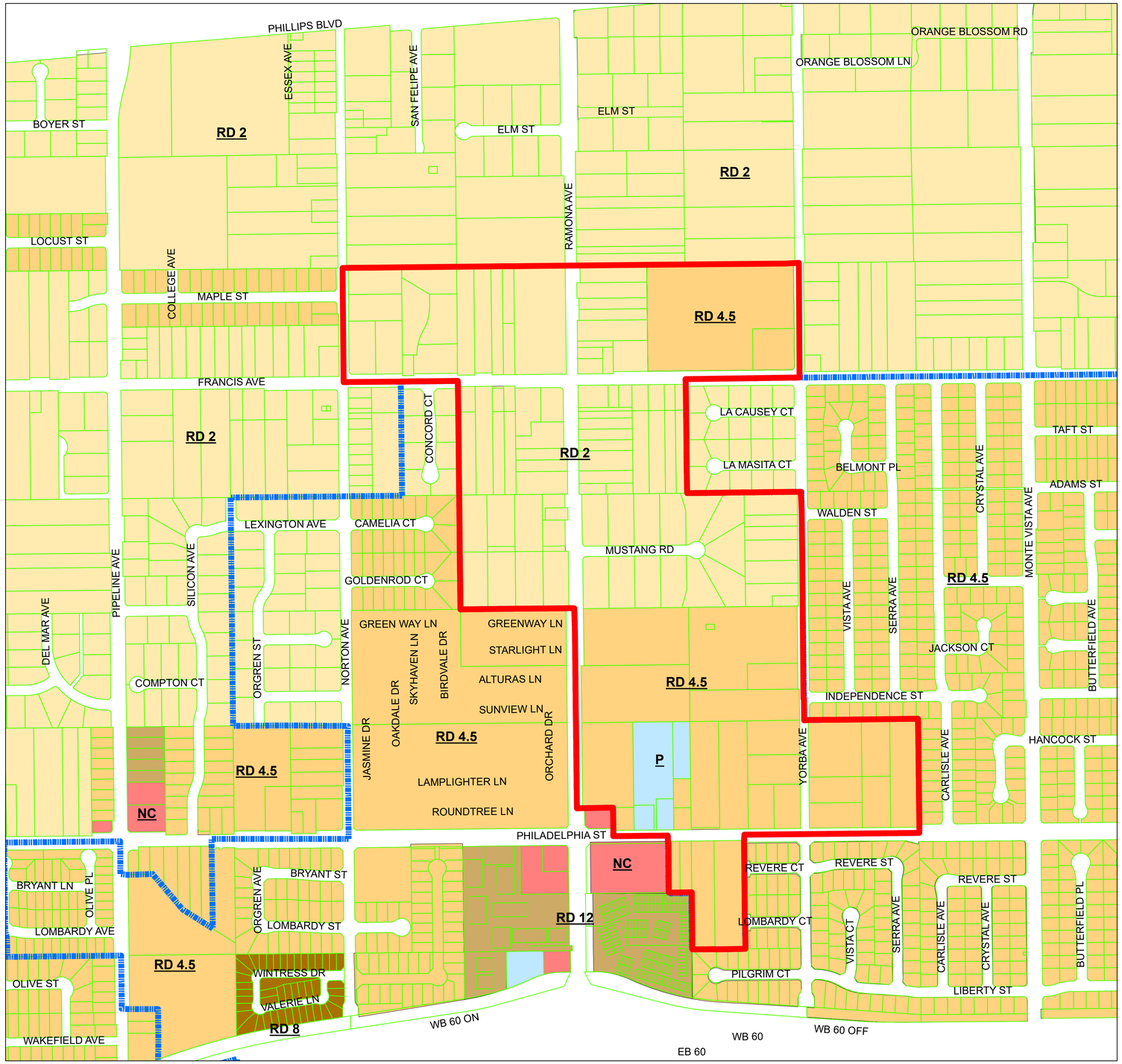
State law provides that an agreement be reached between the City of Chino and San Bernardino County on future distribution of property tax revenue within areas that are annexed into the City. Because the proposed annexation is considered to be an island annexation by LAFCO, the City will receive its full share of property tax for annexed properties, which is consistent with the tax collected on other properties in the City. The amount to be transferred to the City will be the average of all the Tax Rate Areas in the City equaling 10.43%.

To begin transfer of the property tax, both the City and County must approve separate resolutions approving the tax-split, which is attached for Council review.

Attachments: Exhibit A – Location Map
Resolution No. 2024-023

# CITY OF CHINO - ANNEXATION AREA - PREZONE

# EXHIBIT A




## LEGEND

**ANNEXATION AREA 1:**

- 145 ACRES / 73% SURROUNDED BY CITY
- CITY BOUNDARY
- PARCELS

**Prezone - Land Use**

- RD 2
- RD 4.5
- RD 8
- RD 12
- NC
- P

N

**Date: 5/17/2023**

**RESOLUTION NO. 2024-023**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHINO, CALIFORNIA, DETERMINING THE AMOUNT OF TAX REVENUES TO BE EXCHANGED BETWEEN AND AMONG THE CITY OF CHINO, SAN BERNARDINO COUNTY, AND COUNTY OF SAN BERNARDINO SERVICE AREA 70, RESULTING FROM THE JURISDICTIONAL CHANGE DESCRIBED BY LAFCO 3269, RAMONA FRANCIS ANNEXATION (PL23-0014).**

WHEREAS, the Chino City Council hereby finds, determines and resolves as follows:

**SECTION 1.** The Chino City Council hereby finds and determines that:

A. Pursuant to Section 99 of the Revenue and Taxation Code, prior to the issuance of a Certificate of Filing by the Local Agency Formation Commission Executive Order, the governing bodies of all local agencies whose service responsibilities will be altered by change of organization shall negotiate and determine by resolution the amount of property tax revenues to be exchanged between and among such local agencies.

B. Except as provided in Section 99 of the Revenue and Taxation Code, in the event that a jurisdictional change would affect the service area or service responsibility of one or more special districts, the Board of Supervisors shall, on behalf of all special districts, negotiate any exchange of property tax revenues.

C. The Board of Supervisors of the County of San Bernardino and the City of Chino have determined the amount of property tax revenues to be exchanged as a result of the following jurisdictional change:

**LOCAL AGENCY FORMATION COMMISSION 3269 – REORGANIZATION TO INCLUDE THE CITY OF CHINO AND DETACHMENT FROM COUNTY SERVICE AREA 70 (RAMONA FRANCIS ANNEXATION)**

**SECTION 2.** The Chino City Council hereby resolves and orders that:

A. The negotiated exchange of property tax revenue between the City of Chino, San Bernardino County and County Service Area 70, attached hereto as Exhibit “A” and incorporated herein by reference, resulting from the above-described jurisdictional change, is accepted.

B. The annual tax increment generated in the area subject to the jurisdictional change and attributable to the local agencies whose service area or service responsibilities will be altered by the proposed jurisdictional change shall be allocated in future years pursuant to the provisions of Section 98 of the Revenue and Taxation Code.

**SECTION 3.** The City Clerk of the Chino City Council is hereby directed to certify the passage of this resolution and to cause a certified copy to be sent to the

Executive Officer of the Local Agency Formation Commission of the County of San Bernardino.

Further, it is understood that future property tax revenue will be distributed to the City of Chino in an amount not less than the percentage obtained by applying the herein agreed-upon amount of $56,022 to the total amount of property tax revenue of $537,127 generated within LAFCO 3269, per attached Exhibit “A”.

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of Chino hereby approves the tax share agreement between the City of Chino and the County of San Bernardino related to LAFCO 3269 (East End Annexation).

APPROVED AND ADOPTED THIS 21ST DAY OF MAY 2024.

EUNICE M. ULLOA, MAYOR

ATTEST:

NATALIE GONZAGA, CITY CLERK

Attachment: Exhibit “A”

State of California )
County of San Bernardino ) ss
City of Chino )

I, Natalie Gonzaga, City Clerk of the City of Chino, do hereby certify the foregoing Resolution was duly adopted by the Chino City Council at a regular meeting held on the 21st day of May 2024, by the following votes:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
NATALIE GONZAGA, CITY CLERK

**LAFCO 3269**

**LAFCO 3269 - Reorganization to Include Annexation to the City of Chino and Detachment from County Service Area SL-1 and County Service Area 70 (Ramona Francis Annexation)**

**Exhibit A**

City of Chino Percent: 10.43

| TRA | 61056 | 61060 | 61101 | 61102 | 61103 | GRAND TOTAL |
|---|---|---|---|---|---|---|
| **Assessed Value** | $ 11,596,570 | $ 1,956,282 | $ 17,458,427 | $ 13,707,498 | $ 8,993,959 | $ 53,712,736 |
| **RDA Increment** | $ - | $ - | $ - | $ - | $ - | $ - |
| **Net Value After RDA / TRA Frozen Base** | $ 11,596,570 | $ 1,956,282 | $ 17,458,427 | $ 13,707,498 | $ 8,993,959 | $ 53,712,736 |
| **Tax Revenue** | $ 115,966 | $ 19,563 | $ 174,584 | $ 137,075 | $ 89,940 | $ 537,127 |
| | **Estimated Change In Base Year 2023-24** | **Estimated Change In Base Year 2023-24** | **Estimated Change In Base Year 2023-24** | **Estimated Change In Base Year 2023-24** | **Estimated Change In Base Year 2023-24** | **Estimated Change In Base Year 2023-24** |
| **TRANSFER FROM** | | | | | | |
| COUNTY GENERAL FUND | $ (12,095) | $ (2,040) | $ (18,209) | $ (14,297) | $ (8,079) | $ (54,720) |
| COUNTY SERVICE AREA 70 | $ - | $ - | $ - | $ - | $ - | $ - |
| COUNTY SERVICE AREA SL-1 | $ - | $ - | $ - | $ - | $ (1,302) | $ (1,302) |
| **Total Transfers From** | **$ (12,095)** | **$ (2,040)** | **$ (18,209)** | **$ (14,297)** | **$ (9,381)** | **$ (56,022)** |
| **TRANSFER TO** | | | | | | |
| CITY OF CHINO | $ 12,095 | $ 2,040 | $ 18,209 | $ 14,297 | $ 9,381 | $ 56,022 |
| **Total Transfers To** | **$ 12,095** | **$ 2,040** | **$ 18,209** | **$ 14,297** | **$ 9,381** | **$ 56,022** |

# MEMORANDUM
# CITY OF CHINO
# POLICE DEPARTMENT

**CITY COUNCIL MEETING DATE: MAY 21, 2024**

**TO:** **LINDA REICH, CITY MANAGER**

**FROM:** **KEVIN MENSEN, CHIEF OF POLICE**

## SUBJECT

Local Hazard Mitigation Plan Consultant Agreement.

## RECOMMENDATION

Award a contract to Integrated Solutions Consulting, Inc. in the amount of $78,750 for the purpose of updating the City of Chino's Local Hazard Mitigation Plan and authorize the City Manager to execute all necessary documents on behalf of the City.

## FISCAL IMPACT

The City was awarded Hazard Mitigation Grant Program (HMGP) G424D to update its Local Hazard Mitigation Plan. The funding from this grant will pay for the costs of the consultant.

## CITY OF CHINO MISSION / VISION / VALUES / STRATEGIC ISSUES

The recommendation detailed above further the City's values and strategic issues that serve as key pillars on which identified priorities, goals, and action plans are built, by fostering:

- Financial Stability
- Responsible Long-Range Planning

| | |
|---|---|
| Revenue: Click or tap here to enter text. | Expenditure: 1004000-43650-G424D |
| Transfer In: Click or tap here to enter text. | Transfer Out: Click or tap here to enter text. |

## BACKGROUND

In November 2023, the City was awarded Hazard Mitigation Grant Program (HMGP) G424D funding from the Federal Emergency Management Agency (FEMA) to update its Local Hazard Mitigation Plan (LHMP). On February 20, 2024, City Council formally accepted the award and the City has until November 21, 2026, to complete the project which will result in a FEMA approved LHMP.

LHMPs are required by FEMA to receive certain types of non-emergency disaster assistance including the Hazard Mitigation Grant Program and Building Resilient Infrastructure and Communities (BRIC) project grants. Once approved by FEMA, the LHMP is valid for five years. On April 19, 2022, FEMA released an updated Local Mitigation Planning Policy Guide, effective April 19, 2023. This new guidance serves as FEMA's official policy on and interpretation of the applicable statutes and mitigation regulations in 44 Code of Federal Regulations (CFR) Part 201.

As this guidance has only been in effect for a little over a year, the City sought an experienced consultant to help update the LHMP. Therefore, a Request for Proposal (RFP) was issued for qualified consultants to submit proposals to update the City's LHMP.

## ISSUES/ANALYSIS

On February 21, 2024, staff published, via PlanetBids, a Request for Proposal for qualified firms to submit a proposal to update the City of Chino's Local Hazard Mitigation Plan. The RFP required the firms to demonstrate qualifications, resources, expertise, and experience sufficient to undertake and complete the project on a timely and cost-efficient basis. The consultant company selected by the City will be fully responsible for ensuring that the City obtains a FEMA approved LHMP on or before September 16, 2025.

On March 21, 2024, staff received proposals from seven firms. City staff, along with a neighboring jurisdiction's subject matter expert, evaluated each proposal using the weighted criteria outlined in the RFP (qualifications, past performance, responsiveness, cost, and timeline). Staff ranked the proposals from the corresponding firms in the following order:

| Firm | Ranking |
|---|---|
| Integrated Solutions Consulting, Inc. | 1 |
| Jacob Green and Associates Inc. | 2 |
| Risk Management Professionals | 3 |
| IEM International Inc | 4 |
| AG Witt, LLC | 5 |
| WREM Solutions | 6 |
| Construction Testing and Engineering South, Inc. | 7 |

Integrated Solutions Consulting, Inc. received the highest score and is deemed to be the most responsive and responsible firm.

It is, therefore, staff's recommendation that the City Council award and authorize a contract to Integrated Solutions Consulting, Inc. for the updating of the City of Chino's Local Hazard Mitigation Plan.

Attachment: Integrated Solutions Consulting, Inc. Contract

**AGREEMENT FOR SERVICES**
**BETWEEN THE CITY OF CHINO AND**
**INTEGRATED SOLUTIONS CONSULTING**

THIS AGREEMENT FOR SERVICES (herein "Agreement") is made and entered into this 21st day of May, 2024 ("Effective Date") by and between the City of Chino, a California municipal corporation ("City") and Integrated Solutions Consulting, Edwardsville, IL ("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 Seventy Eight Thousand, Seven Hundred Fifty Dollars ($78,750) (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, 2026, except as otherwise provided in the Schedule of Performance (Exhibit "D"). This Agreement may not be renewed.

## 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:

_____

Daniel Martin, Principal

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 the City of Chino's Emergency Services Coordinator, 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:**

_____

Kevin Mensen, Chief of Police

**CONSULTANT:**

**Integrated Solutions Consulting**

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. In addition to the requirements described in this Exhibit A, Consultant shall abide by the Federal procurement standards (Title 2 CFR 200.318-200.326) and FEMA's Program Policy referenced in the document following this page."**

**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

INTEGRATED SOLUTIONS CONSULTING

# CITY OF CHINO

## Request for Proposal No. 2024-0003

# LOCAL HAZARD MITIGATION PLAN UPDATE

## Technical Response

636.346.3949 | www.i-s-consulting.com

BUILDING A MORE RESILIENT FUTURE

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# 1. COVER LETTER

**CITY OF CHINO** **March 21, 2024**

Dear City of Chino,

I am pleased to submit this proposal on behalf of Integrated Solutions Consulting (ISC) to update the Local Hazard Mitigation Plan (LHMPU) for the City of Chino. As outlined in your Request for Proposal (RFP), the purpose of this project is to comprehensively update risk and vulnerability assessments, develop innovative new mitigation strategies, ensure alignment with state and federal requirements, and effectively integrate climate adaptation and community resiliency.

**About Integrated Solutions Consulting**

With over 18 years of experience specializing in homeland security, emergency management, hazard mitigation planning, and disaster recovery, ISC has a proven track record supporting diverse communities nationwide. We maintain a 97.1% client satisfaction rating and have been recognized as a Top Supplier by Dun & Bradstreet for our reliability, timeliness, responsiveness, and high-quality deliverables.

**Local Knowledge and Expertise**

ISC has a proven track record of successfully developing and updating Hazard Mitigation Plans HMPs for communities throughout California, and we are uniquely positioned to create a comprehensive LHMPU for the City of Chino's that addresses its specific needs and challenges. With our deep understanding of the City of Chino's diverse landscape and its vulnerability to natural hazards such as wildfires, earthquakes, and severe weather events, we will work closely with county officials, stakeholders, and residents to identify the most pressing risks and develop practical, actionable strategies to enhance the county's resilience.

Our team will focus on engaging the diverse communities within the City of Chino, ensuring that the LHMPU reflects the needs and concerns of all residents, while building partnerships between the county, local organizations, and state and federal agencies to leverage resources and expertise in implementing the plan's mitigation strategies.

**Summary**

At ISC, we take great pride in our work and are passionate about making a positive difference in the lives of the people we serve. We understand the critical importance of hazard mitigation planning in safeguarding communities, and we are committed to delivering the highest quality.

We look forward to the opportunity to work with you and to help strengthen your community's resilience in the face of potential disasters. Together, we can create a safer, more secure future for all Californians.

Respectfully Submitted,



**Daniel Martin, Ph.D., CEM, CFM**
Principal, Integrated Solutions Consulting, Corp.
Dan.Martin@i-s-consulting.com

# 2. EXPERIENCE AND QUALIFICATION OF THE FIRM

## 2.1 Firm History

**Integrated Solutions Consulting (ISC),** incorporated in 2005**,** is a professional services firm specializing in homeland security, emergency management, public safety, hazard mitigation, and disaster recovery consulting services. ISC has a proven track record of successfully evaluating, developing, and integrating complex disaster/emergency management planning doctrine that follow relevant federal, state, and local programmatic directives and requirements. We are staffed with highly experienced emergency management, law enforcement, public health, disaster recovery, and related public safety professionals.

Throughout ***our 16+ years of service***, ISC has had the privilege of supporting diverse communities nationwide as a single-source provider of emergency planning services. Unlike our competitors, we are exclusively focused on providing emergency management and homeland security consulting services to the private and public sector. Our focus in these services provide our staff a wealth of experience and lessons learned, granting Team ISC the ability to not just meet our clients' needs, but deliver services that go above and beyond.

**Our Mission** is to provide consulting solutions from a professional emergency management perspective for public and private entities. This mission is carried out by our extensive experience in the operational fields of emergency management, homeland security, law enforcement, healthcare systems, environmental, and critical infrastructure engineering; and is supported by our reputation of providing exceptional professional service. We accomplish our mission from our regional offices, located throughout the nation.

**Our Principles** drive us to achieve continued project success with value-added products:

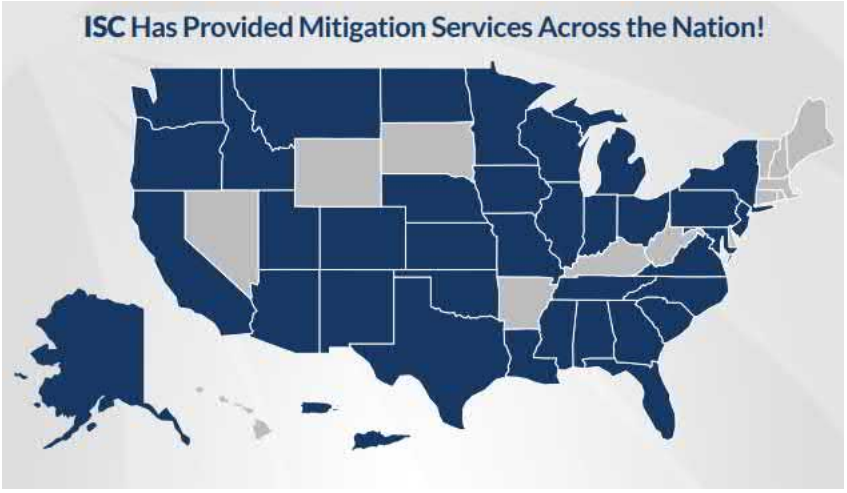
- **Trust:** We treat each relationship as a two-way Partnership with Trust at the core of the relationship.
- **Integrity:** We deliver client-focused results that meet or exceed all FEMA and State compliance demands.
- **Innovation:** By leveraging our experience and research with science and technology, we look to be difference makers by establishing new standards and efficiencies in the industry.
- **Performance:** As evidenced by our D&B Top Supplier Performance Rating, we consistently out-perform our client expectations, setting them up for success in the future.

## 2.2 Hazard Mitigation Planning Experience

At ISC our success in hazard mitigation planning is more than a function of experience and expertise. Our success is driven by our dedication and passion for creating disaster-resilient communities that hold strong against adversity.

Since 2005, ISC has prepared, updated, and delivered HMPs, per the requirements of the Disaster Mitigation Act of 2000 (DMA 2000), Section 322 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), and Title 44 Code of Federal Regulations (CFR)

§201.6.1, for communities, agencies, and jurisdictions of all sizes, scopes, and types, throughout the United States. Additionally, ISC has assisted counties and participating Community Rating System (CRS) communities in identifying repetitive loss structures and developing and integrating mitigation actions that will reduce future impacts from flooding or other natural disasters. Consistent with federal guidance, ISC incorporates the information into the community's National Flood Insurance Program (NFIP) application.




Following a disaster, ISC works with county and jurisdictional clients to implement their HMP per Section 404 and Section 406 of the Stafford Act. Our comprehensive HMP capabilities and proven subject matter expertise result in HMPs that are consistently accepted upon initial submission to the state and FEMA, successfully positioning our clients to secure funding for implementing future hazard mitigation projects.

Our unprecedented success in hazard mitigation planning is more than a function of experience and expertise; dedication and passion for creating more disaster-resilient communities drives our success. In each case identified below, ISC's support, services, expertise, and integrated approach resulted in developing hazard mitigation plans that were accepted by the state and FEMA, but also successfully positioned these communities to secure funding for implementing hazard mitigation projects.

- Implemented hazard mitigation actions after 100's of disasters
- Developed hazard mitigation plans for our nation's largest communities.
- Almost 20 years of hazard mitigation experience
- Experts in hazard risk assessments & modeling
- Supported 1,200+ communities in developing FEMA approved hazard mitigation plans
- Secured & managed **billions** in section 404 & 406 HMGP funding
- Experts in FEMA National Flood Insurance program
- **100%** approved FEMA plans

## 2.3 Proven Experts in Hazard Mitigation Planning

As a leading provider of emergency management professional services, ISC is specifically qualified to perform the entire range of activities, as described in the Scope of Work. We are confident that no other firm can match our team's extensive experience and locally focused approach to this project.

To best encapsulate the benefits, we believe ISC brings this endeavor, we have provided the table below which highlights ISC's experience, expertise, and capacity to deliver a Hazard Mitigation Plan.

| Integrated Solutions Consulting – Overall Benefits | |
|---|---|
| **Our Experience** | ✓ ISC has *completed over 50+ Hazard Mitigation Plans*, of similar size and scope, for government entities nationwide. |
| **Performance and Capacity to Perform** | ✓ Our intent is to provide the County with an HMP that is aligned with the State, while meeting:<br>– *National Flood Insurance Program (NFIP),*<br>– *Community Rating System (CRS)*<br>– *Floodplain Management Planning requirements (Activity 510)*<br>– *Code of Federal Regulations for Local Mitigation Plans (44 CFR 201.6)*<br>✓ ISC's has a superior record of developing mitigation plans that are not only *accepted upon the initial submission to the state/FEMA*, but also *positioned communities to secure funding for implementing hazard mitigation projects*. |
| **References and Recommendations** | ✓ *Repeat business is the best compliment for a consulting firm.* We encourage you to contact our references, who are all repeat customers, to ensure a comprehensive picture of our team's experience and solutions. |
| **Qualifications of Staff** | ✓ ISC consists of 40+ full time employees and *maintains a cadre of 250+ emergency management professionals* with experience completing services similar in size and scope.<br>✓ ISC's proposed team is *available immediately* upon award of the project. |
| **Accuracy of Cost Estimates** | ✓ Team ISC is dedicated to providing our clients with accurate project pricing.<br>✓ We have never pursued a change order on a past project. We cannot provide data regarding bid versus final costs estimate, as we have not altered prices provided in our proposals.<br>✓ The proposed compensation for this project is a firm, fixed price, inclusive of all labor, materials, travel expenses, and all other costs, direct and indirect, necessary for each task identified in the Scope of Work. |

## 2.4 Local Knowledge, Expertise, & Commitment

ISC has been at the forefront of helping communities throughout California develop and update their Hazard Mitigation Plans to better prepare for and respond to natural disasters. With over 16 years of experience and a team of highly skilled professionals, ISC has consistently delivered comprehensive and effective solutions tailored to the unique needs of each California community we serve.

Our work in California has been extensive and impactful, spanning cities both large and small. We understand that each community faces its own set of challenges, and this is especially true for the City of Chino. With its diverse landscape, ranging from suburban neighborhoods to industrial areas and agricultural lands, Chino is exposed to a variety of natural hazards, including wildfires, earthquakes, and severe weather events. ISC recognizes the importance of developing an LHMPU that addresses these specific risks and takes into account the city's unique geographical, economic, and social characteristics.

In the City of Downey, we successfully updated their LHMP to align with the latest FEMA guidelines, collaborating with various city departments to create a comprehensive plan that received FEMA approval. This updated plan not only ensures Downey's eligibility for federal

disaster assistance funds but also provides a roadmap for implementing mitigation strategies that will protect lives, property, and infrastructure in the event of a natural disaster.

Similarly, in the City of La Mirada, we developed a new LHMP that addressed the city's unique vulnerabilities to natural disasters such as earthquakes, urban fires, droughts, floods, and climate change. By carefully analyzing the city's geographical landscape and working closely with public agencies, private organizations, and citizens, we helped La Mirada create a plan that minimizes potential losses and enhances the community's resilience.

ISC's proactive approach and commitment to community engagement were evident in our work with the City of Beverly Hills, where we updated their 2016-2021 LHMP by engaging stakeholders and the entire community. This inclusive process ensured that the final FEMA-approved plan, which was adopted by the City Council, reflected the needs and priorities of the people of Beverly Hills, making it more likely to be effectively implemented.

We believe that our experience, expertise, and dedication to community-driven solutions make ISC the ideal partner for the City of Chino in updating their Local Hazard Mitigation Plan. By working closely with the city's stakeholders and residents, we will develop an LHMPU that not only meets FEMA requirements but also addresses Chino's unique challenges and strengthens the community's resilience in the face of natural disasters.

## 2.5 Recent Projects

The projects below provide a representative list of projects, of a scale and complexity similar to this project engagement. In each case identified, ISC's support, services, expertise, and integrated approach resulted in developing Hazard Mitigation Plans that were accepted by the state and FEMA, but also successfully positioned these communities to secure funding for implementing hazard mitigation projects.

| Summary of ISC HMP Projects | | | |
|---|---|---|---|
| **Client** | **Date** | **Type of Contract** | **Description** |
| Clemson University | 2022 | HMP | University Hazard Mitigation Plan |
| Lake County, IL | 2022 | HMP | County Hazard Mitigation Plan Update |
| La Mirada, CA | 2022 | HMP | City Hazard Mitigation Plan Update |
| Detroit, MI | 2021 | HMP | City Hazard Mitigation Plan Update |
| Dawson Co. MT | 2021 | HMP | 4-county Hazard Mitigation Plan Update |
| Lenowisco Planning District, VA | 2020-2021 | HMP | Regional Hazard Mitigation Plan Update |
| Campbell Co. TN Dept. of Finance | 2019-2020 | HMP | County Hazard Mitigation Plan Update |
| Cook Co. IL DHSEM | 2020 | HMP | County Hazard Mitigation Plan Update \| 136 participating jurisdictions \| Plan initiated, approved, and adopted within a 5-month timeframe. |

| Summary of ISC HMP Projects | | | |
|---|---|---|---|
| **Client** | **Date** | **Type of Contract** | **Description** |
| Milwaukee Co. WI OEM | 2017 | HMP | County Hazard Mitigation Plan Update |
| Kootenai Co. ID OEM | 2020 | HMP | County Hazard Mitigation Plan Update and Wildfire Mitigation Plan |
| Salt Lake United Fire Authority, UT | 2019-2020 | HMP | County Hazard Mitigation Plan Update \| Level 3 HAZUS |
| Portage Co. WI | 2019-2020 | HMP | County Hazard Mitigation Plan Update |
| Madison Co. ID | 2018-2019 | HMP | County Hazard Mitigation Plan Update |
| Franklin Co. OH EM & HS | 2017-2018 | HMP | County Hazard Mitigation Plan Update |
| Hamilton Co. OH OEM & HS | 2017-2018 | HMP | County Hazard Mitigation Plan Update |
| Royal Oak, MI | 2017-2018 | HMP | City Hazard Mitigation Plan Update |
| Oakland Co. MI | 2017-2019 | HMP | County Hazard Mitigation Plan Update |
| Carter Co. TN | 2016-2018 | HMP | County Hazard Mitigation Plan Update |
| Hardin Co. IA EM | 2016-2018 | HMP | County Hazard Mitigation Plan Update |

## 2.6 Project Qualifications

Since 2006, ISC has been a single-source provider of single and multi-jurisdiction hazard mitigation plans, for jurisdictions across the U.S. Over our fifteen-year history, ISC has conceptualized, designed, developed, planned, prepared, and delivered 50+ local and multi-jurisdiction hazard mitigation plans, similar in size, scope, and complexity to that requested in the RFP.

Provided below are some notable examples of hazard mitigation plans that ISC has previously delivered to other agencies and jurisdictions, of similar size and scope. We are happy to provide additional information, on any of the examples below, upon request.

### Hazard Mitigation Plan Update
City of Downey, CA

In 2022, ISC was awarded the contract for completion of the City of Downey's Local Hazard Mitigation Plan (LHMP) update. The City's existing LHMP (adopted in 2017) required an update based on the Local Multi-Hazard Mitigation Planning Guidance published by FEMA in April 19, 2022. The final deliverable to the client being a FEMA approved LHMP. In coordination with the City, ISC City was responsible for assembling a Hazard Mitigation Planning Team consisting of City personnel, including: Fire Department, Public Works, Community Development, Parks and Recreation and the Police Department. Additionally, ISC reviewed the natural and man-made hazards that threaten the City. ISC collected and incorporated information and comments throughout the LHMP process, making all necessary revisions, and prepared a Final Plan for submittal to Cal OES and FEMA for review and approval.

## Hazard Mitigation Plan
City of La Miranda, CA

In 2022, ISC was awarded the contract to coordinate, facilitate, and prepare the City of La Miranda's New Local Hazard Mitigation Plan pursuant to the Disaster Mitigation Act of 2000. The plan was required to be consistent with the State of California's Federal Emergency Management Agency's (FEMA). The plan was developed to help identify mitigation actions that would make the City and plan participants more resistant to disasters, including earthquakes, urban fires, droughts, floods, and climate change, as required by California Government Code Section 65302.

La Mirada is 7 .82 total square miles in area. It is located in southeast Los Angeles County near the Orange County border and offers the benefits of living in a mild Southern California climate. La Mirada is characterized by the unique and attractive geographical landscape and weather that makes the region popular among residents and visitors. However, the potential impacts of natural hazards associated with the terrain make the environment and population highly vulnerable to natural disasters.

Additionally, La Mirada is subject to earthquakes, flooding, landslides, and wildfires. It is impossible to predict exactly when these disasters will occur or the extent to which they will affect the City. However, with the development of the Hazard Mitigation Plan, careful planning and collaboration among public agencies, private sector organizations, and citizens within the community, ISC was able to assist the City in minimizing the losses that can result from these natural disasters.

## Multi-Jurisdictional Hazard Mitigation Plan
Hamilton County, OH

The Hamilton County Emergency Management Agency (EMHSA) requested ISC to develop the MJ-HMP. The ISC Team facilitated nine webinars over two weeks to introduce the mitigation planning process to local officials, engaging 47 of the County's 48 jurisdictions to participate in at least one webinar. Next, ISC planned and facilitated seven hazard mitigation planning workshops throughout the County to identify hazards and update and consider new mitigation strategies, gaining full participation from each of the County's 48 jurisdictions. Our Team then designed and distributed a comprehensive public survey that reached 1,825 residents and resulted in 1,328 completed responses.
ISC leveraged survey data to inform the hazard risk prioritization process, ensuring the MJ-HMP addressed the public's concerns and priorities. ISC also planned, advertised for, and executed two public forums sharing the MJ-HMP draft with County residents, providing all members of the community with an opportunity to provide input for review and comment. MJ-HMP participants assessed over 300 hazard mitigation strategies/actions, resulting in a prioritized list of 111 new strategies/actions, in addition to 180 ongoing/updated mitigation strategies/actions from the 2013 Plan, and 47 completed strategies/actions. The County's MJ-HMP received Ohio Emergency Management Agency (EMA) and FEMA approval.

## Multi-Jurisdictional Hazard Mitigation Plan Update
Cook County Department of Emergency Management and Regional Security (EMRS)

The ISC Team recently completed the nation's largest HMP Update within five months. ISC was recently engaged by the Cook County Department of Emergency Management and Regional Security (DEMRS) to conduct its 2019 MJ-HMP Update, covering a total of 136 jurisdictions. The ISC Team worked closely with Cook County DEMRS, Illinois Emergency Management Agency (IEMA), and personnel to accomplish significant improvements in their 2014 MJ-HMP. Our Team increased participation in public outreach activities by over 230% and gained participation by previously non-participating counties. Recently, IEMA and FEMA formally approved this Plan.

## Hazard Mitigation Plan
Oakland County, MI

The Oakland County HMP was completed with the assistance of the Oakland County Homeland Security Division, members of the Oakland County Local Emergency Planning Committee (LEPC), members of the community, representatives, and leaders from each of the 62 communities and many of the 28 school districts in the County, the Michigan State Police Emergency Management and Homeland Security Division Mitigation Recovery Section. Over 150 individuals were involved in the preparation, evaluation, and community outreach components of this Plan.
The HMP evaluated over 50 hazards during the 2017 Oakland County HMP Update. Plan participants assessed over 300 hazard mitigation strategies. A hazard mitigation and preparedness questionnaire was developed to gauge household preparedness for all hazards and the level of knowledge of tools and techniques that assist in reducing risk and loss. The 30-question survey reached 1,150 residents and resulted in 854 completed responses. On average, it took respondents 16 minutes to complete the survey. Multiple Webinars were conducted between August 29, 2017, and September 8, 2017. In total, seven webinars were offered to municipal and school district representatives. Webinars lasted about one hour. Four workshops were held strategically throughout the County for the identification and prioritization of hazards, hazard mitigation strategies and action plans. The workshops were specifically geared for municipal and school district stakeholders. The Plan received State and FEMA approval.

## Hazard Mitigation Plan Update
Salt Lake County, UT

In 2019, ISC was engaged by Salt Lake County Office of Emergency Management (SLCo EM) to update its 2015 Salt Lake County Multi-Jurisdictional Multi-Hazard Mitigation Plan, set to expire March 2020. Our Team worked closely with SCLo EM staff and the wider Salt Lake County Mitigation Planning Team (comprised of stakeholders from most jurisdictions, including Cottonwood Heights and West Valley) to review and revise significant changes the County has undergone over the past five years.
In addition to leveraging the previous HMP, ISC reviewed other Countywide and relevant municipal plans to inform their approach to the update. ISC's HMP Update was recently approved by the Utah Division of Emergency Management (DEM) and received APA by FEMA Region VIII.

# 2.7 Legal Information

| ISC Company Information | |
|---|---|
| **Company Structure** | S-Corporation |
| **Company Ownership** | Illinois, 2005 |
| **Number of Employees** | 40+ Full-time employees Nationally |
| **Litigation** | As outlined in the RFP, the below situations are not applicable to ISC.<br>• Conviction or indictment of the firm or any officer of the firm within the last three years involving alleged fraud, bribery, collusion, conspiracy, or violation of state or federal antitrust law.<br>• Adjudication or determination by any federal, state, or local agency that the firm or any officer of the firm has violated any provision of law relating to equal opportunity or fair employment.<br>• Termination of a contract for convenience or for cause. |

# 3. KEY PERSONNEL

## 3.1 Key Staff

The ISC Team consists of 40+ full time employees and maintains a cadre of **250+ emergency management professionals** with experience completing Hazard Mitigation Planning services. ISC has drawn from this extensive pool of highly experienced and qualified resources, and specifically identified key personnel for this project. The ISC Team offers Certified Floodplain Managers, Community and Mitigation Planning Subject Matter Experts, and Certified HAZUS Practitioners. The table below summarizes the organization of our proposed team, as well as their roles, qualifications, and relevant experience, relative to the details requested in the RFP.

| Key Staff | | |
|---|---|---|
| **Staff & Role** | **Qualifications** | **Relevant Experience** |
| **Daiko Abe**<br>*Project Manager* | • MS, Emergency Management<br>• Certified Floodplain Manager | • Salt Lake County, UT, MJHMP<br>• Cook County, IL MJHMP<br>• Hamilton County, OH HMP<br>• Project Manager for over 20 FEMA-approved hazard mitigation plans across the nation, in addition to providing subject matter and planning support to multiple other mitigation plans. |
| **Jake Halley**<br>*GIS Specialist* | • Lead planner for multiple MJHMPs nation-wide<br>• HAZUS-MH Professional | • City of Detroit HMP<br>• City of Galveston, TX HMP<br>• St Charles Parish, LA MJHMP<br>• San Miguel County, NM MJHMP<br>• UTMB Galveston.404 and 406 mitigation activities |
| **Elyzabeth Estrada,**<br>*Planner* | • Bachelor of Science | • University of Miami Health System & Miller School of Medicine, Emergency Manager<br>• Seminole Tribe of Florida, HMP |
| **Yahiritza Álvarez,**<br>*Planner* | • Executive Master of Professional Studies in Emergency and Disaster Management, Georgetown University, 2014<br>• Bachelor of Science | • Miami-Dade County Office Emergency Management, Emergency Management Planner<br>• 5-year update of Miami-Dade County's Local Mitigation Strategy |
| **Daniel M. Anderegg,**<br>*Planner* | • MSc., Threat and Response Management, University of Chicago, 2020<br>• BSc., Public Safety Management, Calumet College of St. Joseph, 2016Bachelor of Science | • Experience in command center operations, program development, systems analysis, as well as data performance analytics. |

The ISC Team understands that availability of key staff for task assignments is critical to moving programs and projects forward. The ISC Team's proposed staff is available immediately, upon award of the project. For those circumstances beyond our control, the ISC Team will submit the replacement key staff's qualifications for review. If any additional resources are required the ISC Team will provide approved additional staff, as necessary

# 4. REFERENCES

| **HMP Update 2022**<br>City of La Mirada | |
|---|---|
| **LOCATION** | La Mirada, CA |
| **LENGTH OF CONTRACT** | 2021 – Present |
| **CONTRACT VALUE** | $57,982.16 |
| **REFERENCE** | Mark Rounds<br>562-902-2960<br>mrounds@cityoflamirada.org |
| **PROJECT DESCRIPTION** | |
| The ISC Team assisted the City in developing an HMP Update compliant with the Stafford Act, DMA 2000, 44 CFR Part 201, §201.6, working with local leaders and stakeholders to ensure hazards, risks, and vulnerabilities identified paths to mitigation and community resiliency. The plan is currently in the public comment period. Once comments are received, the ISC team will review them with the City Project Manager, revising the plan accordingly, then will submit the final plan for CalOES and FEMA approval. | |

| **HMP Update 2022**<br>City of Detroit's Homeland Security & Emergency Management Department (HSEMD) | |
|---|---|
| **LOCATION** | Detroit, MI |
| **LENGTH OF CONTRACT** | 2021 – 2022 |
| **CONTRACT VALUE** | $48,997.12 |
| **REFERENCE** | Donna Northern, Emergency Management Coordinator<br>500 Griswold Street Detroit, MI 48226<br>313-600-5266<br>northend@detroitmi.gov |
| **PROJECT DESCRIPTION** | |
| The City of Detroit's Homeland Security and Emergency Management Department (HSEMD) contracted ISC to update their local hazard mitigation plan. ISC identified and coordinated with city departments and local stakeholders to address hazard risks and vulnerabilities, and to identify practical mitigation actions that address the most impacting hazards in the city. Additionally, ISC and the local HSEMD partnered to conduct public meetings in some of the city's most vulnerable neighborhoods with the goal of addressing community concerns and needs. ISC also worked with the State Hazard Mitigation Office and FEMA Region V to address recent significant urban flooding and the means to reduce impacts across the city. The final plan, approved by FEMA, was locally adopted and implemented in early 2022. | |

| **Hazard Mitigation Plan**<br>**Client:** Oakland County, MI | |
|---|---|
| **LOCATION** | Oakland County, MI |

## Hazard Mitigation Plan
**Client:** Oakland County, MI

| | |
|---|---|
| **PERIOD OF PERFORMANCE** | 2017 – 2019 |
| **REFERENCE** | Thomas Hardesty, Manager<br>1200 Telegraph Rd.<br>Pontiac, MI 48341<br>hardestyt@oakgov.com<br>248-452-9578 |
| **CONTRACT VALUE** | $111,750 |

**PROJECT DESCRIPTION**

The Oakland County HMP was completed with the assistance of the Oakland County Homeland Security Division, members of the Oakland County Local Emergency Planning Committee (LEPC), members of the community, representatives, and leaders from each of the 62 communities and many of the 28 school districts in the County, the Michigan State Police Emergency Management and Homeland Security Division Mitigation Recovery Section. Over 150 individuals were involved in the preparation, evaluation, and community outreach components of this Plan.

The HMP evaluated over 50 hazards during the 2017 Oakland County HMP Update. Plan participants assessed over 300 hazard mitigation strategies. A hazard mitigation and preparedness questionnaire was developed to gauge household preparedness for all hazards and the level of knowledge of tools and techniques that assist in reducing risk and loss. The 30-question survey reached 1,150 residents and resulted in 854 completed responses. On average, it took respondents 16 minutes to complete the survey. Multiple Webinars were conducted between August 29, 2017, and September 8, 2017. In total, seven webinars were offered to municipal and school district representatives. Webinars lasted about one hour. Four workshops were held strategically throughout the County for the identification and prioritization of hazards, hazard mitigation strategies and action plans. The workshops were specifically geared for municipal and school district stakeholders. The Plan received State and FEMA approval.

# 5. SCOPE OF WORK

## 5.1 Work Plan Overview

Based on our prior experience developing LHMPUs, we have learned that success means more than gaining FEMA and state approval and local adoptions: *the client defines success*. Accordingly, ISC believes it is essential to establish a clear understanding of goals and objectives upon contract execution.

ISC's approach to developing the LHMPU is a five-task method consistent with the Scope of Work (SOW), and compliant with industry best practices, federal and state requirements, and lessons learned from across the homeland security enterprise. Our approach for preparing, and subsequent adoption of the LHMPU is detailed in the following pages. ISC is happy to provide additional information, upon request.

## 5.2 Task 1: Project Management

### Subtask 1.1: Project Initiation

Upon notification of contract award, the ISC Team Project Manager will immediately contact the designated City of Chino Project Manager to set up a Project Initiation Meeting. The ISC Team will be prepared to schedule and conduct this meeting within seven days of contract award. Additionally, the ISC Project Manager will request contact information for additional participants and confirm with the designated tCity of Chino Project Manager the desired format or location for this meeting (i.e., in-person, remote, preferred platform, etc.). Once these elements are confirmed, the ISC Team will schedule participants to the Project Initiation Meeting via MS Outlook Calendar Invitations.

**Best Practice #1**
ISC offers a customized interactive mitigation planning participation module that allows committee members and stakeholders to learn about the mitigation process and provide real-time feedback and input in the plan development. Data analytics track and document your team's participation in the planning process.

During the initial meeting, we will introduce the proposed ISC Team, present the Project Work Plan (PWP), identify initial data requests, and establish processes for collecting data, the designation of control, points of contact, and quantity of and schedule for project deliverables. Additionally, we will discuss and define administrative requirements for the project, including correspondence, invoicing, and other related project issues. This project kick-off meeting will outline expectations and responsibilities.

### Subtask 1.2: Project Work Plan Development & Internal Controls

Central to ISC's project management approach is the development of the Project Work Plan (PWP). Simply put, the PWP is a formal, approved document used to guide both project execution and project control borne out of consultant and client collaboration.

The ISC Project Manager will utilize the PWP to guide the execution of all project tasks and to manage the quality of the overall project engagement. The PWP will guide the execution of the project, measure progress, and depict the proposed team structure with assigned functions, duties, and responsibilities that will meet the project needs.




## Subtask 1.3 Project Reporting & Meeting Planning

From our experience completing similar projects, ISC believes that, given the importance of project reporting, all associated activities must be clearly defined, precisely completed, and evaluated, and agreed upon by both our Team and the City of Chino. Key **PWP** tasks are included below.

| Team ISC's Project Management Approach | |
|---|---|
| **1. Scope Management** | Identifies the project description, goals, and objectives; evaluates the project structure, scope management, and controls; supports quality assurance procedures, and manages project risks and mitigation. |
| **2. Resource Management** | To facilitate increased coordination and provide a technical contractor that will meet and exceed expectations, ISC has selected the most qualified staff for this project. In the unfortunate event that key personnel assigned to this project become unavailable, ISC has identified support staff and potential candidates that would be available to fill in. *These changes would be implemented only with approval*. |
| **3. Communications & Information Management** | ISC and its team have invested in advanced technologies to facilitate communication and information sharing between our key personnel and staff. The video conferencing and desktop sharing capabilities of our company has proven to be extremely helpful in past projects and have served to increase internal and external communication. |
| **4. Potential Risks & Mitigation Strategy** | At the beginning of the project, identified and potential risks will be recognized to anticipate and manage, as far as possible, the potential impacts of the project, including reporting all risks. Each time a new risk is detected, it shall be managed (identified, assessed, etc.) by the Project Manager or designee. Preventive and corrective treatment will be implemented to reduce the severity and probability of the occurrence of these risks. |
| **5. Quality Assurance & Control** | ISC's Quality Assurance Plan (QAP) defines the organization and the methodology used for all ISC project engagements. The QAP: 1) Identifies processes that will be applied to assure quality; 2) Defines roles and responsibilities to ensure a successful, timely project with deliverables on time; 3) Provides the indicators to allow appropriate decisions and tracks/reports progress; 4) Describes software management practices: procedures, rules, and applicable methods for the project; and, 5) Outlines documentation management/delivery. |
| **6. Project Status Reports** | The ISC Project Manager will provide a "Project Status Report" to the designated City of Chino representative(s) at the agreed-upon interval (typically biweekly or monthly). The Report will include a summary of accomplishments by task, project progress assessment, major deliverables for the reporting period, a summary of the |

| Team ISC's Project Management Approach | |
|---|---|
| | tasks due during the next reporting period, any foreseeable project risks and solutions, and financial status for individual tasks as well as the overall project budget. |
| **7. Invoices & Quarterly Grant Reporting.** | The ISC Project Manager will provide invoices to the designated City of Chino representative(s), which can be sent either by deliverable or monthly. To ensure the The City of Chino meets all compliance and reporting requirements, the ISC Team will maintain detailed records of work and expenditures and submit financial and contract performance reports following the grant reporting schedule. |

## 5.3 Task 2: Organizing Resources

As earlier noted, by defining the City of Chino's vision of success and expectations at the onset of the project, our Team will readily collaborate with the City of Chino to ensure the complete realization of all objectives.

### Subtask 2.1 Formation of Planning Team & Initial Meetings

At a minimum, there should ideally be at least one representative for each relevant the City of Chino department and each participating jurisdiction. However, given departmental overlap, a single representative with authority to represent multiple departments can be accommodated.

**Best Practice #2**
ISC provides analytical reports of each committee member's time in the system reviewing the plan, collaborating with committee members, and participating in the mitigation planning tools. This participation is shared and reported in a format that is consistent with FEMA's quarterly reporting requirement.

ISC will record the name of every person invited, their email, the date of the invitation, the method of the invitation, whether the person agreed to participate, and whether the person provided feedback on the LHMPU. The plan will also include copies of all meeting invitations, a list of everyone invited to each meeting (along with their positions, the departments they represent, and if they attended), and meeting sign-in sheets (and minutes, if desired).

### Subtask 2.2 Documentation of the Planning Process

As part of the overall planning process, ISC will coordinate, schedule, facilitate, and support all meetings and conferences with the Planning Team (both formal planning meetings, project status meetings, and any ad hoc meetings or briefings). ISC will:

- ✓ Coordinate the scheduling of meeting rooms with the designated the City of Chino Project Manager and any designated facility representatives, and send/manage invitations, reminders, and registration (via MS Outlook Calendar appointments)
- ✓ Reserve, establish and ensure functionality of any conference lines and/or any web-based meeting platforms (i.e., webinars, GoToMeeting, RingCentral, Microsoft Teams, WebEx, etc.)
- ✓ Disseminate conference line and/or web-based meeting access information, such as call-in numbers, URLs, etc., and access instructions to remotely participating individuals
- ✓ Develop for each meeting an agenda, presentation slide deck, and appropriate read ahead or draft LHMPU content or materials

- ✓ Distribute, electronically, all written planning meeting materials to the Planning Team, including read ahead, meeting handouts, and/or draft materials, no later than seven days prior to the meeting
- ✓ Provide hard copies of all written planning meeting materials, in sufficient quantity, for each planning meeting
- ✓ Provide and affix all signage, as well as provide, set up, test for functionality, and operate any audio/visual equipment (i.e., projectors, public address, etc.), as needed or requested
- ✓ Facilitate all meetings, conferences, orientations, and/or briefings
- ✓ Record and publish meeting minutes to the participants and designated POCs, no later than one week following the meeting

## Subtask 2.3 Public & Stakeholder Outreach Strategy

A hallmark of ISC's LHMPU process is robust public involvement, including advertisements in local newspapers, preparation of public service announcements, online surveys, distribution of brochures, newsletters, and fliers and posting information and announcements on local government websites and social media platforms.

ISC will work directly with the City of Chino stakeholders to ensure the identified mitigation actions are effective, efficient, scalable, and pragmatic.

**For the City of Chino's LHMPU planning, ISC will facilitate two public outreach workshops in addition to developing and distributing a LHMPU Survey**. ISC will work with local stakeholders to increase public awareness and encourage public participation, especially in the review process. Reaching underserved populations will be a special emphasis to ensure equitable outcomes and considerations are included in the plan.

**In addition to the two public meetings, ISC will facilitate LHMPU workshops for representatives from relevant City of Chino departments and participating jurisdictions**.

During these workshops, we will review the risk assessment report and composite maps. The emphasis of the workshop is knowledge and understanding of the hazards and better preparation for determining mitigation actions.

Ultimately, ISC recommends conducting four to six virtual and on-site meetings throughout the hazard mitigation planning process. These public and steering committee meetings will occur as part of a documented project schedule presented to the Planning Team. Our Team will take all the necessary steps to engage participants, educating them on the importance of the LHMPU, and including interactive activities throughout the meetings.

Though this is inexhaustive, the meetings will address the following key points:

- ✓ Address FEMA's requirements for mitigation plans, as identified in the DMA 2000, CFR Part 201.6, the American Planning Association's Hazard Mitigation: Integrating Best Practices into Planning, and the most current FEMA "how-to" planning guidance.
- ✓ Address state requirements for mitigation plans
- ✓ Identify members' contribution to the planning process.
- ✓ Address preliminary goals and objectives.
- ✓ Identify (and debrief) meetings with key community stakeholders and any other bodies that may seem appropriate.

- ✓ Distribute questionnaires that will assist in identifying resources that will be needed for successful completion of the project.
- ✓ Highlight the progress-to-date and the schedule for the remainder of the planning process.
- ✓ Solicit input from members throughout the planning process.

## 5.4 Task 3: Hazard Identification and Risk Assessment

A community's hazard risk assessment is a critical document that defines a community's strategic common operational picture to mitigate, as well as prepare, protect, respond, and recover to emergencies and disasters.




The ISC Team will rely on its experience developing natural, technological, and political hazard risk and vulnerability assessments for some of the nation's most complex communities and infrastructure systems.

Our team's proven methodology ensures:

- ✓ Ensures uniformity among hazard categories
- ✓ Utilizes empirical values applicable to all communities, facilities, and systems
- ✓ Employs complex GIS modeling and analysis of probable scenarios to provide planning considerations of social, political, and physical impacts
- ✓ Grants the flexibility needed to integrate the vulnerability assessments of critical assets accurately and systematically
- ✓ Provides consistency between the State's approach as applicable while addressing the unique characteristics and attributes of the City of Chino.

As part of the community's overall risk assessment, the ISC Team will provide an analysis of the natural, technological, and political hazard categories by elaborating upon and defining the specific types of hazards; identifying recent events that have occurred locally and/or regionally; developing the hazard profiles, parameters, and characteristics; assessing possible vulnerabilities; determining probable scenarios, and modeling select hazards.

### Subtask 3.1 Hazard Identification and Profiles

The ISC Team will help the Planning Team identify and review all the hazards that might affect the community and will narrow the list to the hazards that most likely will impact the community. Our team will obtain this information through various avenues, including, but not limited to:

1. **Research of historical documents and data:** By accessing newspapers, historical societies, database searches, etc., the ISC Team will gather records that may contain

**Best Practice #3**
ISC documents the planning process, provide a method of on-going committee collaboration, offer an archival repository of planning meeting minutes and information, and ensure the active participation of committee members and key stakeholders throughout the life cycle of the Hazard Mitigation planning process.

dates, the magnitude of the events, damage, and further evidence of the past natural disasters in the community.

2. **Review of existing plans and reports:** To ensure the City of Chino is covering all the possible hazards, our team will collect and review plans and documents that may have information on hazard planning. These documents will be reviewed to identify a list of disasters and potential issues that have occurred in the past. Also, local comprehensive plans, land use plans, capital improvement plans, as well as building codes, land development regulations, and flood ordinances will be reviewed to identify hazard provisions that indicate the presence of local hazards.
3. **Inventory Assets:** Using GIS data management and analysis, an inventory of the City of Chino's assets will be developed based on the categories defined in the DHS/FEMA protocol. This inventory of assets will assist in identifying areas that are subject to the various natural hazards in the subject area. These categories are:

    a. Transportation Systems
    b. Lifeline Utility Systems
    c. High Potential Loss Facilities (financial institutions, government buildings, etc.)
    d. Hazardous Waste/Materials Facilities

4. **Profile Hazards:** Per FEMA, each hazard profile will include a description of the hazard, previous occurrences, locations, and extents, and the probability of future occurrences. Included in this assessment will be the assessment of all dam risks as outlined in Appendix G: High Hazard Potential Dams Grant Program Mitigation Plan Requirement. Additionally, the hazard profile section will address climate change and equitable outcomes and considerations.

In close coordination with the Planning Team, the ISC Team will reach out to local, state, and federal governments to obtain hazard information, development trends, known vulnerabilities, and past experiences mitigating, responding, and recovering from disasters. These efforts may include (as appropriate):

- ✓ Interviewing pre-identified local officials and FEMA officials; and,
- ✓ Contacting other resources such as Natural Hazards Center, Hazard Disaster Center, National Weather Service, Association of State Floodplain Managers, International Association of Emergency Managers, etc.

Many sections (at a minimum, flooding, drought, and extreme temperatures) will also consider how climate change may exacerbate the hazard, notably how it may impact vulnerability, frequency, or severity.

## Subtasks 3.2 and 3.3 Hazard Mapping & Vulnerability Assessment

Led by our GIS/HAZUS Analyst, our Team will work directly with the Planning Team to conduct a GIS-HAZUS Level 2 Analysis, modeling varying hazard scenarios depicted by the client.

For these tasks, an initial inventory of the City of Chino assets will use the baseline data contained in HAZUS-MH and supplemented by GIS data provided by the City of Chino. The effort includes developing

Selected sections of the Hazard Profile (at a minimum flooding, drought, and extreme temperatures) will also consider how climate change may exacerbate the hazard, notably how it may impact vulnerability, frequency, or severity.

and mapping a general inventory of assets in the applicable planning area. Using a base map, the ISC Team will identify the assets inside areas for each identified hazard that has a defined physical geographic boundary.

Our team will review the inventory to ensure that all facilities, infrastructures, and sectors critical to the continuity of government, operations, and services provided by the City of Chino are included in the mitigation planning process. Additionally, our team will conduct GIS-HAZUS Analysis Models of varying hazard scenarios.

The loss estimation process will utilize HAZUS-MH modeling (or other modeling program), GIS analysis, historical disaster data and information, and quantitative analysis to estimate the losses to natural and human-induced hazard events in a defined area. The analysis will include the following:

- Estimation of the losses to structures;
- Estimation of the losses to contents;
- Estimation of the losses to structure use and function;
- Projection of human losses; and,
- Estimation of the primary direct and indirect loss.

**Best Practice #4**
ISC's proprietary CVR2 Model is a prioritized indication of planning risk considerations and dashboard analytics that can be incorporated into the community's preparedness efforts, that will increase programmatic efficiency, operational effectiveness, and a unified common operational picture.

Our team will use HAZUS-MH (or other modeling programs) and GIS analysis to determine which individual assets could sustain the largest potential losses, by adding the structure loss, content loss, and function loss for each asset to determine the total loss. This process will produce the following:

- Calculation of the losses to each asset;
- Calculation of the estimated damages for each hazard event; and,
- Creation of a map that shows a composite of the areas of highest loss.

To ensure the GIS mapping effort is as comprehensive as possible, an inventory of critical facilities will be developed, and may include the following:

- Key end users (Special population centers, such as daycare facilities, nursing homes/elderly housing, medical, and correctional facilities)
- Water and wastewater treatment plants and associate pumping stations;
- Power generation, transmission, and delivery facilities;
- Hazardous materials facilities;
- Repetitive loss properties;
- Population density; and,
- Structures delineated by use (residential, commercial, industrial, institutional, and others as appropriate).

**Best Practice #5**
Unlike our competitors, ISC offers FAA-licensed operators to conduct drone flights per 14 CFR part 107. Incorporating aerial analysis gives a new perspective on existing hazard risks & hazard mitigation actions. Aerial imagery analysis and modeling of high hazard areas, recovering communities, and vital infrastructure assets can be incorporated into your LHMPU.

As part of the vulnerability assessment, our team will look at future development trends and special considerations (i.e., historical property, environmentally sensitive areas, etc.) that can have a significant impact on a community's risk of hazards. The impact of these trends and special considerations on the community's risk is directly proportional to the size of the community, community values, and the significance of the development trend or special consideration.

With input from the Planning Team, our team will analyze the effect of any significant future development trends and special considerations identified by the City of Chino to determine their positive or negative impacts on hazard profiles, inventoried assets, or projected losses.

### Subtask 3.4 Capabilities Assessment

ISC will conduct an in-depth and comprehensive review of the mitigation capabilities and tools currently available to the City of Chino to implement the mitigation strategy. The assessment will include an inventory of existing plans, policies, and procedures that the City of Chino has in place to mitigate the effect of hazards. Our team will also look at fiscal, staffing, and organizational capabilities.

## 5.5 Task 4: Developing a Mitigation Strategy

Identifying and prioritizing mitigation actions are the fundamental components of an LHMPU. In the previous tasks, ISC redefined hazards, reassessed vulnerabilities, and the losses were estimated. Our Team will craft a prioritized list of mitigation actions that will reduce future risks and losses. This task will allow ISC to identify goals and objectives; identify and reevaluate mitigation actions, and develop the capabilities assessment, and identify mitigation strategies.

This effort will also include a progress update on the mitigation actions taken during the last five years, regardless of inclusion in the previous LHMPU or funding source. This progress update will provide context and ideas for new projects.

### Subtask 4.1 Develop Hazard Mitigation Goals

Based upon the hazard profiles, hazard loss, vulnerability, and risk assessment, the Planning Team will identify mitigation goals that articulate the City of Chino's desire to protect people and structures, reduce the cost of disaster response and recovery, and minimize disruption to the community following a disaster.

ISC will prepare a Memorandum stating the identified Mitigation Goals and Objectives, as identified by the Planning Team and schedule and conduct a meeting to review draft mitigation goals and objectives with the Planning Team and the public. ISC will solicit feedback to gain buy-in and consensus.

Information revealed in the hazard profiles, and loss estimation will be used to develop clear mitigation goals. ISC will host the planning meeting and review the hazard profiles with details on the causes of hazards, the likelihood of occurrence, the potential severity, and the extent of areas affected. ISC will review the loss estimation dollar amount of damages for hazard events, as well as related economic information like business interruptions and revenue losses.

## Subtask 4.2 Develop, Evaluate, & Prioritize Mitigation Actions

ISC will reevaluate mitigation actions consistent with the goals and objectives that were previously defined and will evaluate the mitigation actions to determine the action's effectiveness and efficiency for preventing, protecting, and reducing damages to the community's assets from natural hazards. Input will be considered from relevant state and federal agencies, as well.

ISC will work directly with the City of Chino stakeholders to ensure the identified mitigation actions are effective, efficient, scalable, and pragmatic.

Evaluation of these mitigation actions will be based on, but not limited to, the following criteria:

- Technical feasibility
- Economic benefits
- Environmental impacts
- Community acceptance
- Staffing and funding (Administrative)
- Maintenance needs
- Political support
- Legal authority
- Historic projects of similar scope and magnitude

All mitigation actions, regardless of their criterion, will be assessed and discussed. Each mitigation action will include the following:

- Project Name and Number
- Goal and/or Objective being met
- Hazard to be mitigated
- Description of the Problem
- Project Description
- Estimated Timeline
- Lead Agency responsible for implementation
- Estimated Costs
- Estimated Benefits
- Potential Funding Sources
- Whether or not the project is related to a Critical Facility (and if so, assurance that the facility will be protected to the 500-year event or greatest damage scenario).

## Subtask 4.3 Mitigation Actions Implementation Strategy

The implementation strategy identifies how the City of Chino proposes to achieve its mitigation goals and objectives. The Mitigation Actions Implementation Strategy will redefine, identify, and confirm mitigation actions, partners, resources, and schedules.

The implementation strategy will also cover potential funding sources. The sources will be described and include a website link for further information.

ISC will prepare a draft Mitigation Actions Implementation Strategy for review by the Planning Team. Once reviewed, ISC will incorporate changes to the newly created Mitigation Actions Implementation Strategy.

The strategies proposed by ISC will ensure compliance with DMA 2000 and will delineate between pre-disaster (FEMA's BRIC program) and post-disaster (HMGP 404 and 406) actions. The ISC Team will provide technical support to the six-hazard mitigation and preparedness categories, as defined by FEMA: prevention, property protection, public education and awareness, natural resources protection, emergency services, and structural projects.

## 5.6 Task 5: Assisting in Plan Adoption, Monitoring, and Evaluation

The ISC Team will write a complete final draft of the LHMPU for the City of Chino. The plan will include a risk assessment and mitigation strategy as well as a process for maintaining the plan so that it continues to be a useful document for the rapidly growing and urbanizing communities.

ISC will deliver final drafts to the City of Chino officials and relevant stakeholders. These deliverables will integrate with the business flow and be compliant with federal, state, and local regulations.

### Subtask 5.1 Maintenance Strategy

The Plan Maintenance section, included in the final plan, will ensure that the document continues to be viable and is compliant with federal directives, and that the plan moves toward implementation over the next 5 years. **ISC also commits to offer a one-year plan maintenance review.**

The maintenance strategy will detail how the City of Chino will monitor, evaluate, implement, and update the Plan. Updates or changes to the plan will be made periodically to accommodate evolving needs and to respond to actual disasters. ISC has developed multiple year-by-year implementation strategies, which ensures the plan remains viable and relevant.

### Subtask 5.2 Incorporation into Existing Planning Mechanisms

ISC will work in concert with the Planning Team to incorporate the LHMPU into existing planning mechanisms (**including Veoci**). We will consider community development plans, local capital improvement budgets, floodplain management plans, emergency management doctrine, and other planning mechanisms that are relevant to each community's hazard mitigation strategy.

### Subtask 5.3 Implementation Schedule

Each mitigation project will include an implementation schedule per the "Implementation Plan."

### Subtask 5.4 Continued Public Involvement

In past engagements, we have developed robust and detailed public involvement campaigns and schedules to ensure continued public feedback. We also have the capability to encourage real-time and continuous feedback through virtual tools (i.e., surveys, social media, web sites, etc.)

The ISC Team will write a complete final draft of the LHMPU for the City of Chino. The plan will include a risk assessment and mitigation strategy as well as a process for maintaining the plan so that it continues to be a useful document for the rapidly growing and urbanizing communities.

ISC will deliver final drafts to the City of Chino officials and relevant stakeholders. These deliverables will integrate with the business flow at the City of Chino and be compliant with federal, state, and local regulations as applicable.

## Subtask 5.5 Draft Plan

The project team will prepare a draft of the City of Chino's LHMPU that will document the mitigation planning process and address the elements required by 44 CFR 201.4 and CPG 101.

**Best Practice #6**
ISC leverages our library of compliance metric tools to allow clients to validate their plans against federal, state, and industry requirements, include DMA 2000. Our data-driven assessment gives emergency management professionals the opportunity to evaluate compliance systematically & comprehensively.

ISC will assemble information, comments, and reports from the previous tasks. Informational databases, graphics, and maps will also be included in the final plan to visualize the geographic, functional, or systematic relationship between the loss estimation and the mitigation activity chosen.

To meet DMA 2000 requirements, the document will include a description of the planning process; a definition of the planning area identifying who was involved in the process, how they were involved, and methods of public participation that were employed; and a detailed description of the decision-making and prioritization process.

ISC will distribute the copies to the Planning Team for review. A public review draft will be also released for public comment before the LHMPU is finalized.

The Planning Team will meet to review the LHMPU draft. ISC will incorporate all the Committee's final revisions and will submit the plan to the City of Chino officials within two weeks after the receipt of final review comments (we can provide printed, electronic, or both formats).

## Subtask 5.6 Final Plan & Submission to the State & FEMA

ISC will complete the final draft of the plan and will develop the appropriate Plan Review Tool. The plan will be updated to reflect new programmatic changes to the mitigation program, which became effective April 2023.

ISC will submit copies of the final draft to the State of Texas and/or FEMA Region VI for approval. When approved by FEMA, the City of Chino Project Lead will present the plan before the City of Chino leadership for formal adoption.

After FEMA indicates the City of Chino's LHMPU is approvable pending adoption (APA), ISC will assist in preparing the plan to be adopted, with copies of the adoption resolutions provided to the State and FEMA by the City of Chino and ISC.

# 5.7 Closeout

Upon completion of this project and finalization of the proposed deliverable, the ISC Project Manager will provide a "Project Close-Out" report. This report will incorporate the final "Monthly Status of Accomplishments and Costs" report information, summarize this project effort, and recommend improved methodologies for future initiatives of a similar nature.

The "Project Close-Out" report will be submitted as draft copies to the City of Chino Project Lead within 45 days of completion of the City of Chino's LHMPU.

# Hazard Mitigation Assistance Contracting Guidance For FEMA-Eligible Projects, Non-State Subrecipients




## PURPOSE OF THIS PUBLICATION

This publication is intended to be an overview of contracting requirement applicable to Non-State Subrecipients (non-Federal entities other than states) of FEMA Hazard Mitigation Assistance funds.

This publication is not intended to serve as legal advice and does not reflect all of the federal procurement requirements.

Cal OES makes no guarantee that adherence to this guide will result in the full reimbursement of costs and recommends that reviewing the procurement requirements applicable to the disaster period.

## Reference Materials Appearing in this Publication

| | | |
|---|---|---|
| · 2 CFR §200 | Refers to the OMB's | *Title 2, Chapter II, Part 200 of the Code of Federal Regulations* |
| · PGFMS | Refers to FEMA's | *Procurement under Grants Field Manual Supplement* |

# Summary

- Following **Federal procurement standards (Title 2 CFR 200.318-200.326)** and **FEMA's Program Policy** is a condition of receiving Hazard Mitigation Assistance funding for the cost of eligible goods and services.
- Non-State Subrecipients must follow their own documented procurement standards (reflecting applicable State, Tribal, and local government laws and regulations) AND Federal procurement standards (Title 2 CFR 200.318(a)).
- When the two standards conflict the more **restrictive** standard applies.
- State, local, and tribal law cannot waive Federal procurement requirements, even during an emergency.

# Overview

***Non-State Subrecipients of Hazard Mitigation Assistance Funds Must:***

- Maintain adequate oversite of their contractors and document the steps taken to ensure their contractors perform to the terms, conditions, and specifications of their contracts. 2CFR §200.318(b)
- Maintain and enforce a written standard of conduct covering conflicts of interest, performance of employees engaged in the selection, award, and administration of contracts. 2CFR §200.318(c)(1)
- Not enter into any contracts that are conditional on the approval of federal funding.
- Award contracts to responsible contractors with the ability to execute the contract. 2CFR §200.318(h)
- Take responsibility for the settlement of all contractual and administrative issues. 2 CFR §200.318(k)
- Facilitate full and open competition and must exclude contractors that create the Subapplication, or assist in development of materials used to construct the IFB, RFP, or RFQ from competing for the resulting contract. 2CFR §200.319(a)
- Procure all contracts using approved methods and must advertise the intent to contract when required. 2CFR§200.320
- Follow the affirmative steps to ensure that small businesses, minority owned businesses, women's business enterprises, and labor area surplus firms are used when possible. 2CFR§ 200.321
- Document a price/cost analysis for contracts over the Simplified Acquisition Threshold (currently $250,000), including contract modifications. 2 CFR §200.323
- Ensure contracts contain all FEMA required clauses and provisions. 2 CFR §200.326, PGFMS Ch. IV ¶12
- Comply with the National Environmental Policy and Historic Preservation Acts. PGFMS Ch. C ¶6
- Maintain detailed and accurate records including: 2 CFR §200.318(i)
    - Rationale for the method of procurement
    - Selection of contract type
    - Contractor selection or rejection
    - The basis for the contract's price
    - Pre-solicitation documents
    - List of contractors solicited
    - Solicitations, addenda, and amendments
    - Notice of award
    - Notice to unsuccessful bidders
    - Record of protests, disputes, and claims
    - Bid, performance, payment, and bond documents
    - Notices of proposed contract action
    - Independent cost estimates
    - Determination of contractor's responsiveness

## Keeping Records and Maintaining Adequate Technical Capacity

- All documents related to the history of contract procurement must be recorded with a sufficient level of detail and maintained for three years following the State's closure of the grant. 2CFR §200.318(i), 2CFR §200.333

## Ensuring Compliance with the Environmental and Historical Protection Laws

- Compliance with environmental and historic preservation laws including the **National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA)** are required. PGFMS Ch. C ¶6
  Contact the Cal OES Environmental/Historical Officer to determine if a NEPA/NHPA review is required before a project begins.

## Including Disadvantaged Business Enterprises (DBE) and Labor Surplus Area Firms

The following affirmative steps are required to ensure small businesses, minority and women's owned businesses (DBEs), and labor surplus area firms (LSAs) are used when possible: 2CFR §200.321

- Place DBEs/LSAs on solicitation lists and solicit to them when they are a potential source.
- Use the services of organizations such as the Small Business Administration and the Minority Business Development Agency.
- When economically feasible, divide total requirements into smaller tasks or quantities and establish delivery schedules.
- Require contractors who use subcontractors to follow the affirmative steps.

## Ensuring Full and Open Competition

Contracts must be procured in a manner providing full and open competition: 2CFR §200.319

- Do not place unreasonable requirements on potential contractors, e.g. unnecessary experience or bonding.
- Do not specify a brand name of the product that must be used ("brand name or equal" is allowable).
- Do not make noncompetitive awards to consultants on a retainer contract.
- Undertake reasonable efforts to ensure the contract procurement process is free from conflicts of interest and that prospective contractors do not engage in bid rigging.
- Do not apply different treatment to contractors based on their geographical location except when evaluating architectural and engineering services or when requiring compliance with state licensing laws.
- Ensure that prequalified lists (if used) include sufficient number of sources.
- Allow contractors to qualify to be added to prequalified lists during the solicitation period.
- Provide adequate information and time to respond to the advertisement.

# Eligible Methods of Procurement

| Methods | When to Use |
|---|---|
| **Micro Purchases** | Contract aggregate amount ≤ $10,000*<br>• Do not require bids/solicitation.<br>• Price must be reasonable and awarded to a responsible contractor. |
| | See 2 CFR §200.67 and FEMA PGFMS Ch. V ¶ 2.b - 2.d |
| **Small Purchases** | Contracts ≤ $250,000*<br>• Only qualified responsibly contractors should be solicited for quotes.<br>• Must receive an adequate number of quotes from qualified sources.<br>• If the lowest quote was not accepted, document the reason. |
| | See 2 CFR §200.320(b) and FEMA PGFMS Ch. V ¶ 2.e |
| **Sealed Bids** | Contracts > $250,000*<br>*Used when price is the primary consideration used to select the contractor.*<br>• Advertised for bidding using an Invitation for Bids, and solicited to known contractors.<br>• Advertisement period must provide sufficient time for contractors to respond.<br>• Minimum of 2 (preferably more) responsive/responsible bidders required.<br>• Awarded to lowest responsive and responsible bidder.<br>• Any and all bids may be rejected if there is a sound documented reason. |
| | See 2 CFR §200.320(c) and FEMA PGFMS Ch. V ¶ 2.f |
| **Competitive Proposal** | Contracts > $250,000*<br>*Used when other factors are at least equal to price when selecting the contractor.*<br>**Price is a Selection Criteria**<br>• Advertised using a Request for Proposals (RFP).<br>**Price is not a Selection Criteria (Limited to Architect and Engineering Services)**<br>• Advertised using a Request for Qualification (RFQ).<br>• Price is negotiated after the contractor is selected.<br>• Must be advertised and the bid period must provide sufficient time for contractors to respond.<br>• Evaluation factors and their importance must be listed in the advertisement.<br>• Procedure for conducting evaluations must be documented beforehand.<br>• Proposals must be solicited from adequate number of qualified sources.<br>• Minimum of 2 (preferably more) responsive/responsible contractors required. |
| | See 2 CFR §200.320(d) and FEMA PGFMS Ch. V ¶ 2.g |
| **Non-Competitive Proposal** | Acceptable when 1 or more of the following apply:<br>• The item is available only from a single source.<br>• Noncompetitive proposal has was given express authorization from FEMA or Cal OES.<br>• Work must start immediately due to a public emergency or exigency.<br>• Competition was determined inadequate following competitive solicitation procedures.<br>**Contracts awarded without price competition must also:**<br>• Have a documented cost analysis justifying the contract's price. Page 14 of FEMA's Pricing Guide<br>• Include the contractor's profit as a separately negotiated cost element. 2 CFR § 200.323(b) |
| | See 2 CFR §200.320(f) and FEMA PGFMS Ch. V ¶2.h |

* The $10,000 Micro Purchase and $250,000 Simplified Acquisition Thresholds are periodically adjusted and defined in FAR 2.1

# Contracts

| Eligible Contracts | Description |
|---|---|
| **Time and Materials** | Provides for payment of the actual cost of materials and direct labor charged at fixed hourly rate reflecting wages, general/administrative expenses, and profit. |
| | **Time and Materials contracts are only allowable after making a determination that no other contract type is suitable.**<br><br>**FEMA will review such contracts to determine if lacked a rational basis and/or the procurement violated any Federal laws, regulations, or FEMA policy.**<br><br>**When the scope of work becomes clear, these contracts must be canceled and replaced.**<br><br>Time and Materials Contracts Require:<br>• The right to terminate for convenience;<br>• A ceiling price the contractor will exceed at their own risk;<br>• Documentation explaining why no other contract was suitable; and,<br>• A higher degree of oversight to ensure the contractor is controlling the costs. |
| | See 2 CFR § 200.318(j) and FEMA PGFMS Ch. IV ¶ 8 |
| **Fixed Price (Lump Sum)** | Provides for the payment of a fixed price with or without economic adjustment or incentives. |
| | • Firm Fixed Price — Not subject to any adjustments.<br>• Economic Adjustment — Revision for specified contingencies.<br>• Incentive Adjustment — Based on actual to target cost of completion.<br>• Unit Price — A fixed price that is itemized by a unit of measure. |
| | See FEMA PGFMS Ch. IV ¶ 10.b.vi.(1) |
| **Cost-Plus-Fee (Reimbursement)** | Provides for the payment of actual costs and a fee that reflects the contractor's profit. |
| | • Used when uncertainties prevent the use of a Fixed Price contract;<br>• A ceiling cost should be established that cannot be exceeded without pre-approval.<br>• Incentives can be used to encourage higher quality, lower costs, or faster completion. |
| | See 2 CFR § 200.320(f) and FEMA PGFMS Ch. IV ¶ 10.b.vi.(2) |

# Contracts

| Ineligible Contracts | Description |
|---|---|
| **Cost-Plus % of Cost** | Provides for the payment of actual costs and a fee reflecting the contractor's profit that is calculated as percent of the actual costs. |
| | • No economic incentive for the contractor to control the cost.<br>• **Not eligible for Hazard Mitigation Assistance funding.** |
| | See 2 CFR § 200.323(d) and FEMA PGFMS Ch. V ¶ 4.c for additional guidance |

| Existing Contracts | Description |
|---|---|
| **Advanced Contracts (Prepositioned)** | Awarded before an incident occurs for the potential performance of work. |
| | Advanced (pre-awarded) contracts can only be used when:<br>• Awarded in compliance with all federal procurement standards.<br>• The scope of work does not exceed what could be expected during a future declaration.<br>• The work performed falls within the scope of the contract. |
| | See page 2 of FEMA's Key Points Regarding Contracting Practices |
| **Piggy Back Contracts** | Solicited and awarded by another entity. |
| | **Not recommended by FEMA** because the original underlying contract often does not meet all of the federal procurement standards having often been issued under different circumstances and for a different scope of work. |
| | See page 4 of FEMA's Key Points Regarding Contracting Practices |

# Required Contract Provisions

- Contracts cannot use the DHS seal/logo without preapproval. PGFMS Ch. IV ¶12.b.iii
- Contracts cannot include contingencies stating the contract is dependent on other Federal funding sources.

## Contracts Must Include Provisions Addressing the Following: 2CFR §200.326, PGFMS Ch. IV ¶12

- Suspension and debarment of contractors. 2CFR 200 Appx II (I)
- FEMA and Cal OES are not parties to the contract, and not subject to obligations or liabilities. PGFMS Ch. IV ¶12.b.v
- The contractor acknowledges that 31 U.S.C. Chap. 38 applies to its actions. PGFMS Ch. IV ¶12.b.vi
- FEMA will fund the contract, and that FEMA and Cal OES have the right to review the contractor's records. PGFMS Ch. IV ¶12.b.ii, PGFMS Ch. IV ¶12.b.iv
- The contractor will comply with federal law, regulation, executive orders, and FEMA policies, procedures, and directives. PGFMS Ch. IV ¶12.b.iv

## Other Required Contract Provisions and Clauses

| | |
|---|---|
| **Construction Contracts** | Must include an **Equal Employment Opportunity** Clause 2CFR 200 Appx II (C) |
| **Contracts > $10,000** | Must address **Termination for Cause and for Convenience** including the manner by which it will be effected and the basis for settlement. 2CFR 200 Appx II (B) |
| **Contracts ≥ $100,000** | Must include a **Byrd Anti-Lobbying** Clause. 2CFR 200 Appx II (J) |
| **Contracts > $100,000** | Involving the employment of mechanics/laborers must include a **Work Hours and Safety Standards Act** Clause. 2CFR 200 Appx II (E) |
| **Contracts > $150,000** | Must Address **administrative, contractual, or legal remedies** in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. 2CFR 200 Appx II (A) |
| **Contracts > $150,000** | Provision requiring the contractor to comply with the **Clean Air Act and Water Pollution Control Act** 2CFR 200 Appx II (G) |

Sample language for contract clauses 2 C.F.R. Part 200, Appendix II

# Price and Cost Analysis Requirements

| Price Analysis | Cost Analysis |
|---|---|
| Awards made with price competition > $150,000 require a relatively simple price analysis that compares the bids/proposal received and rational for selecting the awarded contractor. | Awards made without price competition require a more detailed cost analysis regardless of the value of the contract. This includes situations where competition was determined to be inadequate. |

See the ***FEMA Pricing Guide*** for information about completing a Price or Cost Analysis.

## Determination of Contractor's Eligibility

The System for Award Management (sam.gov) should be used to verify contractors are not suspended or debarred before making an award. Documentation should be retained demonstrating that the verification was performed. 2CFR §200.212
Only responsible contractors that can successfully execute the contract should be considered for an award.
2CFR §200.318(h), PGFMS Ch. IV ¶6.a

**A responsibility determination must be documented and should include criteria such as:**

- Integrity
- Performance record
- Possessing necessary resources
- Compliance with public policy

## Inadequate Competition

- Competition is said to be inadequate when all of the competition requirements were followed and either only one or no contractors submitted a bid. 2CFR §200.320(f)(4)
- If the contract was not sufficiently publicized, or included an overly restrictive requirement that dissuaded competition, FEMA will not consider competition inadequate. PGFMS Ch. V ¶2.h.i.(4)b-c
- If the decision is made to move forward with a noncompetitive award without revising or cancelling the solicitation and re-soliciting offers or bids, it is important to document why there was inadequate competition. This may include evaluating whether or not the contract was sufficiently publicized or solicited and speaking with unresponsive contractors to determine their reasons for not responding. PGFMS Ch. V ¶2.h.i.(4)c.i

## Negotiating Profit for Contracts Awarded without Price Competition

When a contract is awarded without price competition, the contractor's profit must be negotiated. 2CFR §200.323(b), PGFMS Ch. V ¶4.b

**When negotiating profit the following factors should be considered:**

- Complexity of the work to be performed;
- Amount of subcontracting that will be required;
- Risk borne by contractor;
- Contractor's record of past performance;
- Contractor's investment; and,
- Industry profit rates for similar work in the area.

## Bid Guarantees and Bonding Requirements

Construction and facility improvement contracts or subcontracts > $150,000 must be bonded and if a bonding policy has not been pre-approved by FEMA and Cal OES, the following is required: PGFMS Ch. V ¶5

- Bidders must guarantee 5% of the bid price as assurance that, if awarded, they will execute the contract.
- Awarded contracts must provide a performance bond and a payment bond for the amount of the contract.

## Office of Inspector General (OIG) Audits

The DHS OIG has the right to audit any Disaster Assistance grant for three years following its closure. If an audit reveals that federal regulations were not followed, the OIG will recommend that FEMA de obligate the portion of the project's funding related to the non-compliance.

### Common OIG Audit Findings related to Contracting:

- Failing to procure contracts using full and open competition
- Failing to follow the affirmative steps
- Not maintaining sufficient contractor oversight;
- Not having written standards of conduct
- Not maintaining adequate records
- Not including all required contract provisions
- Using T&M (time-and-material) contracts before determining that no other contract was suitable
- Not document a price or cost analysis for contracts when required
- Not negotiating profit as a separate cost element when required
- Using cost-plus-a-percentage-of-cost contracts

See the OIG's ***Audit Tips for Managing Disaster-Related Project Costs*** for information.

## Additional Resources

| | | | |
|---|---|---|---|
| FEMA Procurement Guidance<br>A guide published by FEMA to assist with the procurements of property and services. |  | FEMA HMA Program Guidance<br>An overview of the Hazard Mitigation Assistance Program process with links to additional details. |  |
| FEMA Pricing Guide<br>A guide published by FEMA to assist with performing price and cost analyses. |  | FEMA Procurement Checklist<br>A checklist published by FEMA to assist applicants complying with the federal procurement regulations. |  |
| Required Contract Clauses<br>A list of the required contract clauses with sample language. |  | Key Points Regarding Contracting<br>A guide published by FEMA to detailing some of the most important aspects of contracting. |  |
| Code of Federal Regulations<br>Title 2, Subtitle A, Chapter II, Part 200 Uniform Administrative Requirements, Cost Principles, And Audit Requirements For Federal Awards. |  | Federal Acquisition Regulation (FAR)<br>The principal set of rules in the Federal Acquisition Regulations System. |  |
| FEMA's Procurement Under Grants Webinar Series<br>A series of webinar modules covering the procurement standards for Federal Awards. |  | Disaster Recovery Audits Reports<br>Audit reports published by the Office of Inspector General for FEMA disaster recovery grants. |  |

**EXHIBIT "B"**

**SPECIAL REQUIREMENTS**

**There are no special requirements.**

## 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. The City will compensate Consultant for the Services performed upon submission of a valid invoice, as described in Section 2.4.**

**III. The total compensation for the Services shall not exceed the Contract Sum, as provided in Section 2.1 of this Agreement.**

# 6. FEES

As a recognized small business, ISC works diligently to keep costs as competitive as possible, while maximizing the return on investment for our clients. With our extensive knowledge and experience developing HMPs, we are confident that we can deliver an LHMPU ahead of schedule, and under budget, as described in this proposal.

## 6.1 Fee Schedule

Based on the scope of work, the estimated cost for this project will be **$78,750**. This is a firm fixed price, inclusive of all labor, materials, travel expenses, and all other costs, direct and indirect, necessary for each task identified in the Scope of Work.

ISC will bill monthly for work performed for each task, unless otherwise directed by the client.

| Task | Price: |
|---|---|
| **Task 1: Project Management** | **$7,088** |
| **Task 2: Organizing Resources** | **$18,900** |
| **Task 3: Hazard Identification and Risk Assessment** | **$27,563** |
| **Task 4: Developing a Mitigation Strategy** | **$17,325** |
| **Task 5: Assisting in Plan Adoption, Monitoring, and Evaluation** | **$7,875** |
| **Total NTE Price** | **$78,750** |

## EXHIBIT "D"

### SCHEDULE OF PERFORMANCE

**I. Consultant shall perform all services and deliver all work products timely in accordance with the schedule attached hereto as Exhibit "D-1".**

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

## 5.8 Schedule

The project timeline is executable immediately upon the notice-to-proceed. The timeline does not account for any unforeseen, uncontrollable delays to the project. ISC has developed this project timeline with the intention to foster full collaboration with the project's key stakeholders and principals. This schedule will ensure the State and FEMA have adequate time to formally review and approve the plan. Our team is capable of initiating the project upon notice of contract award but will be prepared to begin immediately.

The below table is used as a representation of a general 6-month timeline for project completion.

| | Month | | | | | |
|---|---|---|---|---|---|---|
| **Task** | **1** | **2** | **3** | **4** | **5** | **6** |
| **Project Management** | | | | | | |
| **Project Initiation** | X | X | | | | |
| **PWP & Internal Controls** | X | X | | | | |
| **Project Reporting** | X | X | X | X | X | X |
| **Task 1: Plan Process** | | | | | | |
| **Planning Team & Meetings** | X | X | X | | | X |
| **Documentation of Process** | X | X | X | | X | X |
| **Public Outreach** | X | X | X | | | X |
| **Task 2: Risk Assessment** | | | | | | |
| **Hazard Identification & Profiles** | | X | X | X | | |
| **Hazard Mapping** | | | X | X | | |
| **Vulnerability Assessment** | | | | X | X | |
| **Capabilities Assessment** | | | | | X | |
| **Task 3: Mitigation Strategy** | | | | | | |
| **Develop Mitigation Goals** | | | X | | | |
| **Prioritize Mitigation Actions** | | | X | X | X | |
| **Implementation Plan** | | | | | X | |
| **Task 4: Plan Maintenance** | | | | | | |
| **Maintenance Strategy** | | | | | X | X |
| **Incorporation into Existing Planning** | | | | | | X |
| **Implementation Schedule** | | | | | | X |
| **Continued Public Involvement** | | | | | | X |
| **Task 5: Plan Development and Adoption** | | | | | | |
| **Draft Plan** | | | | X | X | |
| **Final Plan** | | | | | X | X |
| **Submission & Adoption** | | | | | X | X |

# MEMORANDUM
# CITY OF CHINO
# PUBLIC WORKS DEPARTMENT

**CITY COUNCIL MEETING DATE: MAY 21, 2024**

**TO:** **LINDA REICH, CITY MANAGER**

**FROM:** **HYE JIN LEE, PE, DIRECTOR OF PUBLIC WORKS**

## SUBJECT

Pine Avenue Improvements Project (ST203) - Professional Services Agreement with Moffatt & Nichol.

## RECOMMENDATION

Award a Professional Services Agreement for $362,810 to Moffatt & Nichol, Long Beach, CA, for consulting services for Environmental Compliance, Regulatory Permitting, Right of Way, and Utility Coordination for the Pine Avenue Improvements Project (ST203); and authorize the City Manager to execute all necessary documents on behalf of the City.

## FISCAL IMPACT

Sufficient funds are included in the Fiscal Year 2023-24 Capital Improvement Program Budget for the Pine Avenue Improvements Project (ST203). The total available budget is $1,588,457.74 as summarized below:

| Funding | Project Budget | Expenses/Encumbrances | Available Budget |
|---|---|---|---|
| **320 Transportation** | $6,755,910.00 | $5,197,452.26 | $1,588,457.74 |

## CITY OF CHINO MISSION / VISION / VALUES / STRATEGIC ISSUES

The recommendation detailed above further the City's values and strategic issues that serve as key pillars on which identified priorities, goals, and action plans are built, by fostering:

- Positive City Image
- Responsible Long-Range Planning

| | |
|---|---|
| Revenue: Click or tap here to enter text. | Expenditure: 3207100 – 48004 – ST203 |
| Transfer In: Click or tap here to enter text. | Transfer Out: Click or tap here to enter text. |

## BACKGROUND

Pine Avenue, between Euclid and Hellman Avenues, is a master-planned facility included in the City's Development Impact Nexus and Calculation Report, which will be a six-lane arterial roadway with a raised landscaped median. The Pine Avenue Widening and Improvement Project ("ST203") encompasses two main components: the widening of Pine Avenue between Euclid Avenue and Johnson Avenue to the ultimate six lane configuration ("Pine Widening") and improving the Euclid Avenue and Pine Avenue intersection ("Euclid/Pine Intersection"). Completion of Project ST203 will enhance roadway and intersection safety, increase traffic flow, relieve traffic congestion, and improve the quality of life for the residents in the regions including south Chino area; residents of Eastvale, Ontario, and Norco. Project ST203 requires additional rights-of-way, relocation of existing utilities, changes in vertical profile, modification of intersections, new pavement and striping, provisions for new sewer, domestic water, recycled water, drainage, and water quality facilities. Construction of these new improvements will require coordination with adjacent property owners and/or review and permits from Army Corps of Engineers, Orange County Flood Control District, Caltrans, the California Department of Fish and Wildlife, and utility companies. This project will raise the profile of the low point on Pine Avenue which is prone to flood inundation and closures during heavy rains.

On April 5, 2022, the City Council approved an amendment with IDC Consulting Engineers, Inc. ("IDC") for project ST203, specifically for environmental compliance, right-of-way ("ROW"), and utility relocation related to the Pine Widening. When the agreement with IDC expired on June 30, 2023, subconsultants Moffatt & Nichol and Monument ROW were engaged to ensure project continuity. On July 1, 2023, the City entered into agreements with both Moffatt & Nichol and Monument ROW to continue their previous tasks for Project ST203. Moffatt & Nichol managed the California Environmental Quality Act ("CEQA") and Regulatory Permitting tasks for Pine Widening, while Monument ROW managed ROW acquisition, utility relocation coordination, and potholing for both Euclid/Pine intersection and Pine Widening.

As noted above, Moffatt & Nichol's original contract only included the Pine Widening effort, however, on September 28, 2023, City staff was informed by the United States Army Corps of Engineers (USACE) that a Section 408 Permit would be required for both Pine Widening as well as the Euclid/ Pine Intersection improvements. To minimize impact to USACE jurisdiction and the amount of soil export, the Pine Widening design was revised to match a previous conceptual plan approved in 2021 by the USACE. Due to this revision, and the requirement for both Pine Widening and Euclid/Pine Intersection improvements to obtain USACE Section 408 Permit, it was recommended to combine the 408 Permit environmental scope to cover both components. This additional effort requires expansion to the physical limits of the study area for the CEQA and the National Environmental Policy Act documentation and support required by the USACE for the Section 408 Permit. City staff therefore made the determination to advertise a Request for Proposals ("RFP") for the expanded scope for both the environmental, right of way acquisition, and utility coordination related to ST203 to ensure the best pricing and quality for the City.

## ISSUES/ANALYSIS

On November 30, 2023, Staff solicited an RFP for Environmental Compliance and Regulatory Permitting Services; ROW Acquisition; and Utility Coordination and Relocation related to project ST203. The City's RFP informed potential proposers that design work is underway, with some

aspects already started and various studies either initiated or finished. Additionally, the City intended to terminate existing contracts while utilizing all information gathered to date and carrying over uncompleted tasks to this new contract. The existing agreements for ROW Acquisition, Utility Coordination, and Relocation were issued to maintain project progress while the City solicited an RFP for the remaining work. Once the new agreement is awarded, these current agreements will be closed, having reached their $50,000 threshold for City Manager authority according to the City's Purchasing Ordinance and Procurement Guidelines. Staff received four (4) proposals which were evaluated and ranked by the following criteria:

- Experience/qualifications
- Past performance/references
- Plan methodology/project approach
- Quality of responsiveness of proposal
- Cost evaluation

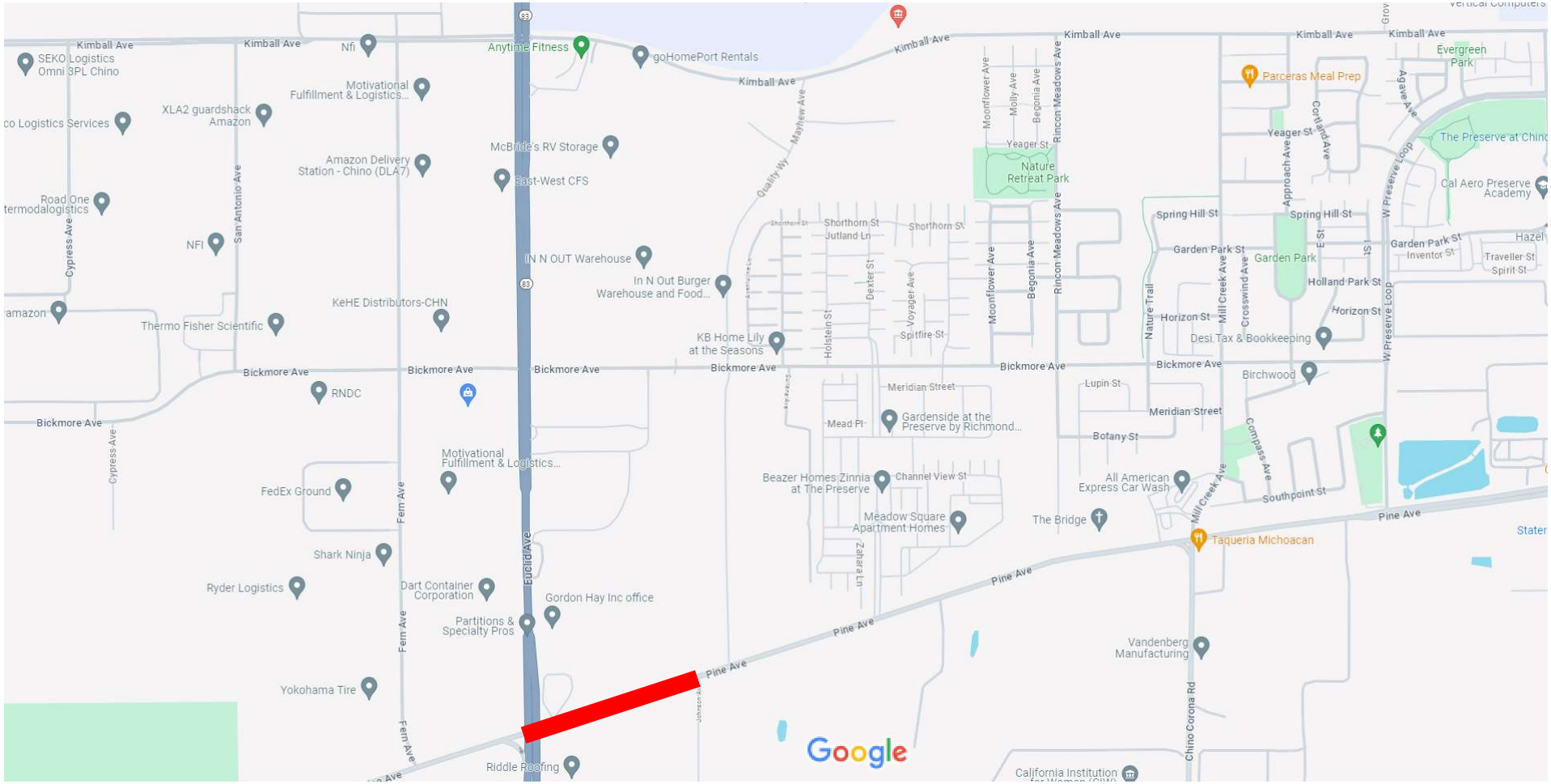
Staff selected the proposed consultant within the guidelines of the State of California Government Code and the City's Purchasing Ordinance. The final ranking of the firms is shown below.

| RANK | CONSULTANT | LOCATION |
|---|---|---|
| 1 | Moffatt & Nichol | Long Beach, CA |
| 2 | Dokken Engineering | Folsom, CA |
| 3 | Ruth Villalobos & Associates, Inc. | Ontario, CA |
| 4 | MNS Engineers, Inc. | San Bernardino, CA |

Staff recommends that the City Council approve a Professional Services Agreement for $362,810 to Moffatt & Nichol, Long Beach, CA for Consulting Services for Environmental Compliance; Regulatory Permitting; Right of Way; and Utility Coordination related to the Pine Avenue Widening and Improvements Project (ST203).

Attachments: Exhibit A – Project Location Map
Exhibit B – Professional Services Agreement – Moffatt & Nichol

# Project No. ST203
# PINE AVENUE WIDENING & INTERSECTION IMPROVEMENTS



**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 7th 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, PM2.5, and ozone. The project area is currently nonattainment for ozone and PM2.5. Significant increases in these pollutants can lead to adverse health effects and nuisance concerns. PM2.5 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 enbironmental 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. Is 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"

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

## 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.**

# MEMORANDUM
# CITY OF CHINO
# PUBLIC WORKS DEPARTMENT

**CITY COUNCIL MEETING DATE: MAY 21, 2024**

**TO:** **LINDA REICH, CITY MANAGER**

**FROM:** **HYE JIN LEE, PE, DIRECTOR OF PUBLIC WORKS**

## SUBJECT

Euclid Bridge Avenue Project (ST243) - Professional Services Agreement (PSA) with Project Partners, Laguna Hills, CA.

## RECOMMENDATION

1) Update Fiscal Year 2023-24 Capital Improvement Program Budget for the Euclid Avenue Bridge Project (R2401) to include a new project number ST243 and appropriate $426,000 from the Transportation Fund (320) backfilled by the General Fund (100) reserves with a corresponding increase to the project budget for project management services; 2) award a Professional Services Agreement to Project Partners, Laguna Hills, CA for $426,000 for Project Management Services for the Euclid Avenue Bridge Project (ST243); and 3) authorize the City Manager to execute all necessary documents on behalf of the City.

## FISCAL IMPACT

The Fiscal Year 2023-2024 Capital Improvement Program Budget for the Euclid Avenue Bridge Project (R2401) will need to be updated to include a new project number ST243 and an appropriation of $426,000 from the Transportation Fund (320) backfilled by the General Fund (100) reserves. There are sufficient General Fund reserves for this appropriation.

## CITY OF CHINO MISSION / VISION / VALUES / STRATEGIC ISSUES

The recommendation detailed above further the City's values and strategic issues that serve as key pillars on which identified priorities, goals, and action plans are built, by fostering:

- Positive City Image
- Responsible Long-Range Planning

| | |
|---|---|
| Revenue: Click or tap here to enter text. | Expenditure: 3207100 – 48003 \| 48007 – ST243 |
| Transfer In: 3201000-50000 | Transfer Out: Click or tap here to enter text. |

## BACKGROUND

On November 7, 2023, the City Council awarded a Professional Services Agreement to Biggs Cardosa Associates, Inc., Orange, CA for Engineering Design and Bid Support Services for the Euclid Avenue Bridge Project ("ST243").

Euclid Avenue is a major regional highway/arterial that provides direct access to the 71/91 Fwy and 60 Fwy. Project ST243 will raise the profile of Euclid Avenue at Chino Creek to accommodate the free flow of storm water for most storm events. The highway will become an all-weather facility and will be able to serve motorists year-round without having to be closed during flash floods. It will increase motorist safety, eliminate the recurring maintenance cost for clean-up and debris removal after flooding. It will also end the inconvenience to motorists from repeated road closures during the winter months. The project will also add pedestrian and bicycle facilities to make it a multi-modal corridor for all users.

Due to the scale and complexity of the project, the City needs an experienced Project Management firm to provide overall project management, coordination, and supervision of project consultants and sub-consultants to facilitate performance of the work. Project Management services are intended for the duration of project design and bid management, which is anticipated to be approximately 30 months.

## ISSUES/ANALYSIS

Staff solicited an informal Request for Proposals ("RFP") from three (3) consultants on the City's approved On-Call Consultants list. On March 20, 2024, two (2) proposals were received. Staff evaluated and ranked the proposals based on the qualifications of the firm; past related experiences and performance; personnel/staffing plan; and work plan. Staff selected the proposed consultant within the guidelines of the State of California Government Code and the City's Purchasing Ordinance. The proposed project manager provides over 30 years of experience in complex municipal project management and collaboration with Caltrans and the United States Army Corps of Engineers. The final ranking of the firms is shown below.

| RANK | CONSULTANT | LOCATION |
|---|---|---|
| 1 | Project Partners | Laguna Hills, CA |
| 2 | Z&K Consultants | Riverside, CA |

Staff recommends that the City Council approve a Professional Services Agreement for $426,000 with Project Partners, Laguna Hills, CA for Project Management Services for the Euclid Avenue Bridge Project (ST243).

Attachments: Exhibit A - Project Location Map
Exhibit B - Professional Services Agreement – Project Partners




# R2401 EUCLID AVENUE BRIDGE PROJECT

**EXHIBIT A –**
**PROJECT LOCATION MAP**

**Project Name/No.: Project Management Services for Euclid Bridge Project (R2401)** **Contract No.: _____**

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

**AGREEMENT FOR SERVICES**
**BETWEEN THE CITY OF CHINO AND**
**PROJECT PARTNERS**

THIS AGREEMENT FOR SERVICES (herein "Agreement") is made and entered into this 21st day of May, 2024 ("Effective Date") by and between the City of Chino, a California municipal corporation ("City") and **Project Partners**, 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 **Four Hundred Twenty-Six Thousand Dollars and Zero Cents ($426,00.00)** (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 (1) year 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, PE, 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 and Zero Cents ($0.00) 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:**
**PROJECT PARTNERS:**

By:_____

Name:
Title:

By:_____

Name:
Title:

Address: 23195 La Cadena Dr., Suite 101
Laguna Hills, CA 92653

**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.**

**I. Consultant will utilize the following personnel to accomplish the Services:**

**A. Amir Modarressi**

**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"**

**SCOPE OF WORK**

The City will furnish a Project Manager (PM) to coordinate all Consultant operations with the City, including, but not limited to, tracking progress of the work and administering subcontracts. The City's PM will provide overall project management, coordination, and supervision of project staff to facilitate the performance of the work in accordance with standards and requirements of the City and other applicable standards and requirements.

Tasks may encompass monthly invoicing & progress reporting, coordination and meetings, project management planning, quality assurance (QA) / quality control (QC), and project controls.

## Duties include:

- Establish and apply internal accounting methods and procedures acceptable to the City for documenting and monitoring contract costs.
- Conduct up to thirty-six (36) PDT regular meetings virtually and prepare agendas and meeting minutes.
- Attend weekly or bi-weekly virtual meetings between the Consultant Project Manager and City Project Manager.
- Attend up to ten (10) meetings with utility companies.
- Conduct up to two (2) field visits to review utilities in the field.
- Conduct coordination with the City's staff, other stakeholders and agencies in monthly Project Development Team (PDT) meetings or technical and focused meetings.
- Communicate and distribute project records and information to all necessary parties and respond to all internal requests for information about the project.
- Convey the Scope of Services and technical requirements, procedures and technical requirements that are to be followed in developing project deliverables, and description of the responsibilities of each participant in the project through a comprehensive Project Management Plan (PMP).
- Ensure the PMP includes scope of services, log of deliverables, baseline project schedule, project electronic filing system, CADD procedures, invoicing instructions, design standards, health and safety plan, general prevailing wage determinations, and risk assessment register.
- Prepare and maintain a Quality Management System (QMS) Manual throughout performance of services.
- Hold a training session with all project participants responsible for the development and/or checking of deliverables to ensure the appropriate procedures are followed.
- Prepare and update the Project schedule on a monthly basis or as needed and provide to the City's PM for review.
- Provide regular reporting on the project status, including, but not limited to, schedule, contract budget, general progress on project tasks, and project issues and concerns.

- Maintain project files using the Caltrans Uniform System in electronic format. Within two weeks of Notice to Proceed (NTP), the Consultant will provide the City a detailed baseline schedule, indicating milestone, major activities and deliverables for review and comments.

**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"**

**Project Partners' billing rate for our proposed Project Manager:**

| Classification | Hourly Billing Rate for 2024-2026 | Total Budget |
|---|---|---|
| **Senior Project Manager** | **$150.00** | **$426,000** |

***Note: City approved Mileage (billed at current IRS rate) and Expenses will be billed as incurred with no additional markup.*

## 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.**

# MEMORANDUM
# CITY OF CHINO
# PUBLIC WORKS DEPARTMENT

**CITY COUNCIL MEETING DATE: MAY 21, 2024**

**TO:** **LINDA REICH, CITY MANAGER**

**FROM:** **HYE JIN LEE, PE, DIRECTOR OF PUBLIC WORKS**

## SUBJECT

Benson Reservoir Improvement Project (Project No. WA213) - Professional Services Agreement - Dudek, Encinitas, CA for Engineering Design and Bid Support Services.

## RECOMMENDATION

1) Award a Professional Services Agreement to Dudek, Encinitas, CA for $694,851 for Engineering Design and Bid Support Services for the Benson Reservoir Improvement Project (WA213); 2) authorize expenditures up to $83,916 for project management services; and 3) authorize the City Manager to execute all necessary documents on behalf of the City.

## FISCAL IMPACT

Sufficient funds are budgeted in the Fiscal Year 2023-2024 Capital Improvement Program for the Benson Reservoir Improvement Project (WA213). The total available budget is $4,401,007.98 as summarized below:

| WA213 | Adopted Budget | Expenses/Encumbrances | Available Budget |
|---|---|---|---|
| **520 Water Fund** | $4,426,000.00 | $24,992.02 | $4,401,007.98 |

## CITY OF CHINO MISSION / VISION / VALUES / STRATEGIC ISSUES

The recommendation detailed above further the City's values and strategic issues that serve as key pillars on which identified priorities, goals, and action plans are built, by fostering:

- Financial Stability
- Responsible Long-Range Planning

| | |
|---|---|
| Revenue: Click or tap here to enter text. | Expenditure: 5207310 – 48004 – WA213 |
| Transfer In: Click or tap here to enter text. | Transfer Out: Click or tap here to enter text. |

## BACKGROUND

The Benson Water Treatment Plant ("WTP") is a centralized treatment plant which treats groundwater supplied from Wells 5 and 9, located onsite, and Well 10, located offsite. The Benson WTP consists of 3,400-gpm capacity Granular Activated Carbon vessels which removes 1,2,3 TCP and a 5,000-gpm design capacity Calgon ISEP ion exchange treatment system which removes nitrate 35. The Benson WTP supplies treated water to the 1.5-million-gallon (MG) capacity Reservoir 3 which supplies the Benson Booster Pump Station (BPS) and boosts the flow into the 980 zone.

The existing reservoir was constructed in 1961 and does not meet current seismic requirements. The City is planning to replace this existing domestic water supply reservoir with a new 1.5 MG capacity reservoir on the northwest corner of the current site. The existing reservoir will be demolished after the installation of the new reservoir. This allows for maintaining operations at the Benson WTP.

## ISSUES/ANALYSIS

On October 17, 2023, the city solicited a Request for Proposals (RFP) for Engineering Design and Bid Support Services for the Benson Reservoir and Improvement Project (WA213). With two proposals submitted, staff evaluated and ranked the proposals based on the following criteria:

- Experience/qualifications
- Past performance/references
- Plan methodology/project approach
- Quality of responsiveness of proposal
- Cost evaluation

The proposed consultant was selected within the guidelines of the State of California Government Code and the City's Purchasing Ordinance. Staff successfully negotiated pricing with the top ranked consultant. The final ranking of the firms is shown below.

| RANK | CONSULTANT | LOCATION |
|---|---|---|
| 1 | Dudek | Encinitas, CA |
| 2 | Webb & Associates | Riverside, CA |

The estimated project design costs are itemized below:

| **WA213** | | |
|---|---|---|
| **Project Task** | **Vendor** | **Totals** |
| Design Engineering & Bid Support Services | Dudek | $694,851.00 |
| Project Management | Z&K Consultants Inc. | $83,916.00 |
| | **Total:** | **$778,767.00** |

Based on the ranking and information provided, staff selected Dudek to provide these services. Additionally, at the City's request, the cost proposal includes two optional services:

| Optional Service | Fee |
|---|---|
| Water System Hydraulic Model | $8,919.00 |
| Preparation of Mitigated Negative Declaration (MND) for California Environmental Quality Act (CEQA) compliance | $86,715.00 |

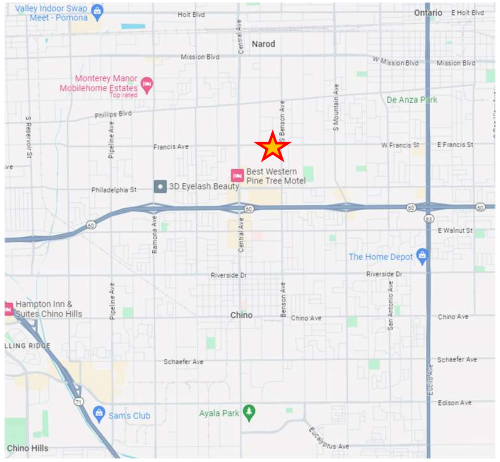
Staff will include the expenses for these two optional services in the award to avoid the necessity for future budget amendments. In addition to the design engineering and bid support services, City Staff determined that Z&K Consultants Inc. ("Z&K") is the best fit to manage the project due to Z&K's knowledge and experience, as they worked with City staff on preliminary design and engineering for this project. Z&K also provides competitive hourly rates compared to other consultants with similar qualifications. The City will utilize the existing on-call consultant agreement with Z&K. Z&K hourly rate is $157 compared to other consultants on the on-call list who range from $150 to over $200.

Therefore, Staff recommends that City Council award a Professional Services Agreement for $694,851 to Dudek, Encinitas, CA for Engineering Design Services for the Benson Reservoir Improvement Project (WA213). Staff also recommends that the City Council authorize expenditures up to $83,916 for project management services.

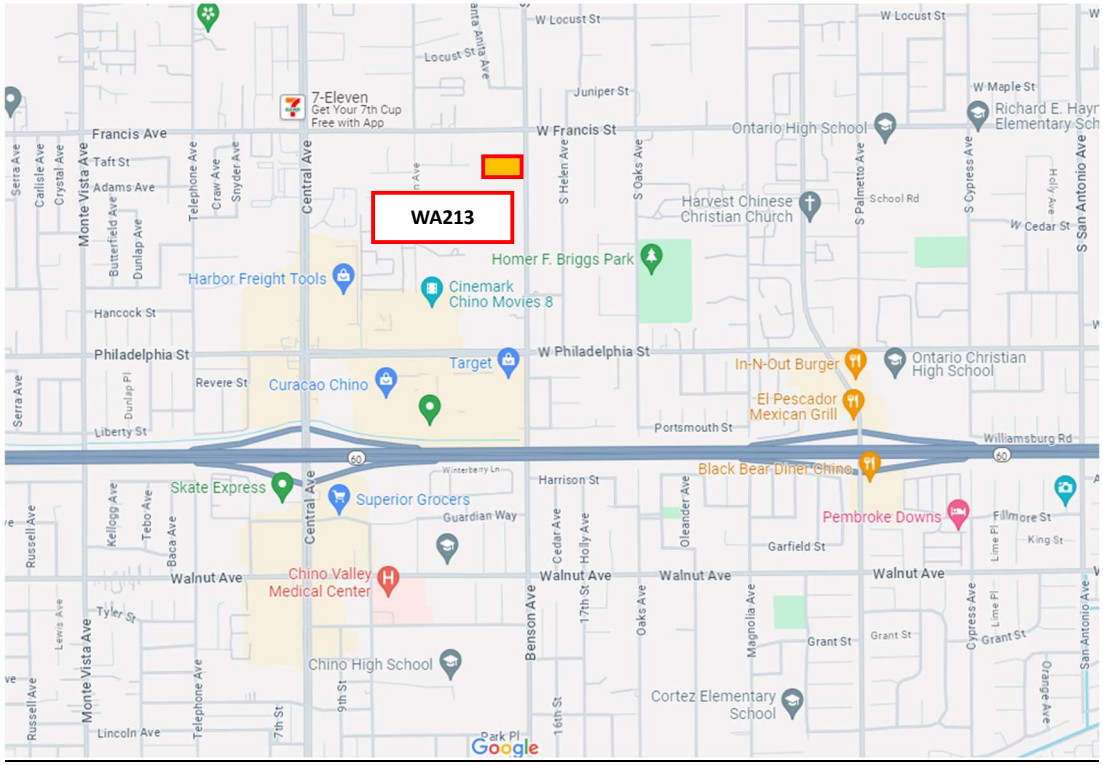
This project will enhance the reliability of our water service to our customers by providing storage capacity and seismic-compliant reservoir.

Attachments: Exhibit A – Project Location Map
Exhibit B - Professional Service Agreement – Dudek (WA213)

# Project No. WA213 – BENSON AVENUE RESERVOIR IMPROVEMENTS




**VICINITY MAP**




**PROJECT LOCATION**

**Project Name/No.: Engineering Design & Bid Support Svcs for WA213** **Contract No.: _____**

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

**AGREEMENT FOR SERVICES**
**BETWEEN THE CITY OF CHINO AND**
**DUDEK**

THIS AGREEMENT FOR SERVICES (herein "Agreement") is made and entered into this 21st day of May, 2024 ("Effective Date") by and between the City of Chino, a California municipal corporation ("City") and **Dudek**, 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 **Six Hundred Ninety-Four Thousand Eight Hundred Fifty-One Dollars and Zero Cents ($694,851.00)** (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 (1) year 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 **Natalie Avila, Associate 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 and Zero Cents ($0.00) 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:**
**DUDEK:**

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**

**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"

## SCOPE OF SERVICES

### Task 1: As-Built Research, Investigation, and Review

Dudek will review the City's information provided as part of the RFP and submit an information request log to the City to obtain additional data/information. This additional information will assist Dudek in Developing a complete understanding of the Benson WTP, reservoir, and BPS infrastructure. The information request, as well as any additional background information and City suggestions, recommendations, directions, and other requirements will be discussed during a Background Materials Meeting with City staff (see Task 12).

**Deliverables:**

- Information Request Log

### Task 2: Preliminary Design Report and Final Engineering Design

#### Task 2.a: Preliminary Design Report

Dudek will prepare a Preliminary Design Report (PDR) that will include Items 2 through 11 in Task 2a and Item 1 in Task 6 in the RFP. Item 1 (As-Built Research, Investigation, and Review) will be completed under Task 1 above, and a summary of the findings will be incorporated into the PDR. Task 3 (Field Investigations) will occur concurrently with this Task 2. The PDR will also include a 30% design and Class IV cost estimate. It is assumed that the 30% design will consist of a single drawing showing the preliminary site layout, including location of the new reservoir, access road alignments, drainage improvements, preliminary grading, and proposed piping alignments. Dudek will submit a Draft PDR to the City for comments. Dudek will incorporate the City's comments and submit a Final PDR. Once accepted by the City, Dudek will begin development of contract documents related to grading. It is assumed that there will not be changes to the grading concept after the preliminary approach is accepted.

Dudek will include a hydraulic analysis of the conveyance pipelines and treatment systems as part of this task. It is assumed the City will provide a hydraulic model of the existing Benson WTP that has been calibrated and is up to date. Dudek assumes hydraulic modeling is limited to the system between the three wells and the Benson BPS. For the purposes of this proposal, modeling of the system downstream of the BPS is not included. In the event that the City does not have a pre-existing hydraulic model, Dudek has added an optional task to the fee to include creation of a new hydraulic model for the Benson WTP system (Task 14).

The mural conceptual design will be included within the PDR. Dudek will create three conceptual design drafts with the engineered specifications for the client to choose from. We will provide three rounds of revision on one design as needed. Final illustration design will be provided in scalable vector format. Dudek assumes the client will work with a vendor/subconsultant for the actual execution of the mural.

This task will also include preparation of a project description for use in the environmental impact review and Mitigated Negative Declaration (MND) described in Task 5, including figures depicting the regional and vicinity locations, site plans, and other illustrations to assist the reader in understanding the proposed project.

Dudek has included labor hours and fee for one site visit (as mentioned in Task 12) to the Benson Reservoir 3 site to fully understand the existing conditions of the site and site access. A Design Review Meeting is also included after submittal of the 30% design/PDR (reference Task 12).

**Deliverables:**

- Draft PDR
- Final PDR

#### Task 2.b: Final Engineering Design

Following submission of the Final PDR, Dudek will prepare a complete set of Construction Drawings. Dudek

will submit 60%, 90%, and Final Drawings to the City for review and comment and incorporate all comments into subsequent submittals. Dudek has included labor hours and fee for one site visit (as mentioned in Task 12) to verify the final design is constructible given existing site conditions. The Final Drawings will be finalized construction drawings ready to be publicly bid. Dudek anticipates a total of 53 drawings will be required.

It is assumed for the purposes of this proposal that no modifications are required to the existing booster pump station or wellhead pumps. If the hydraulic analysis indicates that modifications or any additional construction is required, the work can be added Dudek will bill this on a time and materials basis pending approval of the City.

California Environmental Quality Act (CEQA) documentation will also be prepared and submitted as part of this task (reference Task 5).

**Deliverables:**

- 60% Drawings: Electronic Submittal (PDF)
- 90% Drawings: Electronic Submittal (PDF)
- Final Drawings: Electronic Submittal (PDF and CAD files) + 1 hard copy (mylar)

## Task 3: Field Investigations

As part of this task, Dudek will perform a geotechnical investigation, topographic survey, and utility research. The resulting information will be summarized in the PDR submitted under Task 2.

### Task 3.a: Geotechnical Investigation

Dudek's subconsultant, Leighton, will provide geotechnical services for this project. Leighton will mark the proposed boring notifications and notify both the City and DigAlert before drilling four hollow-stem auger borings. Two borings will be within the proposed location of the new tank, and two will be drilled in locations to collect information about infiltration. Permeameter infiltration tests will be performed in general accordance with San Bernardino County guidelines to estimate infiltration rates. It is assumed that water will be readily available on site for Leighton's use for infiltration testing. Borings will be drilled, logged, and sampled to a maximum depth of 50 feet below existing grade or practical refusal, whichever is deeper. It is assumed the City will waive permit fees for this project.

Soil samples will be transported to the in-house geotechnical laboratory for testing. The laboratory results will be analyzed and summarized in a report that will be signed and stamped by a California-licensed Geotechnical Engineer. The report will include site conditions, geologic hazards, seismicity, and present recommendations for grading and backfill, foundations, lateral earth pressures, corrosivity, concrete, pavement design, and temporary excavations.

Additionally, Dudek's subconsultant RF Yeager Engineering will perform a corrosivity assessment on the soil to determine what level of corrosion control will be required for buried yard piping. This will include an information review, conducting corrosion engineering testing, reviewing geotechnical soil chemical analysis data, conducting stray current interference review, and providing a Corrosivity Assessment Report.

**Deliverables:**

- Geotechnical Report
- Corrosivity Assessment Report

### Task 3.b: Topographic Survey

Dudek's subconsultant, Guida Geospatial Solutions, will provide a topographic survey of the project site. Guida will establish control based on the California Coordinate System and Local County/City Benchmarks on NGVD29. Record property lines will be plotted as shown on recorded maps. Guida will then set targets and fly

aerial photography producing a 1"=20' scale topographic map at 1-foot contours including a color digital orthophoto at .25 GSD and Digital DTM data suitable for AutoCAD.

**Task 3.c: Utility Research and Notification**

Dudek will perform an exhaustive existing utility investigation within the project area. This includes the entire Benson WTP parcel, as well as Benson Avenue to the east. Dudek will retrieve a list of utility agencies that may have utilities within the project area using the DigAlert database. Dudek will draft utility information request letters requesting verification of location, size, and depth of facilities within the project limits, including figures showing the area of interest. These letters will be sent to the City, who will send notices at the 30%, 60%, and 90% design phases. Dudek will compile and catalog a list of utility agencies, including contact persons, numbers, addresses, email addresses, dates of transmittals, agency record drawings, and response to relocate or perform maintenance activities. It is assumed the City will provide available as-built records for City-owned facilities (water, sewer, and storm drain).

**Deliverables:**

- Utility Request Letters
- Utility Agencies Contact List

## Task 4: Hazmat Report

Dudek's subconsultant, Aurora, will conduct asbestos and lead-based paint inspections, and lead soil sampling. Aurora will collect bulk asbestos, paint chip, and soil samples to be transported under chain of custody to an accredited laboratory. The asbestos samples will be analyzed by polarized light microscopy, and the bulk paint chip and soil samples will be analyzed by atomic absorption. It is assumed 20 asbestos bulk samples, 5 lead bulk samples, and 4 soil samples will be taken. Two final reports will be submitted: one for asbestos testing, and one for lead-based paint and soil testing. The reports will document material types, conditions, general asbestos quantities, and lead content. The inspection will be based on the reservoir only and will include exterior components that are safely accessible from the ground, the permanently installed ladder, or a 10-foot portable ladder. Soil samples will be taken from the top half-inch of soil. Dudek will incorporate mitigation measures into the final design documents based on the results of this sampling.

**Deliverables:**

- Asbestos Inspection Report
- Lead-Based Paint and Soil Testing Report

## Task 5: Permitting

The permits and permit conditions will be included in the contract documents, specifications, and plans. It is assumed the City will pay for permit review and/or application fees. Dudek included five meetings with regulatory agencies as part of this task, which are assumed to occur throughout the 60% design.

**Task 5.a: Environmental**

Draft MND: Dudek anticipates CEQA environmental review will rely on a MND prepared with the City as lead agency. Dudek will conduct the following technical analyses to support the project's compliance with CEQA: air quality/greenhouse gas emissions, biological resources, cultural resources, hazards and hazardous materials, and noise. Dudek will then prepare an MND using a version of the Initial Study template approved by the City, incorporating the latest Appendix G thresholds from the State CEQA Guidelines. The results of the technical analyses will be incorporated into the administrative draft MND. For all other environmental topics included in the administrative draft MND, Dudek will prepare qualitative analyses.

Dudek will draft a tribal notification letter for the City's outreach process pursuant to Assembly Bill 52 (AB 52). Dudek will provide draft text of the letter and assumes the City will distribute the letters. Dudek will review the results of the AB 52 outreach process provided by the City and will incorporate them into the MND's tribal cultural resources section.

Dudek will prepare and assist the City with circulation of a Notice of Intent for the Public Draft MND. Dudek will transmit the Public Draft MND to the State Clearinghouse. For cost estimating purposes, Dudek assumes mailing up to 100 copies of the Notice of Intent to Adopt an MND (NOI) to agencies and interested parties based on a distribution list developed by Dudek and the City. Dudek will post the NOI with the San Bernardino County Clerk and publish a newspaper advertisement, the filing fee for which will be reimbursed by the City. Dudek's proposal assumes no attendance at hearings or public meetings during the CEQA public review period.

Final MND: Dudek will compile and review comment letters and prepare draft responses to comments. For cost estimating purposes, Dudek assumes that no more than 10 substantive comments will be received and require technical input to prepare and provide responses to these comments. Dudek will revise the Draft MND if needed for clarification of information based on the public review period and prepare a Final MND including the revisions and the responses to comments. Dudek assumes no additional technical analysis will be required for clarifications in the Final MND, and that no figure revisions will be needed. Dudek assumes no attendance at public hearings associated with adoption of the MND by the City Council. Following Final MND adoption and project approval, Dudek will prepare and post with the State Clearinghouse and San Bernardino County Clerk a Notice of Determination. Dudek assumes the City will pay the applicable filing fees, which are not included as a reimbursable expense in this proposal.

**Deliverables:**

- Draft MND
- Final MND

### Task 5.b: Other Permits

During the preliminary design phase, Dudek will identify which permits will be required for this project, and define the associated documentation required. During the 60% design phase, Dudek will begin coordination with the identified permitting agencies, which are expected to include County of San Bernardino Public Health for Environmental Health Services, the State Water Resources Control Board's Division of Drinking Water, the City of Chino Building and Engineering Department, and any other jurisdictional permitting agencies identified during the preliminary design phase. During the 90% design phase, Dudek will prepare permits and permit conditions, and/or amend existing permits as necessary. This permit preparation will coincide with the start of the 90% design phase to ensure all design elements are completely defined and set with little to no chance of realignment, equipment change, etc.

## Task 6: Site Improvements

Dudek agrees with this task's provided scope of work as defined in the RFP. The site improvements listed in the RFP will be covered in the plans and specifications.

The following describes Dudek's methodology for developing the grading and drainage portion of this task:

1. Evaluation of Existing Drainage features: Concurrently with Task 1 (As-Built Research, Investigation, and Review), Dudek will perform an investigation of the existing drainage features on site, including the existing basin, to develop a holistic drainage approach with the goal of simplifying the on-site drainage features to the greatest extent possible. Dudek will also obtain as-builts for the existing storm drain in Benson Avenue.

2. Preliminary Site Design: As part of the PDR (Task 2a) Dudek will provide a preliminary site layout and grading exhibit showing the recommended location of the proposed improvements, including but not limited to the reservoir, access roads, parking areas, drainage improvements, and the location of a proposed storm drain connection. Preliminary hydrology and hydraulic calculations will be performed at this stage to

determine size and suitability for all drainage features proposed on site, with more detailed calculations to be performed in subsequent design stages. A brief summary of the preliminary calculations will be provided as part of the PDR.

a. Assumptions:
   i. Drainage from the reservoir site and overflow piping will outlet to the storm drain within Benson Avenue.
   ii. Only on-site flows will be considered for designing on-site drainage improvements.

3. Final Grading and Drainage Design: As part of the Task 2b (Final Engineering Design) Dudek will develop precise grading and drainage plans based on the preliminary layout agreed upon by the City in Task 2a. Dudek will also perform detailed hydrology and hydraulics calculations in conformance with current San Bernardino County methodology. Drainage features will include overflow piping, on-site drainage improvements, and a storm drain lateral connection to the existing storm drain located in Benson Avenue. Dudek will provide a brief drainage design memorandum to describe the methodology and results of all drainage calculations performed as part of the design. It is assumed that the draft drainage design memo will be submitted at the 60% design phase and a final version of the memo will be provided with final plans.

The following assumptions are made for the electrical portion of this task:

1. The existing electrical system at the treatment plant has adequate capacity and space available to power the new equipment.
2. The existing Programmable Logic Controller (PLC) has adequate spare I/O and this design does not require a new PLC, existing PLC modification, or radio.
3. The City will perform all PLC and SCADA programming.
4. The City will provide security and automatic gate requirements, standards, and/or details.

**Deliverables:**

- Draft and Final Drainage Design Memorandum

## Task 7: WQMP

Dudek will evaluate the project's new and/or replaced impervious area and prepare the required Water Quality Management Plan (WQMP), based on the San Bernardino County Stormwater Program's 2013 WQMP Technical Guidance Document requirements and the County of San Bernardino Areawide Stormwater Program (Order No. R8-2010-0036) (Municipal Permit) issued by the Santa Ana Regional Water Quality Control Board. It is anticipated the project will be a redevelopment project with more than 5,000 square feet of new and/or replaced impervious area and will be considered a Priority Development Project. The project is also anticipated to be exempt from the hydromodification requirements because the project drains to an exempt system. The project will include an infiltration or biofiltration basin to treat all required imperious area. It is assumed that a preliminary WQMP will be provided at the PDR stage and it will be updated for the 60%, 90%, and final design submittals.

**Deliverables:**

- Preliminary, 60%, 90%, and Final WQMP

## Task 8: Engineer's Quantity and Cost Estimate

The Bid Schedule and Engineer's Opinion of Probable Construction Cost (EOPCC) will be provided concurrently with plan submittals at the 60%, 90%, and Final design stages (see Task 2.b). All City comments

will be incorporated into subsequent submittals. Quantities will be clearly shown in both the Bid Schedule and EOPCC. Please note that in the schedule, the Bid Schedule and EOPCC submittals are bundled with Task 2 for clarity.

**Deliverables:**

- 60% Bid Schedule and EOPCC: Electronic Submittal (PDF)
- 90% Bid Schedule and EOPCC: Electronic Submittal (PDF)
- Final Bid Schedule and EOPCC: Electronic Submittal (PDF) + 1 hard copy

## Task 9: Construction Specifications and Bid Documents

The Construction Technical Specifications and Bid Documents will be provided concurrently with plan submittals at the 60%, 90%, and Final design stages (see Task 2.b). All City comments will be incorporated into subsequent submittals. Dudek will prepare the specifications and bid documents using the Standard Specifications for Public Works Construction (Greenbook) 2018 edition, and the City of Chino Standard Plans and Specifications and Construction Bid Item Descriptions. The Final Specifications and Bid Documents will be ready to be put out to public bid. Please note that in the schedule, the Technical Specifications and Bid Documents submittals are bundled with Task 2 for clarity.

**Deliverables:**

- 60% Technical Specifications and Bid Documents: Electronic Submittal (PDF)
- 90% Technical Specifications and Bid Documents: Electronic Submittal (PDF)
- Final Technical Specifications and Bid Documents: Electronic Submittal (PDF) + 1 hard copy.

## Task 10: Plan Interpretation and Bidding Assistance

Dudek will provide assistance during bidding by responding to Bidder's questions, preparing up to three (3) addenda to the plans and specifications for the City's review and approval, assisting with bid review and providing a recommendation for award of the project, and preparing a set of conformed plans and specifications after the bidding process is complete.

## Task 11: Construction Support and Shop Drawing Review

Dudek will provide Construction Support by attending the pre-construction meeting, tracking and responding to requests for information (RFIs) including coordination of City input, and tracking and reviewing submittals including coordination of City review comments. Dudek assumes the level of effort outlined below will be required for this task:

- It is assumed that 30 RFIs will be reviewed and addressed. If additional RFIs occur, Dudek will bill this on a time and materials basis pending approval of the City.
- It is assumed that 100 material submittals (inclusive of re-submittals) will be reviewed by the Dudek team. Submittal reviews are anticipated to average 1.5 hours per submittal and 0.5 hours per resubmittal, depending on the complexity of the submittal. If additional submittals are required, Dudek will bill this on a time and materials basis pending approval of the City.

## Task 12: Meetings and Site Visits

The following meetings and site visits are included in Dudek's scope throughout the duration of this project:

- One Kickoff Meeting—*in person*
- One Background Materials Meeting (reference Task 1)—*virtual*
- Two Site Visits (one during preliminary design, and one during final design)—*in person*
- Three Design Review Meetings (after 30%/PDR, 60%, and 90% submittals)—*virtual*
- Five Coordination Meetings with Utility Companies—*virtual*
- One Pre-Construction Meeting—*in person*

- One Coordination Meeting with Emerson—*in person*

Please note that in the schedule Task 12 is distributed throughout the tasks where each meeting occurs, as indicated in orange italicized text. Coordination meetings are not shown in the schedule because they will occur as needed.

## Task 13: As-Built Drawings

Dudek will prepare record drawings electronically on 24 by 36-inch sheets, with final record drawing submitted electronically in PDF format. The drawings will be based on comments from the inspector, comments from City staff, and/or contractor's field changes made during construction.

**Deliverables:**

- Record Drawings – Electronic Submittal (PDF)

**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"

| TASK | TOTAL FEE |
|---|---|
| Task 1 – As-Built Research, Investigation, and Review | $8,518.00 |
| Task 2 – Preliminary Design Report and Final Engineering Design. | $257,746.00 |
| Task 3 – Field Investigations | $53,621.00 |
| Task 4 – HazMat Report | $5,617.00 |
| Task 5 – Permitting | $27,240.00 |
| Task 6 – Site Improvements | $32,472.00 |
| Task 7 – WQMP | $36,275.00 |
| Task 8 – Engineer's Quantity and Cost Estimate | $22,728.00 |
| Task 9 – Construction Specifications and Bid Documents | $47,278.00 |
| Task 10 – Plan Interpretation and Bidding Assistance | $13,409.00 |
| Task 11 – Construction Support and Shop Drawing Review | $56,004.00 |
| Task 12 – Meetings and Site Visits | $28,500.00 |
| Task 13 – As-Built Drawings | $9,809.00 |
| OPTIONAL SERVICES | |
| Task 14 – Hydraulic Model | $8,919.00 |
| Task 15 – Preparation of MND | $86,715.00 |
| Grand Total: | $694,851.00 |

## EXHIBIT "D"

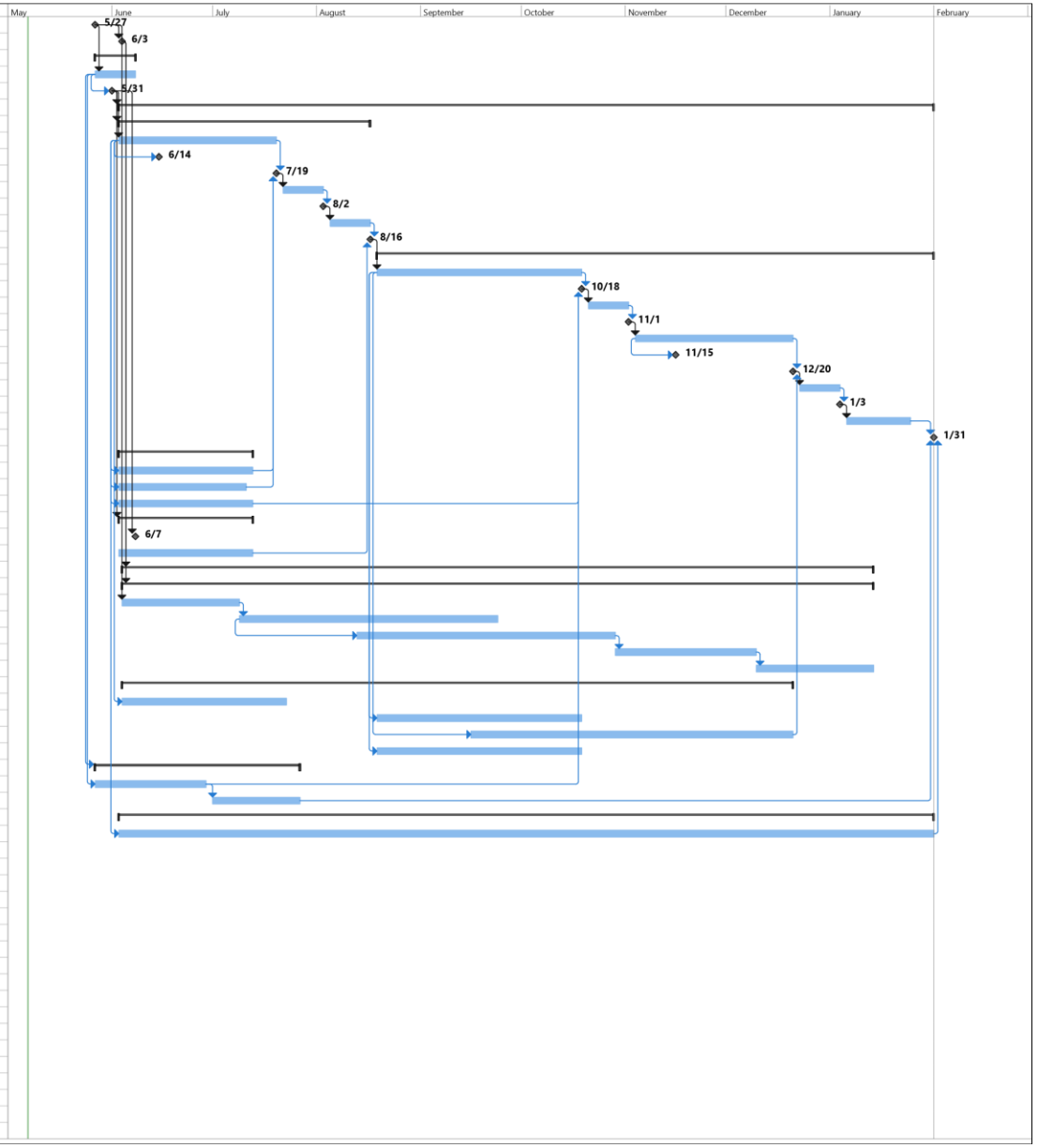
### SCHEDULE OF PERFORMANCE

**I. Consultant shall perform all services and deliver all work products timely in accordance with the schedule attached hereto as Exhibit "D-1".**

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

# EXHIBIT "D-1"

| ID | ID | Task Name | Duration |
|---|---|---|---|
| 1 | 1 | **Notice to Proceed** | 0 days |
| 2 | 2 | *Kick-Off Meeting* | 0 days |
| 3 | 3 | **Task 1 - As-Built Research, Investigation, and Review** | **10 days** |
| 4 | 4 | As-Built Research, Investigation, and Review | 10 days |
| 5 | 5 | *Background Materials Meeting* | 0 days |
| 6 | 6 | **Task 2 - Preliminary Design Report and Final Engineering Design** | **175 days** |
| 7 | 7 | **Preliminary Design Report** | **55 days** |
| 8 | 8 | **Draft Preliminary Design Report** | 35 days |
| 9 | 9 | *Site Visit* | 0 days |
| 10 | 10 | *Submittal of Draft Alternatives Analysis Report* | 0 days |
| 11 | 11 | City Review | 10 days |
| 12 | 12 | *PDR / 30% Design Review Workshop* | 0 days |
| 13 | 13 | **Final Preliminary Design Report** | 10 days |
| 14 | 14 | *Submittal of Final Alternatives Analysis Report* | 0 days |
| 15 | 15 | **Final Engineering Design** | **120 days** |
| 16 | 16 | **60% Engineering Drawings, Specifications, and Estimate** | 45 days |
| 17 | 17 | *Submit 60% Engineering Drawings, Specifications, and Estimate* | 0 days |
| 18 | 18 | City Review | 10 days |
| 19 | 19 | *60% Design Review Workshop* | 0 days |
| 20 | 20 | **90% Engineering Drawings, Specifications, and Estimate** | 35 days |
| 21 | 21 | *Site Visit* | 0 days |
| 22 | 22 | *Submit 90% Engineering Drawings, Specifications, and Estimate* | 0 days |
| 23 | 23 | City Review | 10 days |
| 24 | 24 | *90% Design Review Workshop* | 0 days |
| 25 | 25 | **Final Engineering Drawings, Specifications, and Estimate** | 15 days |
| 26 | 26 | *Submit Final Engineering Drawings, Specifications, and Estimate* | 0 days |
| 27 | 27 | **Task 3 - Field Investigations** | **30 days** |
| 28 | 28 | Geotechnical Investigation | 30 days |
| 29 | 29 | Topographic Survey | 28 days |
| 30 | 30 | Utility Research and Information | 30 days |
| 31 | 31 | **Task 4 - HazMat Report** | **30 days** |
| 32 | 32 | Inspections | 0 days |
| 33 | 33 | Report | 30 days |
| 34 | 34 | **Task 5 - Permitting** | **160 days** |
| 35 | 35 | **Environmental** | **160 days** |
| 36 | 36 | Project Initiation / Project Description | 25 days |
| 37 | 37 | Technical Studies | 55 days |
| 38 | 38 | Public Review Draft MND | 55 days |
| 39 | 39 | Draft MND | 30 days |
| 40 | 40 | Final MND | 25 days |
| 41 | 41 | **Other Permits** | **144 days** |
| 42 | 42 | Identification of Permit Requirements | 35 days |
| 43 | 43 | Permit Coordination | 45 days |
| 44 | 44 | Permit Preparation and Application | 70 days |
| 45 | 45 | *Coordination Meetings with Regulatory Agencies* | 45 days |
| 46 | 46 | **Task 6 - Site Improvements** | **45 days** |
| 47 | 47 | Draft Drainage Memo | 25 days |
| 48 | 48 | Final Drainage Memo | 20 days |
| 49 | 49 | **Task 7 - WQMP** | **175 days** |
| 50 | 50 | WQMP | 175 days |
| 51 | 51 | **Task 8 - Engineer's Quantity and Cost Estimate** | |
| 52 | 52 | **INCLUDED ABOVE IN TASK 2** | N/A |
| 53 | 53 | **Task 9 - Construction Specifications and Bid Documents** | |
| 54 | 54 | **INCLUDED ABOVE IN TASK 2** | N/A |
| 55 | 55 | **Task 10 - Plan Interpretation and Bidding Assistance** | |
| 56 | 56 | Bidder Questions | TBD |
| 57 | 57 | Addenda | TBD |
| 58 | 58 | Bid Review / Recommendation | TBD |
| 59 | 59 | Conformed Plans and Specifications | TBD |
| 60 | 60 | **Task 11 - Construction Support and Shop Drawing Review** | |
| 61 | 61 | RFIs | TBD |
| 62 | 62 | Submittals | TBD |
| 63 | 63 | *Pre-Construction Meeting* | TBD |
| 64 | 64 | *Coordination Meeting with Emerson* | TBD |
| 65 | 65 | **Task 12 - Meetings and Site Visits** | |
| 66 | 66 | **INCLUDED IN RESPECTIVE TASKS IN ORANGE FONT** | N/A |
| 67 | 67 | **Task 13 - As-Built Drawings** | |
| 68 | 68 | As-Built Drawings | TBD |



# MEMORANDUM
# CITY OF CHINO
# PUBLIC WORKS DEPARTMENT

**CITY COUNCIL MEETING DATE: MAY 21, 2024**

**TO:** **LINDA REICH, CITY MANAGER**

**FROM:** **HYE JIN LEE, PE, DIRECTOR OF PUBLIC WORKS**

## SUBJECT

Acceptance of CalRecycle Used Oil Payment Program (OPP14) Grant funds.

## RECOMMENDATION

1) Authorize the acceptance of an award of funds from the State Department of Resources, Recycling and Recovery (CalRecycle) Used Oil Payment Program (OPP14) for $13,034; 2) establish grant number G7240 for FY2023-24; 3) appropriate $13,034 to the Sanitation Fund with a corresponding appropriation in revenues; and 4) authorize the City Manager to execute the necessary documents on behalf of the City.

## FISCAL IMPACT

Requires an appropriation of $13,034 to the revenue and expenditure accounts of the Sanitation Fund 550, grant number G7240.

## CITY OF CHINO MISSION / VISION / VALUES / STRATEGIC ISSUES

The recommendation detailed above further the City's values and strategic issues that serve as key pillars on which identified priorities, goals, and action plans are built, by fostering:

- Financial Stability
- Public Service Excellence through Internal and External Partnerships

| | |
|---|---|
| Revenue: 5507380-59500-G7240 | Expenditure: 5507380-40010-G7240 |
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## BACKGROUND

The state of California awards annual Used Oil Payment Program (OPP) funds to cities and counties for used oil and used oil filter recycling activities. The state awards amounts based on a per capita formula which also causes a fluctuation from year-to-year due to population change and OPP fund availability.

## ISSUES/ANALYSIS

The Department of Resources Recycling and Recovery (CalRecycle) has made funds available to cities and counties since the early 1990's for support and promotion of used oil and household hazardous waste programs. These funds are used to supplement costs for the City's direct staffing expenses associated with operating the Household Hazardous Waste Collection facility; inspection of certified oil collection centers; and for outreach, education, and materials to promote used oil recycling.

Staff received notification from CalRecycle that funding was approved from the OPP to be expended during the grant cycle term of July 1, 2023, through June 30, 2025, which covers Fiscal Years 2023-24 and 2024-25. Therefore, staff is recommending an appropriation of $13,034 from the unappropriated reserves of the Sanitation Fund with a corresponding increase to the revenues. There are no city matching funds required and the City has already received the funds from the State Controller's Office.

# MEMORANDUM
# CITY OF CHINO
# PUBLIC WORKS DEPARTMENT

**CITY COUNCIL MEETING DATE: MAY 21, 2024**

**TO:** **LINDA REICH, CITY MANAGER**

**FROM:** **HYE JIN LEE, PE, DIRECTOR OF PUBLIC WORKS**

## SUBJECT

Final Acceptance of Public Improvements for PL18-0038 Special Conditional Use Permit, Tang & Sung Investment LLC (Wing Lee Farms), located at 13625 Yorba Avenue.

## RECOMMENDATION

1) Accept public improvements as complete for PL18-0038 Special Conditional Use Permit; 2) authorize release of the performance bond and initiate the warranty bond; and 3) authorize the City Manager to execute the necessary documents on behalf of the City.

## FISCAL IMPACT

There are sufficient funds included in the City's Operating Budget to support the ongoing maintenance activities related to the public improvements being accepted.

## CITY OF CHINO MISSION / VISION / VALUES / STRATEGIC ISSUES

The recommendation detailed above further the City's values and strategic issues that serve as key pillars on which identified priorities, goals, and action plans are built, by fostering:

- Positive City Image

| | |
|---|---|
| Revenue: Click or tap here to enter text. | Expenditure: |
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## BACKGROUND

Since 2007, Wing Lee Farms (WLF) has been operating a poultry slaughterhouse in the M2 (General Industrial) zone located at 13625 Yorba Avenue (Exhibit A - Location Map).

The facility had previously operated as a lamb slaughterhouse in the 1970s. WLF purchased the vacant property and building and obtained Planning Commission approval in June 2002 to expand the old building and establish a poultry slaughterhouse use. The project consisted of the expansion of an existing building to accommodate 9,374 square feet of office and storage space and process a maximum of up to 2,500 chickens per day. The building construction was completed in 2006 and the facility has been operating without incident since 2007.

In 2017, the City performed a sewer system inspection and determined that WLF was processing more chickens than what was permitted under the approved 2002 Special Conditional Use Permit (SCUP). At that time, WLF representatives informed City staff that they inherited the business and were not aware of the limitations placed on the operations by the SCUP. Based upon the increased production, WLF was required to either scale back the operations to what was previously approved or submit a new SCUP application to request approval to expand the processing operation.

Subsequently, on April 19, 2021, the Planning Commission approved WLF's SCUP to expand its poultry processing operations. The approval of the SCUP allows for the increased production in poultry processing volume from 2,500 chickens and 1–2 truck deliveries per day to a maximum of 22,000 chickens and 16 truck deliveries per day at its existing 30,197 square foot main processing building and a 2,414 square foot receiving building within the M2 (General Industrial) zoning district.

The Engineering Conditions of Approval for this project required WLF to design and construct certain frontage improvements including, sidewalk; curb and gutter; drive approach; drainage outlet structure; and landscape improvements. The public improvements completed by WLF necessitated the execution of a Public Improvement Agreement and posting securities that the City Council approved on September 6, 2022 (Exhibit B). It should be noted that the costs associated with the design and construction of the required public improvements are completely offset by WLF. There is no direct fiscal impact to the City.

The public improvements are complete in accordance with the approved plans and have been constructed to the satisfaction of the City Engineer.

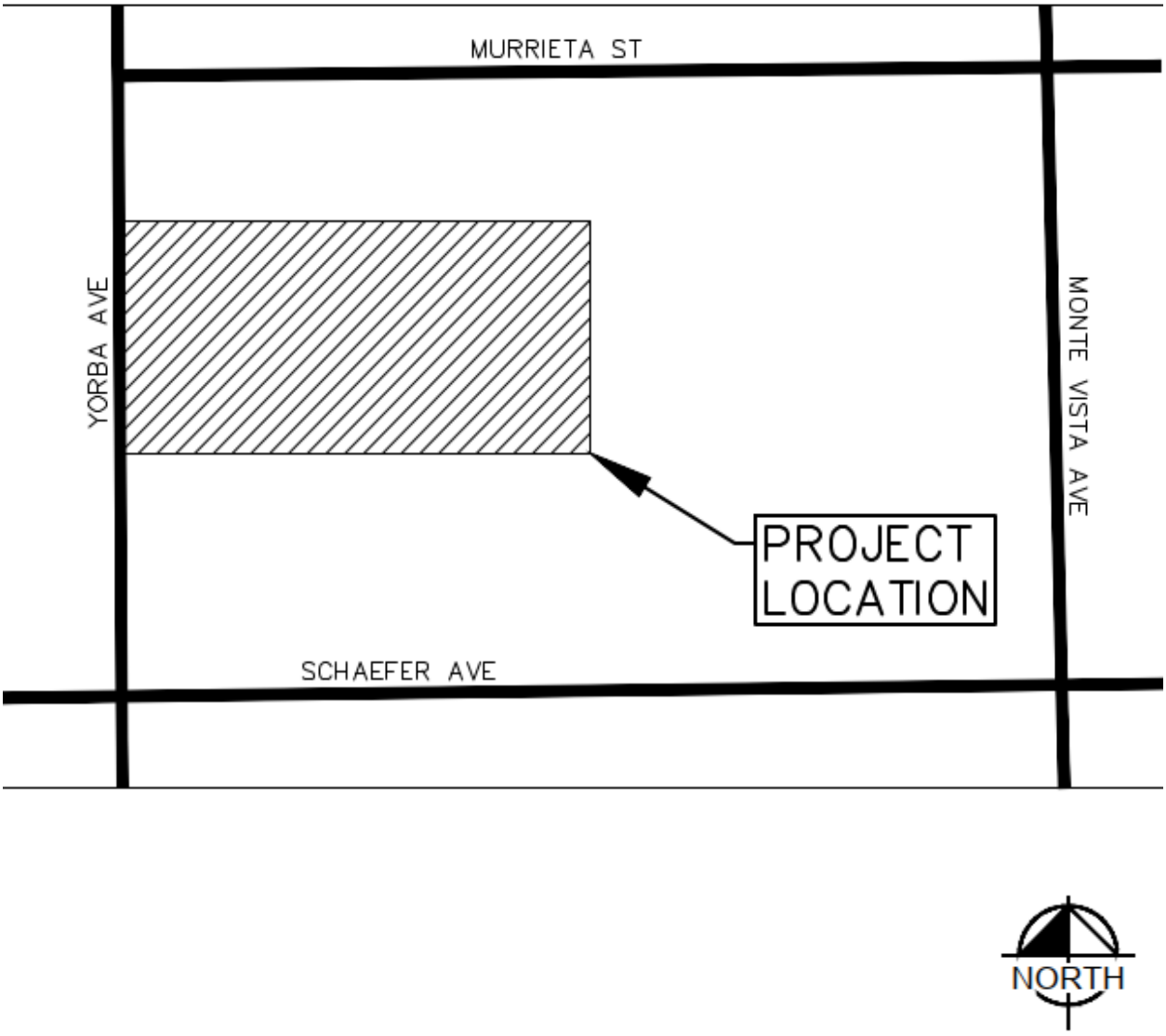
## ISSUES/ANALYSIS

Beginning in July 2009, WLF has been federally regulated as a "Significant Industrial User" through an Industrial User Discharge Permit jointly issued by the City and the Inland Empire Utilities Agency (IEUA). IEUA is the City's wastewater processor. Over the years, WLF expanded the processing operation and additional sewer flows were being discharged into the public sewer system that exceeded the permitted allowable flow. To address the excess flow into the public sewer system, the City's Public Works Department completed the design and construction to upsize the City's sewer collection system downstream of WLF to allow for the increased flow. WLF also installed on-site pretreatment upgrades to facilitate compliance with the City and IEUA. Thus, WLF has submitted a permit application for review to IEUA and the

City requesting 50,000 gallons/day up from 37,000 gallons/day. IEUA has reviewed WLF's application and is finalizing comments. Additionally, there are no pending issues with the City currently. The City will continue to monitor and sample the wastewater coming from the WLF site to ensure that compliance is maintained moving into the future.

Attachments: Exhibit A – Location Map
Exhibit B – Fully Executed Public Improvement Agreement

Exhibit A
Location Map



# PUBLIC IMPROVEMENT AGREEMENT

**by and between**

**CITY OF CHINO**

**and**

**TANG AND SUNG INVESTMENT LLC**

**Designees for the Service of Written Notice**:

| **CITY**: | **DEVELOPER:** |
|---|---|
| Jesus Plasencia<br>Assistant City Engineer<br><br>13220 Central Avenue<br>Chino, CA 91710<br><br>(909) 334-3417<br>jplasencia@cityofchino.org | Tang and Sung Investments LLC<br>Cindy Tang<br>Owner<br><br>13625 Yorba Avenue<br>Chino, CA 91710<br><br>(909) 536-1886 |
| **CITY PROJECT INSPECTOR** | **SURETY** |
| Isaac Ortega<br>Permit & Inspection Supervisor<br><br>13220 Central Avenue<br>Chino, CA 91710<br><br>(909) 334-3501<br>iortega@cityofchino.org | American Contractors Indemnity Company |

5. Cost of Construction and Provision of Inspection Service

5.1 Developer Responsible for All Related Costs of Construction
5.2 Payment to City for Cost of Related Inspection and Engineering Services
5.3 Payment of Development Impact Fees

6. Acceptance of Offers of Dedication

7. Warranty of Work

8. Default

8.1 Default by Developer
8.2 Remedies
8.3 Remedies Not Exclusive
8.4 Attorney's Fees and Costs
8.5 Waiver

9. Indemnity/Hold Harmless

10. Developer's Indemnity of Project Approval

11. Insurance Requirements

12. Environmental Warranty

13. General Provisions

13.1 Successors and Assigns
13.2 No Third-Party Beneficiaries
13.3 No Vesting Rights
13.4 Developer is Not Agent of City
13.5 Time of the Essence
13.6 Notices
13.7 No Apportionment
13.8 Severability
13.9 Captions
13.10 Incorporation of Recitals
13.11 Interpretation
13.12 Entire Agreement; Waivers and Amendments
13.13 Counterparts

14. Authority

Project and the Property. The Conditions associated with the Map are included in Exhibit "B" attached hereto.

1.3. Intent of Plans. The intent of the Plans referenced in Section 1.1 is to prescribe a complete work of improvement which Developer shall perform or cause to be performed in a manner acceptable to the City Engineer, (or designee), and in full compliance with all codes and the terms of this Agreement. Developer shall complete a functional or operable improvement or facility, even though the Plans may not specifically call out all items of work required for Developer's contractor to complete its tasks, incidental appurtenances, materials, and the like. If any omissions are made or information necessary to carry out the full intent and meaning of the Plans, Developer or its contractor shall immediately notify its design engineer who will seek approval of the City Engineer for furnishing of detailed instructions. In the event of any doubt or question arising regarding the true meaning of any of the Plans, reference shall be made to the City Engineer whose decision thereon shall be final.

Developer recognizes that the Plans consist of general drawings. All authorized alterations affecting the requirements and information given on the Plans shall be in writing and approved by the City Engineer. The Plans shall be supplemented by such working or shop drawings as are necessary to adequately control the work. Without the City Engineer's prior written approval, no change shall be made by Developer or its contractor to any plan, specification, or working or shop drawing after it has been stamped as approved.

1.4. Survey Monuments. Before final approval of street improvements, Developer shall place survey monuments in accordance with the provisions of the State Subdivision Map Act, the Subdivision Ordinance of the City of Chino, and any other applicable law. Developer shall provide security for such obligation as provided in Section 4.1(a)(iii) and, after setting the monuments, Developer shall furnish the City Engineer written notice of the setting of said monuments and written proof of having paid the engineer or surveyor for the setting of said monuments.

1.5. Performance of Work. Developer shall furnish or cause to be furnished all materials, labor, tools, equipment, utilities, transportation, and incidentals required to perform Developer's obligations under this Agreement.

1.6. Changes in the Work. The City Engineer, without invalidating this Agreement and without notification to any of the sureties or financial institutions referenced in Paragraph 4, may order extra work or may make changes by altering or deleting any portion of the Works of Improvement as specified herein or as deemed necessary or desirable by the City Engineer as determined necessary to accomplish the purposes of this Agreement and to protect the public health, safety, or welfare. The City Engineer shall notify Developer or its contractor in writing (by Correction Notice) at the time a determination has been made to require changes in the work. No field changes performed or proposed by Developer or its contractor shall be binding on City unless approved in writing by the City Engineer. The City and Developer may mutually agree upon changes to the Works of Improvement, subject to the security requirements in Section 4.

1.13. Suspension of Work. The City Engineer shall have authority to order suspension of the work for failure of the Developer's contractor to comply with law pursuant to Section 1.12. In case of suspension of work for any cause whatsoever, Developer and its contractor shall be responsible for all materials and shall store them properly if necessary and shall provide suitable interim drainage and/or dust control measures, and erect temporary structures where necessary.

1.14. Erosion and Dust Control and Environmental Mitigation. All grading, landscaping, and construction activities shall be performed in a manner to control erosion and prevent flooding problems. The City Engineer shall have the authority to require erosion plans to prescribe reasonable controls on the method, manner, and time of grading, landscaping, and construction activities to prevent nuisances to surrounding properties. Plans shall include without limitation temporary drainage and erosion control requirements, dust control procedures, restrictions on truck and other construction traffic routes, noise abatement procedures, storage of materials and equipment, removal of garbage, trash, and refuse, securing the job site to prevent injury, and similar matters.

1.15. Final Acceptance of Works of Improvement. After Developer's contractor has completed all of the Works of Improvement, Developer shall then request a final inspection of the work. If items are found by the City's inspectors to be incomplete or not in compliance with this Agreement or any of the requirements contained or referenced herein, City will inform the Developer or its contractor of such items. After the Developer's contractor has completed these items, the procedure shall then be the same as specified above for the Developer's contractor's initial request for final inspection. If items are found by City's inspectors to be incomplete or not in compliance after two (2) "final" inspections, the City may require the Developer or its contractor, as a condition to performing further field inspections, to submit in writing a detailed statement of the work performed subsequent to the date of the previous inspection which was found to be incomplete or not in compliance at that time. Developer shall be responsible for payment to City Engineer of re-inspection fees in the amount necessary to cover the City's costs for additional final inspections, as determined by the City Engineer.

No inspection or acceptance pertaining to specific parts of the Works of Improvement shall be construed as final acceptance of any part until the overall final acceptance by the City Engineer is made. The City Engineer shall make a certification of completion and acceptance on the Works of Improvement by recordation of a Notice of Acceptance on behalf of the City. Final acceptance shall not constitute a waiver by the City Engineer of defective work subsequently discovered.

The date on which the Works of Improvement will be considered as complete shall be the date of the Notice of Acceptance.

1.16. Vesting of Ownership. Upon recordation of the Notice of Acceptance, ownership of the Works of Improvement shall vest in the City.

1.17. Developer's Obligation to Warn Public During Construction. Until recordation of the Notice of Acceptance, Developer shall give good and adequate warning to the public of any dangerous condition of the Works of Improvements and shall take reasonable actions to

Occupancy may be withheld from the Developer by the City, if, upon a determination by the City Engineer, completion of specific Works of Improvements or other requirements associated with the development of the Property have not been completed to the City Engineer's satisfaction.

2.3. Force Majeure. Notwithstanding the provisions of Section 2.1, Developer's time for commencement and completion of the Works of Improvement shall be extended for the period of any enforced delay caused due to circumstances beyond the control and without the fault of Developer, including to the extent applicable adverse weather conditions, flood, earthquakes, strikes, lockouts, pandemics, acts or failures to act of a public agency (including City), required changes to the scope of work required by City, and similar causes; provided, however, that the period of any enforced delay hereunder shall not include any period longer than five (5) days prior to City's receipt of a written notice from Developer or its contractor detailing the grounds for Developer's claim to a right to extend its time for performance hereunder. The City Engineer shall evaluate all claims to Force Majeure and make a reasonable determination regarding the length of any extension of time for commencement and/or completion of the Works of Improvement and the City Engineer's decision shall be final.

2.4. Continuous Work. After commencement of construction of the Works of Improvement (or separate portion thereof), Developer shall cause such work to be diligently pursued to completion and shall not abandon the work for a consecutive period or more than thirty (30) days, events of Force Majeure excepted.

3. Labor.

3.1. Labor Standards. This Agreement is subject to, and Developer agrees to comply with, all of the applicable provisions of the Labor Code including, but not limited to, the wage and hour, prevailing wage, worker compensation, and various other labor requirements in Division 2, Part 7, Chapter 1, including section 1720 to 1740, 1770 to 1780, 1810 to 1815, 1860 to 1861, which provisions are specifically incorporated herein by reference as set forth herein in their entirety. Developer shall expressly require compliance with the provisions of this Section in all agreements with contractors and subcontractors for the performance of the Works of Improvement.

3.2. Nondiscrimination. In accordance with the California Fair Employment and Housing Act ("FEHA"), California Government Code Section 12940 *et seq.*, Developer agrees that Developer, its agents, employees, contractors, and subcontractor performing any of the Works of Improvement shall not discriminate, in any way, against any person on the basis of race, ethnicity, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Developer shall expressly require compliance with the provisions of this Section in all agreements with contractors and subcontractors for the performance of this Agreement.

3.3. Licensed Contractors. Developer shall cause all of the Works of Improvement to be constructed by contractors and subcontractors with valid California Contractors' licenses for the type of work being performed. All of Developer's contractors and subcontractors shall

(a) Bonds. For Security Instruments provided in the form of bonds, any such bond must be issued and executed by an insurance company or bank authorized to transact surety business in the State of California. Any insurance company acting as surety shall have a minimum rating of A-IX, as rated by the current edition of Best's Key Rating Guide published by A.M. Best's Company, Oldwick, New Jersey, 08858. Any bank acting as surety shall have a minimum rating of AA, as rated by Moody's or Standard & Poor's.

(b) Letters of Credit. For Security Instruments which are letters of credit, any letter of credit shall be an original separate unconditional, irrevocable, negotiable and transferable commercial letter of credit issued by a financial institution with offices in the State of California acceptable to City. Any such letter of credit shall specifically permit City to draw on same by unilateral certification of the City Engineer of the City that Developer is in default under its payment or performance obligations hereunder or in the event Developer fails to deliver a replacement letter of credit not less than thirty (30) days prior to the date of expiration of any such letter of credit and shall further be subject to the provisions of Section 4.4.

(c) Instrument of Credit. For Security Instruments which are Instruments of Credit, any Instrument of Credit shall be an assignment of deposit account assigning as security to City all of Developer's interest in funds on deposit in one or more bank accounts with financial institutions acceptable to City.

(d) General Requirements for all Security Instruments.

(i) Payments under any Security Instruments shall be required to be made (and, with respect to bonds, litigation shall be required to be instituted and maintained) in the City of Chino, State of California (and the Security Instrument shall so provide).

(ii) Each Security Instrument shall have a minimum term of one (1) year after the deadline for Developer's completing the Works of Improvement, in accordance with Section 2.1 (other than Instruments of Credit, which shall have no defined term or expiration date).

(iii) Each Security Instrument shall provide that changes may be made in the Works of Improvement pursuant to the terms of this Agreement without notice to any issuer or surety and without affecting the obligations under such Security Instrument.

(iv) If the Developer seeks to replace any security with another security, the replacement shall: (1) comply with all the requirements for security in this Agreement; (2) be provided by the Developer to the City Engineer; and (3) upon its written acceptance by the City Engineer, be deemed a part of this Agreement. Upon the City

(iii) Developer has delivered the Maintenance and Warranty Security Instrument; and

(iv) after passage of the time within which lien claims are required to be made pursuant to Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code of the State of California. If lien claims have been timely filed, City shall hold the Labor and Materials Security Instrument until such claims have been resolved, Developer has provided a statutory bond, or otherwise as required by applicable law.

(b) City shall release the Maintenance and Warranty Security Instrument upon Developer's written request upon the expiration of the warranty period, and settlement of any claims filed during the warranty period.

(c) The City may retain from any security released, an amount sufficient to cover costs and reasonable expenses and fees, including reasonable attorney's fees.

5. Cost of Construction and Provision of Inspection Service.

5.1. Developer Responsible for All Costs of Construction. Developer shall be responsible for payment of all costs incurred for construction and installation of the Works of Improvement. In the event Developer is entitled to reimbursement from City for any of the Works of Improvement, such reimbursement shall be subject to a separate Reimbursement Agreement to be entered into between Developer and City prior to construction of the Works of Improvement.

5.2. Payment to City for Cost of Related Inspection and Engineering Services. Developer shall compensate City for all of City's costs reasonably incurred in having its authorized representative make the usual and customary inspections of the Works of Improvement. In addition, Developer shall compensate City for all design, plan check, evaluating any proposed or agreed-upon changes in the work. The procedures for deposit and payment of such fees shall be as established by the City. In no event shall Developer be entitled to additional inspections or a final inspection and acceptance of any of the Works of Improvement until all City fees and charges have been fully paid, including without limitation, charges for applicable penalties and additional required inspections.

5.3. Payment of Development Impact Fees. Developer shall pay Development Impact Fees pursuant to and in accordance with Chino Municipal Code Chapter 3.40 and Chapter 3.45, as applicable.

6. Acceptance of Offers of Dedication. The City Council shall pass as appropriate resolution or resolutions accepting all offers of dedication shown on the approvals for the Project, with acceptance to become effective upon completion and acceptance by City of the Works of Improvement.

City to perform the obligation for which Developer is in default and agrees to pay the entire cost of such performance by the City. The City may take over the work and complete the Works of Improvement, by contract or by any other method City deems appropriate, at the expense of the Developer. In such event, City, without liability for doing so, may complete the Works of Improvement using any of Developer's materials, appliances, plans and other property that are at the work site and that are necessary to complete the Works of Improvement.

8.3. Remedies Not Exclusive. In any case where this Agreement provides a specific remedy to City for a default by Developer hereunder, the Developer agrees that the choice of remedy or remedies for Developer's breach shall be in the discretion of the City. Additionally, any remedy specifically provided in this Agreement shall be in addition to, and not exclusive of, City's right to pursue any other administrative, legal, or equitable remedy to which it may by entitled.

8.4. Attorney's Fees and Costs. In the event that Developer fails to perform any obligation under this Agreement, Developer agrees to pay all costs and expenses incurred by City in securing performance of such obligations, including costs of suit and reasonable attorney's fees. In the event of any dispute arising out of Developer's performance of its obligations under this Agreement or under any of the Security Instruments referenced herein, the prevailing party in such action, in addition to any other relief which may be granted, shall be entitled to recover its reasonable attorney's fees and costs. Such attorney's fees and cost shall include fees and costs on any appeal, and in addition a party entitled to attorney's fees and costs shall be entitled to all other reasonable costs incurred in investigating such action, taking depositions and discovery, retaining expert witnesses, and all other necessary and related costs with respect to the litigation. All such fees and costs shall be deemed to have accrued on commencement of the action and shall be enforceable whether or not the action is prosecuted to judgment.

8.5. Waiver. No waiver by the City of any breach or default by the Developer shall be considered valid unless in writing, and no such waiver by the City shall be deemed a waiver of any subsequent breach or default by the Developer.

9. Indemnity/Hold Harmless. City or any officer, employee or agent thereof shall not be liable for any injury to persons or property occasioned by reason of the acts or omissions of Developer, its agents, employees, contractors and subcontractors in the performance of this Agreement. Developer further agrees to protect, defend, indemnify and hold harmless City, its officials, boards and commissions, and members thereof, agents, and employees from any and all claims, demands, causes of action, liability or loss of any sort, because of, or arising out of, acts or omissions of Developer, its agents, employees, contractors and subcontractors in the performance of this Agreement, except for such claims, demands, causes of action, liability or loss arising out of the sole active negligence of the City, its officials, boards, commissions, the members thereof, agents and employees, including all claims, demands, causes of action, liability or loss because of or arising out of, in whole or in part, the design or construction of the improvements. This indemnification and agreement to hold harmless shall extend to injuries to persons and damages or taking of property resulting from the design or construction of said Project, and the public improvements as provided herein, and in addition,

(i) Premises operations; including X, C, and U coverage;

(ii) Owners' and contractors' protection;

(iii) Blanket contractual;

(iv) Completed operations; and

(v) Products.

(b) Commercial Business Auto policy with a minimum $1 million combined single limit for bodily injury and property damage, providing all of the following minimum coverage without deductibles:

(i) Coverage shall apply to any and all leased, owned, hired, or non-owned vehicles used in pursuit of any of the activities associated with this Agreement; and

(ii) Any and all mobile equipment including cranes which are not covered under the above Commercial Business Auto policy shall have said coverage provided under the Commercial General Liability policy.

(c) Workers Compensation and Employers' Liability policy in accordance with the laws of the State of California and providing coverage for any and all employees of the Developer:

(i) This policy shall provide coverage for Workers' Compensation (Coverage A); and

(i) This policy shall provide coverage for $1,000,000 Employers' Liability (Coverage B).

(ii) Pursuant to Labor Code section 1861, Developer by executing this Agreement certifies: "*I am aware of the provisions of Section 3700 of the Labor Code which requires 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.*"

(iii) Prior to commencement of work, the Developer shall file with the City's Risk Manager a Certificate of Insurance or certification of permission to self-insure workers' compensation conforming to the requirements of the Labor Code.

(d) Endorsements. All of the following endorsements are required to be made a part of each of the above-required policies as stipulated below:

state or local governmental authority under or in connection with the environmental laws relating to the property to be dedicated.

(b) Neither Developer nor any other person with Developer's permission to be upon the property to be dedicated shall use, generate, manufacture, produce, or release, on, under, or about the property to be dedicated, any Hazardous Substance except in compliance with all applicable environmental laws. For the purposes of this Agreement, the term "Hazardous Substances" shall mean any substance or material which is capable of posing a risk of injury to health, safety or property, including all those materials and substances designated as hazardous or toxic by any federal, state or local law, ordinance, rule, regulation or policy, including but not limited to, all of those materials and substances defined as "Toxic Materials" in Sections 66680 through 66685 of Title 22 of the California Code of Regulations, Division 4, Chapter 30, as the same shall be amended from time to time, or any other materials requiring remediation under federal, state or local laws, ordinances, rules, regulations or policies.

(c) Developer has not caused or permitted the release of, and has no knowledge of the release or presence of, any Hazardous Substance on the property to be dedicated or the migration of any hazardous substance from or to any other property adjacent to, or in the vicinity of, the property to be dedicated.

(d) Developer's prior and present use of the property to be dedicated has not resulted in the release of any hazardous substance on the property to be dedicated.

12.2. Developer shall give prompt written notice to City of:

(a) Any proceeding or investigation by any federal, state or local governmental

(b) authority with respect to the presence of any hazardous substance on the property to be dedicated or the migration thereof from or to any other property adjacent to, or in the vicinity of, the property to be dedicated.

(c) Any claims made or threatened by any third party against City or the property to be dedicated relating to any loss or injury resulting from any hazardous substance; and

(d) Developer's discovery of any occurrence or condition on any property adjoining or in the vicinity of the property to be dedicated that could cause the property to be dedicated or any part thereof to be subject to any restrictions on its ownership, occupancy, use for the purpose for which it is intended, transferability or suit under any environmental law.

13. General Provisions.

13.1. Successors and Assigns. This Agreement shall be binding upon all successors and assigns to Developer's right, title, and interest in and to the Property and any portion

13.7. No Apportionment. Nothing contained in this Agreement shall preclude City from expending monies pursuant to agreements concurrently or previously executed between the parties, or from entering into agreements with other Developers for the apportionment of costs of water and sewer mains, or other improvements pursuant to the provisions of the City ordinances providing therefore. Nor shall anything in the Agreement commit City to any such apportionment.

13.8. Severability. If any portion of this Agreement is held invalid by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect unless amended or modified by mutual written consent of the parties.

13.9. Captions. The captions of this Agreement are for convenience and reference only and shall not be used in the interpretation of any provision of this Agreement.

13.10. Incorporation of Recitals. The recitals to this Agreement are hereby incorporated into the terms of this Agreement.

13.11. Interpretation. This Agreement shall be interpreted in accordance with the laws of the State of California.

13.12. Entire Agreement; Waivers and Amendments. This Agreement integrates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations and previous agreements between the parties with respect to all or part of the subject matter hereof, except as may be expressly provided herein. All waivers of the provisions of this Agreement must be in writing and signed by an authorized representative of the party to be charged, and all amendments hereto must be in writing and signed by the appropriate representatives of both parties.

13.13. Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall be deemed one original.

14. Authority. The persons executing this Agreement on behalf of the parties warrant the (I) 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) the entering into of this Agreement does not violate any provisions of any other agreement to which said party is bound.

***[SIGNATURES ON NEXT PAGE]***

**IN WITNESS WHEREOF,** the City and the Developer have caused this Agreement to be executed the day and year first above written.

**APPROVED AS TO FORM:**

DocuSigned by:
Fred Galante
7D0F5E4E9D9F405...
Fred Galante, City Attorney

**APPROVED AS TO CONTENT:**

Nicholas S. Liguori, AICP
Development Services Director

**TANG AND SUNG INVESTMENT LLC**

By: 7/19/22
(Signature and Date)

Name: Cindy Tang Kuempel, aka Cindy Tang
(Please type or print name)

Title: Member
(Please type or print title)

**CITY OF CHINO**

Linda Reich, City Manager

Dated: 9-12-22

**ATTEST:**

By
Angela Robles, City Clerk

Dated: 9-12-2022

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT** **CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )
County of San Bernardino )

On July 19, 2022 before me, Samantha Michelle Leyland, notary public
*Date* *Here Insert Name and Title of the Officer*

personally appeared Cindy Tang Kuempel
*Name(s) of Signer(s)*

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

SAMANTHA MICHELLE LEYLAND
COMM. #2395529
Notary Public - California
SAN BERNARDINO COUNTY
My Comm. Exp. Mar. 2, 2026

Signature _____
*Signature of Notary Public*

*Place Notary Seal Above*

**OPTIONAL**

*Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.*

**Description of Attached Document**

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

**Capacity(ies) Claimed by Signer(s)**

| | |
|---|---|
| Signer's Name: _____ | Signer's Name: _____ |
| ☐ Corporate Officer — Title(s): _____ | ☐ Corporate Officer — Title(s): _____ |
| ☐ Partner — ☐ Limited ☐ General | ☐ Partner — ☐ Limited ☐ General |
| ☐ Individual ☐ Attorney in Fact | ☐ Individual ☐ Attorney in Fact |
| ☐ Trustee ☐ Guardian or Conservator | ☐ Trustee ☐ Guardian or Conservator |
| ☐ Other: _____ | ☐ Other: _____ |
| Signer Is Representing: _____ | Signer Is Representing: _____ |

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## EXHIBIT "B"

## WORKS OF IMPROVEMENT

A. Removal of undesirable, dangerous and dead plant materials and roots.

B. All onsite and offsite grading as specified on the approved grading plan.

C. Relocation of all public utility structures as necessary to properly construct the required improvements.

D. Storm drain facilities as required and shown on the approved construction plans and in accordance with City Standards.

E. Water mains, valves, hydrants, services, meters and appurtenances to serve each lot as shown on the approved construction plans and in accordance with City Standards.

F. Disposal of all rocks and debris located within any public right-of-way within said development or on the boundary streets thereof.

G. Installation of concrete curbs, gutters, sidewalks, cross gutters, driveways and intersections as shown on approved construction plans and in accordance with City Standards.

H. Installation of asphalt concrete or Portland Cement Concrete street pavement on base material as shown on approved construction plans and in accordance with City Standards.

I. Installation of approved landscaping (plants and materials).

J. Setting monuments as required by the State Code.

The Developer shall also perform all work and furnish all materials necessary, in the opinion of the Director of Development Services or his designee and on his order, to complete the improvements in accordance with the plans and specifications on file as hereinbefore specified, or any changes required or ordered by said Engineer which, in his opinion, are necessary or required to complete this work.

# CITY OF CHINO

## ENGINEERING COST ESTIMATE

**PROJECT NO:**

**LOCATION :** 13625 Yorba Avenue Chino, CA

**By:** Kimley-Horn

**DATE:** 12/20/2021

APPROVED
Sylvia Ramos
Digitally signed by Sylvia Ramos
DN: cn=Sylvia Ramos, c=US, o=City of Chino, ou=Development Services - Engineering Division, email=sramos@cityofchino.org
Reason: Approval of the Engineering Cost Estimate
Location: Chino, CA
Date: 2022.08.11 10:56:43 -07'00'

| Quantity | Unit | Item | Unit Price | Total Cost Per Item |
|---|---|---|---|---|
| **STREETS** | | | | |
| | EA | Tree Removal | $ 800.00 | $ - |
| 32 | CY | Concrete Removal | $ 325.00 | $ 10,400.00 |
| 3 | CY | AC Pavement Removal | $ 100.00 | $ 300.00 |
| | CY | Imported Common Fill (Incl. Compaction) | $ 34.00 | $ - |
| 1300 | SF | Preparation of Subgrade, Sidewalk and Paving | $ 1.00 | $ 1,300.00 |
| | LF | PCC 8" Curb & 24" Gutter on 6" AB | $ 26.00 | $ - |
| 130 | LF | PCC 6" Curb & 24" Gutter on 6" AB | $ 24.00 | $ 3,120.00 |
| | LF | PCC Curb Only | $ 20.00 | $ - |
| | LF | 8" A.C. Berm | $ 20.00 | $ - |
| 1300 | SF | 4" PCC Sidewalk | $ 5.80 | $ 7,540.00 |
| 800 | SF | 6" PCC Thick Drive Approach on 6" AB | $ 12.50 | $ 10,000.00 |
| | SF | 8" PCC Thick Drive Approach on 6" AB | $ 15.00 | $ - |
| | LF | 2" x 6" Redwood Header | $ 7.50 | $ - |
| 1 | EA | Street Sign and Post | $ 475.00 | $ 475.00 |
| 1 | EA | Traffic Sign and Post | $ 400.00 | $ 400.00 |
| | EA | Reflector Sign and Post | $ 175.00 | $ - |
| | EA | Painted Legend | $ 6.50 | $ - |
| | SF | Prime or Tack Coat | $ 0.08 | $ - |
| | TON | AC Variable - <300T | $ 130.00 | $ - |
| | TON | AC Variable - >300T | $ 120.00 | $ - |
| | TON | CAB Variable - <300T | $ 100.00 | $ - |
| | TON | CAB Variable - >300T | $ 90.00 | $ - |

# CITY OF CHINO

## ENGINEERING COST ESTIMATE

**PROJECT NO:**

**LOCATION :** 13625 Yorba Avenue Chino, CA

**By:** Kimley-Horn

**DATE:** 12/20/2021

| Quantity | Unit | Item | Unit Price | Total Cost Per Item |
|---|---|---|---|---|
| **STREETS** | | | | |
| 860 | SF | Landscape (Including shrubs, Hardscape, Irrigation, Ground Cover, Lighting, Installation Labor and Connection to Existing Systems) | $ 15.00 | $ 12,900.00 |
| | LF | 14 foot Median with Landscape, Irrigation, Lighting, Hardscape, Curb, Gutter & Pavement | $ 300.00 | $ - |
| | | Rail Road Crossing | | |
| | LS | Safety Equipment (Complete Including Crossing Gates, Signs, and Lights) | $ 500,000.00 | $ - |
| | SF | Track Crossing (Concrete) | $ 175.00 | $ - |
| | SF | Approach | $ 4.00 | $ - |
| | EA | S.W. Ramps (A.D.A. Compliant) | $ 4,000.00 | $ - |
| | EA | Traffic Signal Loops | $ 600.00 | $ - |
| | | | | |
| | | | | |
| | | | | |

| STREETS | | | | |
|---|---|---|---|---|
| | | **STREET SUBTOTAL** | | $ 46,831.00 |
| | LS | Mobilzation (5% of Construction Cost) | 5% | $ 2,341.55 |
| | LS | Traffic Control (5% of Construction Cost) | 5% | $ 2,341.55 |
| | LS | Clear & Grub Site (5% of Construction Cost) | 5% | $ 2,341.55 |
| | LS | Excavation (Clean Material) (5% of Construction Cost) | 5% | $ 2,341.55 |
| | | **GRAND TOTAL STREETS ONLY** | | **$ 56,197.20** |

# CITY OF CHINO

## ENGINEERING COST ESTIMATE

**PROJECT NO:**

**LOCATION :** 13625 Yorba Avenue Chino, CA

**By:** Kimley-Horn

**DATE:** 12/20/2021

| Quantity | Unit | Item | Unit Price | Total Cost Per Item |
|---|---|---|---|---|
| **RECYCLED WATER** | | | | |
| | LF | Trench Support/Shoring (6 foot depth) | $ 15.00 | $ - |
| | CY | Pipe Bedding (Imported) | $ 90.00 | $ - |
| | LF | 6" Pipe & Fittings Installed, including excavation, bedding, backfill and pavement restoration | $ 80.00 | $ - |
| | LF | 8" Pipe & Fittings Installed, including excavation, bedding, backfill and pavement restoration. | $ 100.00 | $ - |
| | LF | 12" Pipe & Fittings Installed, including excavation, bedding, backfill and pavement restoration | $ 135.00 | $ - |
| | LF | 18" Pipe & Fittings Installed, including excavation, bedding, backfill and pavement restoration | $ 175.00 | $ - |
| | EA | 6" Gate Valve | $ 2,000.00 | $ - |
| | EA | 8" Gate Valve | $ 2,600.00 | $ - |
| | EA | 12" Gate Valve | $ 4,500.00 | $ - |
| | EA | 18" Gate Valve | $ 7,500.00 | $ - |
| | EA | Fire Hydrant Assembly per City Std. | $ 7,500.00 | $ - |
| | EA | Blow-off Assembly 5" per City Std. | $ 8,600.00 | $ - |
| | EA | 2" Air Relief Assembly | $ 4,500.00 | $ - |
| | EA | 1" Water Service/Meter | $ 3,500.00 | $ - |
| | EA | 2" Water Service/Meter | $ 4,500.00 | $ - |
| | | | | |
| | | | | |
| | | | | |

| | | | | |
|---|---|---|---|---|
| **RECYCLED WATER** | | | | |
| | | **RECYCLED WATER SUBTOTAL** | | $ - |
| | LS | Mobilzation (5% of Construction Cost) | 5% | $ - |
| | LS | Traffic Control (5% of Construction Cost) | 5% | $ - |
| | | **GRAND TOTAL RECYCLED WATER ONLY** | | **$ -** |

# CITY OF CHINO

## ENGINEERING COST ESTIMATE

**PROJECT NO:**

**LOCATION :** 13625 Yorba Avenue Chino, CA

**By:** Kimley-Horn

**DATE:** 12/20/2021

| Quantity | Unit | Item | Unit Price | Total Cost Per Item |
|---|---|---|---|---|
| **STORM DRAIN** | | | | |
| | LF | 24" X 36" C.M.P.A. (10 Gauge) | $ 230.00 | $ - |
| | LF | 27" x 43" C.M.P.A (10 Gauge) | $ 250.00 | $ - |
| | EA | Storm Drain Manhole #1 | $ 10,000.00 | $ - |
| | EA | Junction Structure #2 (24" or larger) | $ 8,850.00 | $ - |
| | EA | Junction Structure #4 (24" or smaller) | $ 4,000.00 | $ - |
| 1 | EA | Outlet Structure | $ 7,000.00 | $ 7,000.00 |
| | EA | Catch Basin 3.5' Width | $ 7,200.00 | $ - |
| | EA | Catch Basin 7' Width/L.D. | $ 7,900.00 | $ - |
| | EA | Catch Basin 10' Width/L.D. | $ 9,950.00 | $ - |
| | EA | Catch Basin 14' Width/L.D. | $ 11,000.00 | $ - |
| | EA | Catch Basin 21' Width/L.D. | $ 13,000.00 | $ - |
| | LF | 18 inch RCP Installed, including excavation, bedding, backfill and pavement restoration | $ 200.00 | $ - |
| | LF | 24 inch RCP Installed, including excavation, bedding, backfill and pavement restoration | $ 240.00 | $ - |
| | LF | 27 inch RCP Installed, including excavation, bedding, backfill and pavement restoration | $ 260.00 | $ - |
| | LF | 30 inch RCP Installed, including excavation, bedding, backfill and pavement restoration | $ 280.00 | $ - |
| | LF | 33 inch RCP Installed, including excavation, bedding, backfill and pavement restoration | $ 295.00 | $ - |
| | LF | 36 inch RCP Installed, including excavation, bedding, backfill and pavement restoration | $ 310.00 | $ - |
| | LF | 39 inch RCP Installed, including excavation, bedding, backfill and pavement restoration | $ 320.00 | $ - |
| | LF | 42 inch RCP Installed, including excavation, bedding, backfill and pavement restoration | $ 330.00 | $ - |
| | LF | 45 inch RCP Installed, including excavation, bedding, backfill and pavement restoration | $ 360.00 | $ - |
| | LF | 48 inch RCP Installed, including excavation, bedding, backfill and pavement restoration | $ 385.00 | $ - |
| | LF | 54 inch RCP Installed, including excavation, bedding, backfill and pavement restoration | $ 440.00 | $ - |
| | LF | 60 inch RCP Installed, including excavation, bedding, backfill and pavement restoration | $ 500.00 | $ - |

# CITY OF CHINO

## ENGINEERING COST ESTIMATE

**PROJECT NO:**

**LOCATION :** 13625 Yorba Avenue Chino, CA

**By:** Kimley-Horn

**DATE:** 12/20/2021

| Quantity | Unit | Item | Unit Price | Total Cost Per Item |
|---|---|---|---|---|
| DIRECT COSTS | | GRAND TOTAL STREETS ONLY | | $ 56,197.20 |
| | | GRAND TOTAL WATER ONLY | | $ 7,700.00 |
| | | GRAND TOTAL RECYCLED WATER ONLY | | $ - |
| | | GRAND TOTAL SEWER ONLY | | $ - |
| | | GRAND TOTAL STORM DRAIN ONLY | | $ 7,700.00 |
| | | GRAND TOTAL (FOR PLAN CHECK & INSPECTION FEE DETERMINATION) | | $ 71,597.20 |

| | | | | |
|---|---|---|---|---|
| PROJECT ADDITIVES | | *Project Contingencies* | 10% | $ *7,159.72* |
| | | *Construction Staking* | 3% | $ *2,147.92* |
| | | *Soils Testing* | 1% | $ *715.97* |
| | | *Material Testing* | 1% | $ *715.97* |
| | | *Construction Inspection* | 4.8% | $ *3,436.67* |
| | | *Contract Administration* | 1% | $ *715.97* |
| | | *GRAND TOTAL (FOR BOND AMOUNTS)* | | $ *86,489.42* |

| | | | | | |
|---|---|---|---|---|---|
| NL | | JP | | MH | |
| FM | | IA | | | |
| SR | X | NA | | | |

E-Mail Sent: 4/7/2022
To: M. Staar

# DEVELOPMENT ENGINEERING DIVISION CONDITIONS OF APPROVAL
## SCUP NO. PL 18-0038 (TE01)

DATE: March 8, 2022 PC MEETING DATE: April 19, 2022

PROJECT DESCRIPTION: Expanding operation of poultry processing facility

PROJECT LOCATION: 13625 Yorba Avenue

APPLICANT: Wing Lee Farms PROJECT ENGINEER: Natalie Ávila

PRIOR TO THE TWO MAJOR DEVELOPMENT EVENTS LISTED BELOW, THE APPLICANT SHALL SATISFY AND FULFILL ALL CONDITIONS OUTLINED BELOW. FAILURE TO COMPLY WITH ANY CONDITIONS OF APPROVAL SHALL BE DEEMED JUST CAUSE FOR REVOCATION OF PROJECT APPROVAL BY THE PLANNING COMMISSION. HOWEVER, THE DIRECTOR OF DEVELOPMENT SERVICES SHALL HAVE THE AUTHORITY TO APPROVE MINOR DEVIATIONS IN THE CONDITIONS OF APPROVAL, AND ALL PLANS INCLUDING THE CONSTRUCTION DRAWINGS.

**1.0 PRIOR TO ISSUANCE OF BUILDING PERMITS:**

1.1 All required plans and studies shall be prepared by a Registered Professional Engineer and submitted to the Project Engineer for review and approval. All project plans must be approved by the City Engineer's office before a Building Permit will be issued. All maps, studies, calculation sheets, reports, etc. must be on and/or folded in an 11-inch by 8½-inch standard format.

1.2 Make the following dedications:

| Street Name | Distance | Direction From C/L |
|---|---|---|
| Yorba Avenue | 33' | East |

1.4 Execute a Public Improvement Agreement and submit security in an amount acceptable to the City Engineer to guarantee construction of the public improvements listed in 1.3. All security must be accessible to the City at any time and in a form acceptable to the Assistant City Manager, pursuant to Government Code, Section 66499.

1.5 Comply with all applicable requirements of the City Code.

1.6 Pursuant to Santa Ana Regional Water Quality Control Board Order Number R8-2010-0036, NPDES Permit No. CAS618036, should onsite improvements require prepare a project-specific Water Quality Management Plan (WQMP) and submit to the project engineer for review and approval. To address NPDES Permit requirements to the maximum extent practicable, the project shall be designed to specify preferential use of Low Impact Development Best Management Practices that reduce pollutants and runoff volume through structural measures (e.g. infiltration, harvesting, and bio-treatment) and non-structural measures (e.g. preserving natural areas, clustering development, and reducing impervious areas). The WQMP shall conform to the requirements of the San Bernardino County Stormwater Program, 2013 WQMP Technical Guidance Document.

1.7 Any future maintenance and repair of water, fire service and sewer laterals to the project site shall be the sole responsibility of the applicant/property owner in accordance with City Code, Chapter 13.04.175 and 13.12.150.

1.8 Provide adequate sight distance per City Standard No. 865 for each project driveway and at all intersections. Landscaping type and height shall be maintained to ensure sight distance requirements are perpetuated.

1.9 Submit to the City electronic files, in Adobe Acrobat PDF format, of all submittals, including reports, studies, improvement plans and City redlines of previous submittals.

1.10 Other Conditions:

Comply with the City and IEUA requirements per the Industrial User Discharge Permit No. 1093.

## 2.0 PRIOR TO REQUEST FOR AND FINALIZATION OF BUILDING PERMITS/ACCEPTANCE OF PUBLIC IMPROVEMENTS:

2.1 Construct and secure Development Services Department approval of all public facilities enumerated under Section 1.0 above (per Resolution No. 88-23).

2.2 If applicable, the applicant's Civil Engineer shall field verify that all BMPs are designed, constructed, and functional in accordance with the approved WQMP. BMPs shall also be inspected by Public Works Environmental staff. Coordinate inspection with staff and submit a completed City of Chino BMP field verification form for review and approval.

2.3 Pay all remaining applicable fees pursuant to City Code.

2.4 Slurry seal along all streets impacted by the development as directed by City staff. Install signing and striping per approved plans.

**CITY OF CHINO**
**DEVELOPMENT SERVICES DEPARTMENT**
**DEVELOPMENT ENGINEERING DIVISION**

ITEMS REQUIRED FOR FIRST PLAN CHECK SUBMITTAL

**SPECIAL CONDITIONAL USE PERMIT NO. PL18-0038 (TE01)**

PROJECT ENGINEER: Sylvia Ramos
DATE: 4/7/2022

| | | |
|---|---|---|
| ☒ | | A COPY OF THIS CHECK LIST MUST BE SUBMITTED WITH THE FIRST PLAN CHECK |
| ☒ | 1 | Copy of Development Engineering Division Conditions of Approval |
| ☐ | 2 | Sets of Maps (Subdivision Only) |
| ☒ | 1 | Copies of preliminary Title Report (no older than six months) with support documents |
| ☒ | 2 | Copies of Closure Calculations for R/W dedications |
| ☐ | 1 | Set of Referenced Maps |
| ☐ | 2 | Copies of Preliminary Soils Report (no older than sixty days) |
| ☐ | 2 | Copies of lot line adjustment certificate |
| ☐ | 2 | Copies of lot merger |
| ☒ | 2 | Copies of right-of-way dedication (legal descriptions and plats) |
| ☐ | 4 | Sets of Rough Grading Plans |
| ☐ | 5 | Sets of Precise Grading Plans |
| ☐ | 4 | Sets of Storm Drain Plans |
| ☐ | 2 | Copies of Hydrology and Hydraulic Calculations with Backup Data (Signed and Sealed by a Registered Civil Engineer) |
| ☒ | 2 | Copies of Engineering Cost Estimate (On City Forms) with Engineer's Wet Signature and Stamp. Provide an estimate for the public improvements and a separate estimate for any onsite private drainage improvements (if applicable). |
| ☒ | 3 | Sets of Street Improvements Plans (for sidewalk and driveway improvements) |
| ☐ | 3 | Copies of Cross-Sections (if street plans are required) at 50' intervals and extended a minimum of 100' beyond limits of improvements |
| ☐ | 2 | Sets of Sewer Plans |
| ☐ | 3 | Sets of Domestic Water Plans |
| ☐ | 2 | Sets of Recycled Water Plans |
| ☐ | 2 | Sets of Street Light Plans |
| ☐ | 2 | Copies of Voltage Drop Calculations (Signed and Sealed by a Registered Engineer) |
| ☐ | 2 | Sets of Signing and Striping Plans |
| ☐ | 1 | Water Quality Management Plan (Will be required if if the area of additional or replaced non-pervious materials exceeds 5000 square feet.) |

**EXHIBIT "C"**

**PL18-0038**

**TANG AND SUNG INVESTMENT LLC**

**ENVIRONMENTAL WARRANTY**

As a condition precedent to acceptance of the dedications and public improvements to be conveyed by the above-named Developer to the City of Chino for the above-referenced Subdivision, Developer hereby warrants to the City of Chino that:

1. Neither the property to be dedicated nor Developer are in violation of any environmental law, and neither the property to be dedicated nor the Developer are subject to any existing, pending or threatened investigation by any federal, state or local governmental authority under or in connection with the environmental laws relating to the property to be dedicated.

2. Neither Developer nor any other person with Developer's permission to be upon the property to be dedicated has used, generated, manufactured, produced, or released, on, under, or about the property to be dedicated, any Hazardous Substance except in compliance with all applicable environmental laws. For the purposes of this warranty, the term "Hazardous Substances" shall mean any substance or material which is capable of posing a risk of injury to health, safety or property, including all those materials and substances designated as hazardous or toxic by any federal, state or local law, ordinance, rule, regulation or policy, including but not limited to, all of those materials and substances defined as "Toxic Materials" in Sections 66680 through 66685 of Title 22 of the California Code of Regulations, Division 4, Chapter 30, as the same shall be amended from time to time, or any other materials requiring remediation under federal, state or local laws, ordinances, rules, regulations or policies.

3. Developer has not caused or permitted the release of, and has no knowledge of the release or presence of, any Hazardous Substance on the property to be dedicated or the migration of any hazardous substance from or to any other property adjacent to, or in the vicinity of, the property to be dedicated.

4. Developer's prior and present use of the property to be dedicated has not resulted in the release of any Hazardous Substance on the property to be dedicated.

5. All persons executing this warranty hereby represent and warrant to the City of Chino, and Developer hereby represents and warrants, that the signators hereto have the legal power, right and authority to execute this warranty on behalf of the Developer and that the signators hereto have sufficient knowledge or expertise, either personally, through reasonable inspection and investigation of the property, or through reasonable reliance upon the investigation and professional opinion of Developer's environmental experts, to make the representations herein, and that no consent of any other party is

Bond No.: 100675117
Contract No.: 2023-115
Approved: 9/6/2022

Executed in triplicate

Premium: $8,650.00 Initial Premium

# ***FAITHFUL PERFORMANCE BOND***

PL18-0038 (SCUP)

---

WHEREAS, the City Council of the City of Chino, State of California, hereinafter designated as "CITY" and TANG & SUNG INVESTMENT LLC, hereinafter designated as "PRINCIPAL," have entered into an agreement whereby Principal agrees to install and complete certain designated public improvements, which said agreement, dated 9/6/2022, and identified as Project No. PL18-0038 (SCUP), is hereby referred to and made a part hereof; and

WHEREAS, said Principal is required under the terms of said agreement to furnish a bond for the faithful performance of said agreement.

NOW, THEREFORE, we, the Principal and American Contractors Indemnity Company, as surety, are held and firmly bound unto the City of Chino in the penal sum of ---------- Eighty Six Thousand Five Hundred and 00/100 Dollars ($86,500.00) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors, and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above-bound Principal, his or its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and provisions in said agreement and any alteration thereof made as therein provided, on his or its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless City, its officers, agents, and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees including reasonable attorneys' fees, incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the agreement or to the work or to the specifications.

IN WITNESS WHEREOF, this instrument has been duly executed by Principal and Surety above named, on August 3, 2022.

| TANG & SUNG INVESTMENT LLC<br>PRINCIPAL | American Contractors Indemnity Company<br>SURETY |
|---|---|
| By: Cindy Tang Fuempel, aka Cindy Tang | By: Freddy Anvari, Attorney-in-Fact |

***SIGNATURES MUST BE NOTARIZED***

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT** **CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )
County of Orange )

On 08/03/2022 before me, K. Ho, Notary Public,
*Date* *Here Insert Name and Title of the Officer*

personally appeared Freddy Anvari
*Name(s) of Signer(s)*

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

K. HO
Notary Public - California
Orange County
Commission # 2262101
My Comm. Expires Nov 7, 2022

Signature
*Signature of Notary Public*

*Place Notary Seal Above*

**OPTIONAL**

*Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.*

**Description of Attached Document**
Title or Type of Document: Bond 100675117 Document Date:
Number of Pages: Signer(s) Other Than Named Above:

**Capacity(ies) Claimed by Signer(s)**

| | |
|---|---|
| Signer's Name: Freddy Anvari | Signer's Name: |
| ☐ Corporate Officer — Title(s): | ☐ Corporate Officer — Title(s): |
| ☐ Partner — ☐ Limited ☐ General | ☐ Partner — ☐ Limited ☐ General |
| ☐ Individual ☒ Attorney in Fact | ☐ Individual ☐ Attorney in Fact |
| ☐ Trustee ☐ Guardian or Conservator | ☐ Trustee ☐ Guardian or Conservator |
| ☐ Other: | ☐ Other: |
| Signer Is Representing: | Signer Is Representing: |

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# California Acknowledgment Form

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Bernardino } ss.

On August 9th, 2022 before me, Tori Staley, Notary Public
(here insert name and title of the officer),
personally appeared Cindy Tang Kuempel

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Seal

WITNESS my hand and official seal.

Tori Staley
Signature of Notary

TORI STALEY
COMM. #2312060
Notary Public - California
SAN BERNARDINO COUNTY
My Comm. Exp. Nov. 9, 2023

## Optional Information

To help prevent fraud, it is recommended that you provide information about the attached document below.
***This is not required under California State notary public law.***

Document Title: Faithful Performance Bond # of Pages: 4

## Notes

©2014 Golden State Notary, Inc.

TOKIO MARINE HCC

# POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:
That American Contractors Indemnity Company of the State of California, a California corporation, does hereby appoint,

## FREDDY ANVARI

its true and lawful Attorney-in-Fact, with full authority to execute on its behalf bond number 100675117, issued in the course of its business and to bind the Company thereby, in an amount not to exceed One hundred thousand and 00/100 ($100,000.00).

This Power of Attorney is granted and is signed and sealed by facsimile under and by the authority of the following resolutions adopted by the Board of Directors of AMERICAN CONTRACTORS INDEMNITY COMPANY at a meeting duly called and held on the 1st day of September, 2011.

*"Be it Resolved,* that the President, any Vice-President, any Assistant Vice-President, any Secretary or any Assistant Secretary shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

*Attorney-in-Fact* may be given full power and authority for and in the name of and on behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements or indemnity and other conditional or obligatory undertakings, including any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts, and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be binding upon the Company as if signed by the President and sealed and effected by the Corporate Secretary.

*Be it Resolved,* that the signature of any authorized officer and seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signature or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached."

The Attorney-in-Fact named above may be an agent or a broker of the Company. The granting of this Power of Attorney is specific to this bond and does not indicate whether the Attorney-in-Fact is or is not an appointed agent of the Company.

IN WITNESS WHEREOF, American Contractors Indemnity Company has caused its seal to be affixed hereto and executed by its President on this 18th day of April, 2022.

AMERICAN CONTRACTORS INDEMNITY CO. INCORPORATED SEPT. 25, 1990 CALIFORNIA

State of California
County of Los Angeles

AMERICAN CONTRACTORS INDEMNITY COMPANY

By: _____
Adam S. Pessin, President

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

On this 18th day of April, 2022, before me, Sonia O. Carrejo, a notary public, personally appeared Adam S. Pessin, President of American Contractors Indemnity Company, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of CALIFORNIA that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (seal)

SONIA O. CARREJO
Notary Public - California
Los Angeles County
Commission # 2398710
My Comm. Expires Apr 23, 2026

I, Kio Lo, Assistant Secretary of American Contractors Indemnity Company, do hereby certify that the Power of Attorney and the resolution adopted by the Board of Directors of said Company as set forth above, are true and correct transcripts thereof and that neither the said Power of Attorney nor the resolution have been revoked and they are now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of August, 2022.

Bond No. 100675117

Agency No. 3092

AMERICAN CONTRACTORS INDEMNITY CO. INCORPORATED SEPT. 25, 1990 CALIFORNIA

_____
Kio Lo, Assistant Secretary

HCCSOZZPOAACIC04/2022

visit tmhcc.com/surety for more information

Bond No.: 100675117
Contract No.: 2023-115
Approved: 9/16/2022

Executed in triplicate

Premium Included on Performance Bond

# ***LABOR AND MATERIAL BOND***

PL18-0038 (SCUP)

WHEREAS, the City Council of the City of Chino, State of California, hereinafter designated as "CITY" and TANG & SUNG INVESTMENT LLC, hereinafter designated as "PRINCIPAL," have entered into an agreement whereby Principal agrees to install and complete certain designated public improvements, which said agreement, dated 9/16/2022, and identified as Project No. PL18-0038 (SCUP), is hereby referred to and made a part hereof; and

WHEREAS, under the terms of said agreement, Principal is required, before entering upon the performance of the work, to file a good and sufficient payment bond with the City of Chino to secure the claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code of the State of California.

NOW, THEREFORE, said Principal and the undersigned, as corporate surety, are held and firmly bound unto the City of Chino, and all contractors, subcontractors, laborers, material, men, and other persons employed in the performance of the aforesaid agreement and referred to in the aforesaid Code of Civil Procedure in the sum of Forty Three Thousand Two Hundred and 00/100 Dollars ($43,200.00) for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that said surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by City in successfully enforcing such obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

The surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the agreement or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by Principal and Surety above named, on August 3, 2022.

| TANG & SUNG INVESTMENT LLC | American Contractors Indemnity Company |
|---|---|
| PRINCIPAL | SURETY |
| By: Cindy Tang Kuempel aka Cindy Tang | By: Freddy Anvari, Attorney-in-Fact |

***SIGNATURE(S) MUST BE NOTARIZED***

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT** **CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )
County of Orange )

On 08/03/2022 before me, K. Ho, Notary Public,
*Date* *Here Insert Name and Title of the Officer*

personally appeared Freddy Anvari
*Name(s) of Signer(s)*

,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

K. HO
Notary Public - California
Orange County
Commission # 2262101
My Comm. Expires Nov 7, 2022

Signature _____
*Signature of Notary Public*

*Place Notary Seal Above*

**OPTIONAL**

*Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.*

**Description of Attached Document**
Title or Type of Document: Bond 100675117 Document Date: _____
Number of Pages: _____ Signer(s) Other Than Named Above: _____

**Capacity(ies) Claimed by Signer(s)**

| | |
|---|---|
| Signer's Name: Freddy Anvari | Signer's Name: |
| ☐ Corporate Officer — Title(s): | ☐ Corporate Officer — Title(s): |
| ☐ Partner — ☐ Limited ☐ General | ☐ Partner — ☐ Limited ☐ General |
| ☐ Individual ☒ Attorney in Fact | ☐ Individual ☐ Attorney in Fact |
| ☐ Trustee ☐ Guardian or Conservator | ☐ Trustee ☐ Guardian or Conservator |
| ☐ Other: | ☐ Other: |
| Signer Is Representing: | Signer Is Representing: |

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# California Acknowledgment Form

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Bernardino } ss.

On August 9th, 2022 before me, Tori Staley, Notary Public
(here insert name and title of the officer),
personally appeared Cindy Tang Kuempel

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Seal

WITNESS my hand and official seal.

Tori Staley
Signature of Notary

TORI STALEY
COMM. #2312060
Notary Public - California
SAN BERNARDINO COUNTY
My Comm. Exp. Nov. 9, 2023

## Optional Information

To help prevent fraud, it is recommended that you provide information about the attached document below.
***This is not required under California State notary public law.***

Document Title: Labor and material bond # of Pages: 4

## Notes

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TOKIO MARINE HCC

# POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:
That American Contractors Indemnity Company of the State of California, a California corporation, does hereby appoint,

## FREDDY ANVARI

its true and lawful Attorney-in-Fact, with full authority to execute on its behalf bond number 100675117, issued in the course of its business and to bind the Company thereby, in an amount not to exceed One hundred thousand and 00/100 ($100,000.00).

This Power of Attorney is granted and is signed and sealed by facsimile under and by the authority of the following resolutions adopted by the Board of Directors of AMERICAN CONTRACTORS INDEMNITY COMPANY at a meeting duly called and held on the 1st day of September, 2011.

*"Be it Resolved,* that the President, any Vice-President, any Assistant Vice-President, any Secretary or any Assistant Secretary shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

*Attorney-in-Fact* may be given full power and authority for and in the name of and on behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements or indemnity and other conditional or obligatory undertakings, including any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts, and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be binding upon the Company as if signed by the President and sealed and effected by the Corporate Secretary.

*Be it Resolved,* that the signature of any authorized officer and seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signature or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached."

The Attorney-in-Fact named above may be an agent or a broker of the Company. The granting of this Power of Attorney is specific to this bond and does not indicate whether the Attorney-in-Fact is or is not an appointed agent of the Company.

IN WITNESS WHEREOF, American Contractors Indemnity Company has caused its seal to be affixed hereto and executed by its President on this 18th day of April, 2022.

AMERICAN CONTRACTORS INDEMNITY CO. INCORPORATED SEPT. 25, 1990 CALIFORNIA

State of California
County of Los Angeles

AMERICAN CONTRACTORS INDEMNITY COMPANY

By: _____
Adam S. Pessin, President

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

On this 18th day of April, 2022, before me, Sonia O. Carrejo, a notary public, personally appeared Adam S. Pessin, President of American Contractors Indemnity Company, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of CALIFORNIA that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (seal)

SONIA O. CARREJO
Notary Public - California
Los Angeles County
Commission # 2398710
My Comm. Expires Apr 23, 2026

I, Kio Lo, Assistant Secretary of American Contractors Indemnity Company, do hereby certify that the Power of Attorney and the resolution adopted by the Board of Directors of said Company as set forth above, are true and correct transcripts thereof and that neither the said Power of Attorney nor the resolution have been revoked and they are now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of August, 2022.

Bond No. 100675117

Agency No. 3092

AMERICAN CONTRACTORS INDEMNITY CO. INCORPORATED SEPT. 25, 1990 CALIFORNIA

_____
Kio Lo, Assistant Secretary

HCCSOZZPOAACIC04/2022

visit tmhcc.com/surety for more information

Executed in triplicate

Bond No.: 100675117
Contract No.: 2023-115
Approved: 9/6/2022

# *WARRANTY BOND*

PL18-0038 (SCUP)

WHEREAS, the City Council of the City of Chino, State of California, hereinafter designated as "CITY" and TANG & SUNG INVESTMENT LLC, hereinafter designated as "PRINCIPAL," have entered into an agreement whereby Principal has agreed to warrant and guarantee the installation, completion, and maintenance of certain designated public improvements, which said agreement, dated 9/6/2022, and identified as Project No. PL18-0038, is hereby referred to and made a part hereof; and

WHEREAS, said Principal is required under the terms of said agreement to furnish a bond for the warranty of said improvements.

NOW, THEREFORE, we, the Principal, and American Contractors Indemnity Company, as surety, are held and firmly bound unto the City of Chino in the penal sum of ---------- Eight Thousand Six Hundred and 00/100 Dollars ($8,600.00) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors, and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above bound Principal, his or its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and provisions in said agreement and any alteration thereof made as therein provided, on his or their part, to be kept and performed thereof made as therein provided, on his or its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless City, its officers, agents, and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby, and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees including reasonable attorneys' fees, incurred by the City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the agreement or to the work or to the specifications.

IN WITNESS WHEREOF, this instrument has been duly executed by Principal and Surety above named, on August 3, 2022.

| TANG & SUNG INVESTMENT LLC | American Contractors Indemnity Company |
|---|---|
| PRINCIPAL | SURETY |
| By: Cindy Tang Kuempel aka Cindy Tang | By: |
| | Freddy Anvari, Attorney-in-Fact |

***SIGNATURE(S) MUST BE NOTARIZED***

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT** **CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )
County of Orange )

On 08/03/2022 before me, Angela Kim, Notary Public,
*Date* *Here Insert Name and Title of the Officer*

personally appeared Freddy Anvari
*Name(s) of Signer(s)*

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

ANGELA KIM
Notary Public - California
Orange County
Commission # 2337781
My Comm. Expires May 15, 2025

Signature _____
*Signature of Notary Public*

*Place Notary Seal Above*

**OPTIONAL**

*Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.*

**Description of Attached Document**

Title or Type of Document: Bond# 100675117 Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

**Capacity(ies) Claimed by Signer(s)**

| | |
|---|---|
| Signer's Name: Freddy Anvari | Signer's Name: _____ |
| ☐ Corporate Officer — Title(s): _____ | ☐ Corporate Officer — Title(s): _____ |
| ☐ Partner — ☐ Limited ☐ General | ☐ Partner — ☐ Limited ☐ General |
| ☐ Individual ☒ Attorney in Fact | ☐ Individual ☐ Attorney in Fact |
| ☐ Trustee ☐ Guardian or Conservator | ☐ Trustee ☐ Guardian or Conservator |
| ☐ Other: _____ | ☐ Other: _____ |
| Signer Is Representing: _____ | Signer Is Representing: _____ |

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# California Acknowledgment Form

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Bernardino } ss.

On August 9th, 2022 before me, Tori Staley, Notary Public
(here insert name and title of the officer),
personally appeared Cindy Tang Kvempel

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Seal

TORI STALEY
COMM. #2312060
Notary Public - California
SAN BERNARDINO COUNTY
My Comm. Exp. Nov. 9, 2023

WITNESS my hand and official seal.

Tori Staley
Signature of Notary

## Optional Information

To help prevent fraud, it is recommended that you provide information about the attached document below.
***This is not required under California State notary public law.***

Document Title Warranty Bond # of Pages: 4

## Notes

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TOKIO MARINE HCC

# POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:
That American Contractors Indemnity Company of the State of California, a California corporation, does hereby appoint,

## FREDDY ANVARI

its true and lawful Attorney-in-Fact, with full authority to execute on its behalf bond number 100675117, issued in the course of its business and to bind the Company thereby, in an amount not to exceed One hundred thousand and 00/100 ($100,000.00).

This Power of Attorney is granted and is signed and sealed by facsimile under and by the authority of the following resolutions adopted by the Board of Directors of AMERICAN CONTRACTORS INDEMNITY COMPANY at a meeting duly called and held on the 1st day of September, 2011.

*"Be it Resolved,* that the President, any Vice-President, any Assistant Vice-President, any Secretary or any Assistant Secretary shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

*Attorney-in-Fact* may be given full power and authority for and in the name of and on behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements or indemnity and other conditional or obligatory undertakings, including any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts, and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be binding upon the Company as if signed by the President and sealed and effected by the Corporate Secretary.

*Be it Resolved,* that the signature of any authorized officer and seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signature or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached."

The Attorney-in-Fact named above may be an agent or a broker of the Company. The granting of this Power of Attorney is specific to this bond and does not indicate whether the Attorney-in-Fact is or is not an appointed agent of the Company.

IN WITNESS WHEREOF, American Contractors Indemnity Company has caused its seal to be affixed hereto and executed by its President on this 18th day of April, 2022.

AMERICAN CONTRACTORS INDEMNITY CO. INCORPORATED SEPT. 25, 1990 CALIFORNIA

State of California
County of Los Angeles

AMERICAN CONTRACTORS INDEMNITY COMPANY

By: _____
Adam S. Pessin, President

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

On this 18th day of April, 2022, before me, Sonia O. Carrejo, a notary public, personally appeared Adam S. Pessin, President of American Contractors Indemnity Company, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of CALIFORNIA that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (seal)

SONIA O. CARREJO
Notary Public - California
Los Angeles County
Commission # 2398710
My Comm. Expires Apr 23, 2026

I, Kio Lo, Assistant Secretary of American Contractors Indemnity Company, do hereby certify that the Power of Attorney and the resolution adopted by the Board of Directors of said Company as set forth above, are true and correct transcripts thereof and that neither the said Power of Attorney nor the resolution have been revoked and they are now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of August, 2022.

Bond No. 100675117

Agency No. 3092

AMERICAN CONTRACTORS INDEMNITY CO. INCORPORATED SEPT. 25, 1990 CALIFORNIA

_____
Kio Lo, Assistant Secretary

HCCSOZZPOAACIC04/2022

visit tmhcc.com/surety for more information

# MEMORANDUM
# CITY OF CHINO
# PUBLIC WORKS DEPARTMENT

**CITY COUNCIL MEETING DATE: MAY 21, 2024**

**TO:** **LINDA REICH, CITY MANAGER**

**FROM:** **HYE JIN LEE, PE, DIRECTOR OF PUBLIC WORKS**

## SUBJECT

Final Acceptance of Public Improvements for Site Approval PL16-0671, G&SS Restaurant Corporation (Andy's Burgers), located at 4616 Riverside Drive.

## RECOMMENDATION

1) Accept public improvements as complete for Site Approval PL16-0671; 2) authorize release of the performance bond and initiate the warranty bond; and 3) authorize the City Manager to execute the necessary documents on behalf of the City.

## FISCAL IMPACT

There are sufficient funds included in the City's Operating Budget to support the ongoing maintenance activities related to the public improvements being accepted.

## CITY OF CHINO MISSION / VISION / VALUES / STRATEGIC ISSUES

The recommendation detailed above further the City's values and strategic issues that serve as key pillars on which identified priorities, goals, and action plans are built, by fostering:

- Positive City Image

| | |
|---|---|
| Revenue: Click or tap here to enter text. | Expenditure: |
| Transfer In: Click or tap here to enter text. | Transfer Out: Click or tap here to enter text. |

## BACKGROUND

On November 13, 2017, the Planning Commission conditionally approved Site Approval PL16-0671 for the construction of a 4,925 square-foot drive-thru restaurant (known as Andy's Burgers) with a 592 square-foot outdoor seating area, located on a 0.96-acre site in the Commercial General Zoning District. The project is located at 4616 Riverside Drive, on the northeast corner of Wright Avenue and Riverside Drive (Exhibit A).

The Engineering Conditions of Approval ("COA") for this project required the applicant to design and construct certain frontage improvements including, sidewalk; streetlights, curb, and gutter; curb ramps, sidewalk, signing & striping, drive approaches; street pavement, domestic water; private storm drain, private sewer; and parkway landscape improvements. The public improvements completed by the applicant necessitated the execution of a Public Improvement Agreement and posting securities that the City Council approved on June 16, 2020 (Exhibit B). It should be noted that the costs associated with the design and construction of the required public improvements are completely offset by the applicant. There is no direct fiscal impact on the City.

The COA additionally required that the owner annex the property to the City's Landscape and Lighting District No. 2002-1 (Annexation/Zone No. 82) for public streetlight maintenance along the project's frontage, within the right-of-way. The public hearing for the annexation was held on September 1, 2020. The City Council unanimously approved the annexation.

The applicant started the plan check process in July 2018 and underwent several rounds of plan checks for onsite and offsite improvements until December 2018. Construction for the onsite and offsite improvements began in February 2019 and August 2020 respectively. During construction, the City and the applicant met to discuss the City's condition of approval for the required undergrounding of overhead utilities along the property frontage. Per the applicant's request and City Municipal Code Chapter 13.32.70.E, City staff agreed to accept a $120,000 in-lieu payment for the undergrounding of dry utility improvements along the project frontage. Additionally, the applicant was required to pay for a fair share contribution toward future improvements at the Wright Avenue & Riverside Drive intersection.

The public improvements are complete per the approved plans and have been constructed to the satisfaction of the City Engineer. Completion of the project was delayed due to the uncertainty brought on by the pandemic and the applicant's ability to pay the lump sum in-lieu fee, which was a financial hardship to the applicant until recently. The applicant has since paid the fee in full as of April 2024.

## ISSUES/ANALYSIS

The public improvements completed have been constructed in compliance with the City's standards/specifications, and accessibility requirements, and to the satisfaction of the City Engineer.

It should be noted that during project approval, comments from nearby residents expressed concerns over project traffic impacts specifically along Wright Avenue. During the meeting, staff suggested a traffic signal could be constructed at the intersection of Riverside Drive and Wright

Avenue to address the residents' concerns. However, subsequent analysis determined that a traffic signal was not warranted even after project construction. As a result, a traffic signal was not constructed as part of the project. City staff will continue to monitor the operation of the intersection to determine if improvements are needed in the future.

All public improvements that were part of the condition of the Project were fully funded by the Applicant/Developer.

Security for a one-year warranty period has been submitted to the City. Under the warranty bond obligation, the developer will correct any defects found within one year of the City Council's acceptance of the Project. Also, upon completion and final acceptance, the public improvements shall become the sole exclusive property of the City to operate and maintain. The following maintenance obligations will commence following acceptance of the public improvements:

| | |
|---|---|
| Domestic Water Lateral: | By the City |
| Sewer Lateral: | By the City |
| Public Street Sweeping: | By the City |
| Public Streetlights: | By the City |
| Landscaping: | By the property owner |

Attachment: Exhibit A - Project Location Map
Exhibit B - Fully Executed Public Improvement Agreement & Bonds

# Exhibit “A”

**PL16-0671 (Site Approval)**

## LOCATION MAP



# PUBLIC IMPROVEMENT AGREEMENT

**by and between**

**CITY OF CHINO**

**and**

**G&SS RESTAURANT CORPORATION**
**(ANDY'S BURGERS)**

# PUBLIC IMPROVEMENT AGREEMENT BETWEEN

# THE CITY OF CHINO

# AND

# ANDY'S BURGERS

**Agreement Date**: June 16th, 2020

**Developer's Name**: G&SS RESTAURANT CORPORATION (ANDY'S BURGERS)

**Description**: On November 13, 2017, the Planning Commission conditionally approved PL16-0671 Site Approval to construct a 4,925 square-foot Andy's Burgers drive-thru restaurant with a 592 square-foot outdoor seating area on a 0.96-acre site in the Commercial General Zoning District. The project is located at 4616 Riverside Drive on the northwest corner Riverside Drive and Wright Avenue.

**Site Approval No.**: PL16-0671

**Estimated Total Cost of Improvements**: $191,300.00

**Security**

**Bond No.**: 4440023

**Surety**: SureTec Insurance Company

**Designees for the Service of Written Notice**:

| **CITY**: | **SUBDIVIDER**: |
|---|---|
| Chris Magdosku<br>City Engineer<br><br>13220 Central Avenue<br>Chino, CA 91710<br><br>(909) 334-3417<br>cmagdosku@cityofchino.org | G&SS Restaurant Corporation<br>Attn: Angelo Sotiropoulos<br>Owner<br><br>4603 Riverside Drive<br>Chino, CA 91710<br><br>sotiropoulos50@gmail.com |
| **CITY PROJECT INSPECTOR** | **SURETY** |
| Ronnie Hernandez<br>Permit & Inspection Supervisor<br><br>13220 Central Avenue<br>Chino, CA 91710<br><br>(909) 334-3433<br>rhernandez@cityofchino.org | SureTec Insurance Company |

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## PUBLIC IMPROVEMENT AGREEMENT

THIS PUBLIC IMPROVEMENT AGREEMENT (this "Agreement") is entered into this 16th day of June, 2020, by and between the CITY OF CHINO, a municipal corporation, organized and existing in the County of San Bernardino, under and by virtue of the laws of the State of California, ("CITY"), and G&SS RESTAURANT CORPORATION. ("DEVELOPER").

### RECITALS

A. Developer is the owner of certain real property located in the City of Chino, County of San Bernardino, State of California (the "Property"), as described on Exhibit "A", which Developer proposes to develop and construct certain works of improvement thereon, as hereafter set forth.

B. Site Approval PL16-0671, as presented by Developer, consists of a 4,925 square-foot Andy's Burgers drive-thru restaurant with a 592 square-foot outdoor seating area on a 0.96-acre site in the Commercial General Zoning District. The project is located at 4616 Riverside Drive on the northwest corner Riverside Drive and Wright Avenue (Exhibit A). Site Approval PL16-0671 was conditionally approved by the City of Chino Planning Commission on November 13, 2017 ("**Project**").

C. The City desires to assure that said improvements proposed for the Project will be constructed in a good workmanlike manner and in accordance with all applicable laws, statues, ordinances, resolutions and regulations now in force and effect in the City of Chino and the State of California, all of which are incorporated herein.

D. The Developer acknowledges familiarity with the various requirements for public improvements contained in the Chino Municipal Code and agrees to comply therewith.

### COVENANTS

Based upon the foregoing Recitals which are incorporated herein by reference and in consideration of City's site plan or other entitlements for the Property and permitting development of the Property to proceed, Developer agrees to timely perform all of its obligations as set forth herein.

1. Construction Obligations.

1.1. Works of Improvement. Developer agrees, at its sole cost and expense, to construct or install, or cause to be constructed or installed the street, domestic water, street lighting, landscaping, utility, and other improvements more fully described as Exhibit "B" attached hereto (the "Works of Improvement"), as the same may be supplemented and revised from time to time as set forth in this Agreement (said plans and specifications, together with all related documents, the "Plans"). The estimated construction cost for the Works of Improvement is $191,300.00.

1.2. Other Obligations Referenced in Conditions of Tentative Map Approval. In addition to the foregoing, Developer shall satisfy all of the other Conditions associated with the

Project and the Property. The Conditions associated with the Map are included in Exhibit "B" attached hereto.

1.3. Intent of Plans. The intent of the Plans referenced in Section 1.1 is to prescribe a complete work of improvement which Developer shall perform or cause to be performed in a manner acceptable to the City Engineer, (or designee), and in full compliance with all codes and the terms of this Agreement. Developer shall complete a functional or operable improvement or facility, even though the Plans may not specifically call out all items of work required for Developer's contractor to complete its tasks, incidental appurtenances, materials, and the like. If any omissions are made or information necessary to carry out the full intent and meaning of the Plans, Developer or its contractor shall immediately notify its design engineer who will seek approval of the City Engineer for furnishing of detailed instructions. In the event of any doubt or question arising regarding the true meaning of any of the Plans, reference shall be made to the City Engineer whose decision thereon shall be final.

Developer recognizes that the Plans consist of general drawings. All authorized alterations affecting the requirements and information given on the Plans shall be in writing and approved by the City Engineer. The Plans shall be supplemented by such working or shop drawings as are necessary to adequately control the work. Without the City Engineer's prior written approval, no change shall be made by Developer or its contractor to any plan, specification, or working or shop drawing after it has been stamped as approved.

1.4. Performance of Work. Developer shall furnish or cause to be furnished all materials, labor, tools, equipment, utilities, transportation, and incidentals required to perform Developer's obligations under this Agreement.

1.5. Changes in the Work. The City Engineer, without invalidating this Agreement and without notification to any of the sureties or financial institutions referenced in Paragraph 4, may order extra work or may make changes by altering or deleting any portion of the Works of Improvement as specified herein or as deemed necessary or desirable by the City Engineer as determined necessary to accomplish the purposes of this Agreement and to protect the public health, safety, or welfare. The City Engineer shall notify Developer or its contractor in writing (by Correction Notice) at the time a determination has been made to require changes in the work. No field changes performed or proposed by Developer or its contractor shall be binding on City unless approved in writing by the City Engineer. The City and Developer may mutually agree upon changes to the Works of Improvement, subject to the security requirements in Section 4.

1.6. Defective Work. Developer shall cause its contractor to repair, reconstruct, replace, or otherwise make acceptable any work found by the City Engineer to be defective.

1.7. No Warranty by City. The Plans for the Works of Improvement have been prepared by or on behalf of Developer or its consultants or contractors, and City makes no representation or warranty, express or implied, to Developer or to any other person regarding the adequacy of the Plans or related documents.

1.8. Authority of the City Engineer. In addition to the authority granted to the City Engineer elsewhere in this Agreement, the City Engineer shall have the authority to decide all questions which may arise as to the quality and acceptability of materials furnished and work

performed, and all questions as to the satisfactory and acceptable fulfillment of the terms of this Agreement by Developer and its contractor.

1.9. Documents Available at the Site. Developer shall cause its contractor to keep a copy of all approved Plans at the job site and shall give access thereto to the City's inspectors and engineers at all times.

1.10. Inspection. Developer shall have an authorized representative on the job site at all times during which work is being done who has full authority to act for Developer, or its design engineer, and Developer's contractor(s) regarding the Works of Improvement. Developer shall cause its contractor to furnish the City with every reasonable facility for ascertaining whether or not the Works of Improvement as performed are in accordance with the requirements and intent of this Agreement, including the Plans. If the City inspector requests it, the Developer's contractor, at any time before acceptance of the Works of Improvement, shall remove or uncover such portions of the finished work as may be directed which have not previously been inspected. After examination, the Developer's contractor shall restore said portions of the work to the standards required hereunder. Inspection or supervision by the City Engineer (or designee) shall not be considered as direct control of the individual workmen on the job site. City's inspectors shall have the authority to stop any and all work not in accordance with the requirements contained or referenced in this Agreement.

The inspection of the work by City shall not relieve Developer or its contractor of any obligations to fulfill this Agreement as herein provided, and unsuitable materials or work may be rejected notwithstanding that such materials or work may have been previously overlooked or accepted.

1.11. Compliance with Law; Applicable Standards for Improvements. In addition to the express provisions of this Agreement and the Plans, Developer shall cause construction of the Works of Improvement to be completed in accordance with all other applicable federal, state, and local laws, ordinances, rules and regulations. In addition, without limiting the foregoing, the Developer shall, at its expense, obtain and comply with the conditions of all necessary permits and licenses for the construction of the Works of Improvement. The Developer shall also give all necessary notices and pay all fees and taxes as required by law.

Developer shall construct the improvements in accordance with the City standards in effect at the time of the adoption of this Agreement. City reserves the right to protect the public safety or welfare or comply with applicable Federal or State law or City zoning ordinances.

1.12. Suspension of Work. The City Engineer shall have authority to order suspension of the work for failure of the Developer's contractor to comply with law pursuant to Section 1.12. In case of suspension of work for any cause whatsoever, Developer and its contractor shall be responsible for all materials and shall store them properly if necessary, and shall provide suitable interim drainage and/or dust control measures, and erect temporary structures where necessary.

1.13. Erosion and Dust Control and Environmental Mitigation. All grading, landscaping, and construction activities shall be performed in a manner to control erosion and prevent flooding problems. The City Engineer shall have the authority to require erosion plans to prescribe reasonable controls on the method, manner, and time of grading, landscaping, and

construction activities to prevent nuisances to surrounding properties. Plans shall include without limitation temporary drainage and erosion control requirements, dust control procedures, restrictions on truck and other construction traffic routes, noise abatement procedures, storage of materials and equipment, removal of garbage, trash, and refuse, securing the job site to prevent injury, and similar matters.

1.14. Final Acceptance of Works of Improvement. After Developer's contractor has completed all of the Works of Improvement, Developer shall then request a final inspection of the work. If items are found by the City's inspectors to be incomplete or not in compliance with this Agreement or any of the requirements contained or referenced herein, City will inform the Developer or its contractor of such items. After the Developer's contractor has completed these items, the procedure shall then be the same as specified above for the Developer's contractor's initial request for final inspection. If items are found by City's inspectors to be incomplete or not in compliance after two (2) "final" inspections, the City may require the Developer or its contractor, as a condition to performing further field inspections, to submit in writing a detailed statement of the work performed subsequent to the date of the previous inspection which was found to be incomplete or not in compliance at that time. Developer shall be responsible for payment to City Engineer of re-inspection fees in the amount necessary to cover the City's costs for additional final inspections, as determined by the City Engineer.

No inspection or acceptance pertaining to specific parts of the Works of Improvement shall be construed as final acceptance of any part until the overall final acceptance by the City Engineer is made. The City Engineer shall make a certification of completion and acceptance on the Works of Improvement by recordation of a Notice of Acceptance on behalf of the City. Final acceptance shall not constitute a waiver by the City Engineer of defective work subsequently discovered.

The date on which the Works of Improvement will be considered as complete shall be the date of the Notice of Acceptance.

1.15. Vesting of Ownership. Upon recordation of the Notice of Acceptance, ownership of the Works of Improvement shall vest in the City.

1.16. Developer's Obligation to Warn Public During Construction. Until recordation of the Notice of Acceptance, Developer shall give good and adequate warning to the public of any dangerous condition of the Works of Improvements, and shall take reasonable actions to protect the public from such dangerous condition. Until recordation of the Notice of Acceptance, Developer shall provide forty-eight (48) hours' advance written notice to all neighboring property owners and tenants affected by Developer's operations or construction of the hours, dates and duration of any planned construction activities.

1.17. Injury to Public Improvements, Public Property or Public Utility. Until recordation of the Notice of Acceptance of the Works of Improvement, Developer assumes responsibility for the care and maintenance of, and any damage to, the Works of Improvements. Developer shall replace or repair all Works of Improvements, public property, public utility facilities, and surveying or subdivision monuments and benchmarks which are destroyed or damaged for any reason, regardless whether resulting from the acts of the Developer, prior to the recordation of the Notice of Acceptance. Developer shall bear the entire cost of such

replacement or repairs regardless of what entity owns the underlying property. Any repair or replacement shall be to the satisfaction, and subject to the approval, of the City Engineer.

Neither the City, nor any officer or employee thereof, shall be liable or responsible for any accident, loss or damage, regardless of cause, occurring to the work or Works of Improvements prior to recordation of the Notice of Acceptance of the work or improvements.

2. Time for Performance.

2.1. Commencement and Completion Dates. Subject to Sections 2.2 and 2.3 below, Developer shall (i) commence with construction and installation of the Works of Improvement thirty (30) days following City's approval of the Plans ("Commencement Date"); and (ii) complete or cause to be completed all of the Works of Improvement within two (2) years after the Commencement Date. In the event good cause exists as determined by the City Engineer, the time for commencement of construction or completion of the Works of Improvement hereunder may be extended by up to three (3) additional one-year periods. Extensions shall be executed in writing by the City Engineer. The City Engineer in his or her sole discretion determines whether or not the Developer has established good cause for an extension. As a condition of such extension, the City Engineer may require Developer to furnish new security guaranteeing performance of this Agreement, as extended, in an increased amount to compensate for any increase in construction costs as determined by the City Engineer. If Developer requests and is granted an extension of time for completion of the improvements, City may apply the standards in effect at the time of the extension.

2.2. Phasing Requirements. Notwithstanding the provisions of Section 2.1, the City reserves the right to control and regulate the phasing of completion of specific Works of Improvement as required to comply with applicable City ordinances, regulations, and rules relating to the timely provision of public services and facilities. In addition to whatever other remedies the City may have for Developer's failure to satisfy such phasing requirements, as the same now exist or may be amended from time to time, Developer acknowledges City's right to withhold the issuance of further building permits on the Property until such phasing requirements are satisfied. Prior to issuance of building permits, Developer shall provide satisfactory evidence that all applicable requirements that are a condition to issuance of building permits have been satisfied. Such requirements may include the payment of fees, construction of improvements, or both. Final inspections or issuance of Certificates of Occupancy may be withheld from the Developer by the City, if, upon a determination by the City Engineer, completion of specific Works of Improvements or other requirements associated with the development of the Property have not been completed to the City Engineer's satisfaction.

2.3. Force Majeure. Notwithstanding the provisions of Section 2.1, Developer's time for commencement and completion of the Works of Improvement shall be extended for the period of any enforced delay caused due to circumstances beyond the control and without the fault of Developer, including to the extent applicable adverse weather conditions, flood, earthquakes, strikes, lockouts, acts or failures to act of a public agency (including City), required changes to the scope of work required by City, and similar causes; provided, however, that the period of any enforced delay hereunder shall not include any period longer than five (5) days prior to City's receipt of a written notice from Developer or its contractor detailing the grounds for Developer's claim to a right to extend its time for performance

hereunder. The City Engineer shall evaluate all claims to Force Majeure and the City Engineer's decision shall be final.

2.4. Continuous Work. After commencement of construction of the Works of Improvement (or separate portion thereof), Developer shall cause such work to be diligently pursued to completion, and shall not abandon the work for a consecutive period or more than thirty (30) days, events of Force Majeure excepted.

3. Labor.

3.1. Labor Standards. This Agreement is subject to, and Developer agrees to comply with, all of the applicable provisions of the Labor Code including, but not limited to, the wage and hour, prevailing wage, worker compensation, and various other labor requirements in Division 2, Part 7, Chapter 1, including section 1720 to 1740, 1770 to 1780, 1810 to 1815, 1860 to 1861, which provisions are specifically incorporated herein by reference as set forth herein in their entirety. Developer shall expressly require compliance with the provisions of this Section in all agreements with contractors and subcontractors for the performance of the Works of Improvement.

3.2. Nondiscrimination. In accordance with the California Fair Employment and Housing Act ("FEHA"), California Government Code Section 12940 *et seq.*, Developer agrees that Developer, its agents, employees, contractors, and subcontractor performing any of the Works of Improvement shall not discriminate, in any way, against any person on the basis of race, ethnicity, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Developer shall expressly require compliance with the provisions of this Section in all agreements with contractors and subcontractors for the performance of this Agreement.

3.3. Licensed Contractors. Developer shall cause all of the Works of Improvement to be constructed by contractors and subcontractors with valid California Contractors' licenses for the type of work being performed. All of Developer's contractors and subcontractors shall obtain a valid City of Chino business license prior to performing any work pursuant to this Agreement. Developer shall provide the City Engineer with a list of all of its contractors and subcontractors prior to initiating any work, and all valid Contractor's licenses and business licenses issued thereto as a condition of constructing the Works of Improvements.

3.4. Worker's Compensation. Developer shall cause every contractor and subcontractor performing any of the Works of Improvement to carry Workers' Compensation Insurance as required by the Labor Code of the State of California and shall cause each such contractor and subcontractor to submit to City a Certificate of Insurance verifying such coverage prior to such contractor or subcontractor entering onto the job site.

4. Security.

4.1. Required Security.

(a) At the time Developer executes this Agreement, Developer shall furnish to City the following bonds, letters of credit, instruments of credit (assignment of

deposit account) or other security acceptable to City in its sole and absolute discretion and satisfying the requirements of the applicable provisions of this Section 4 below (hereinafter "Security Instruments"):

(i) A Security Instrument securing Developer's faithful performance of all of the Works of Improvement ("Faithful Performance Security Instrument"), in the amount of $191,300.00 equal to 100% of the estimated construction cost referenced in Section 1.1.

(ii) A Security Instrument guaranteeing the payment to contractors, subcontractors, and other persons furnishing labor, materials, and/or equipment ("Labor and Materials Security Instrument") with respect to the Works of Improvement in an amount equal to $95,700.00 equal to 50% of the estimated construction cost referenced in Section 1.1.

This Agreement shall not be effective for any purpose until such Security Instruments are supplied to and approved by City in accordance herewith.

(b) Required Security Instrument for Maintenance and Warranty. Prior to the City Council's acceptance of the Works of Improvement and recordation of a Notice of Completion, Developer shall deliver a Security Instrument warranting the work accepted for a period of one (1) year following said acceptance ("Maintenance and Warranty Security Instrument"), in the amount of $19,100.00 equal to 10% of the estimated construction cost set forth in Section 1.1 or a suitable amount determined by the City Engineer.

4.2. Form of Security Instruments. All Security Instruments shall be in the amounts required under Section 4.1 (a) or 4.1(b), as applicable, shall meet the following minimum requirements and otherwise shall be in a form provided by City or otherwise approved by the City Attorney:

(a) Bonds. For Security Instruments provided in the form of bonds, any such bond must be issued and executed by an insurance company or bank authorized to transact surety business in the State of California. Any insurance company acting as surety shall have a minimum rating of A-IX, as rated by the current edition of Best's Key Rating Guide published by A.M. Best's Company, Oldwick, New Jersey, 08858. Any bank acting as surety shall have a minimum rating of AA, as rated by Moody's or Standard & Poor's.

(b) Letters of Credit. For Security Instruments which are letters of credit, any letter of credit shall be an original separate unconditional, irrevocable, negotiable and transferable commercial letter of credit issued by a financial institution with offices in the State of California acceptable to City. Any such letter of credit shall specifically permit City to draw on same by unilateral certification of the City Engineer of the City that Developer is in default under its payment or performance obligations hereunder or in the event Developer fails to deliver a replacement letter of credit not less than thirty (30) days prior to the date of

expiration of any such letter of credit and shall further be subject to the provisions of Section 4.4.

(c) Instrument of Credit. For Security Instruments which are Instruments of Credit, any Instrument of Credit shall be an assignment of deposit account assigning as security to City all of Developer's interest in funds on deposit in one or more bank accounts with financial institutions acceptable to City.

(d) General Requirements for all Security Instruments.

(i) Payments under any Security Instruments shall be required to be made (and, with respect to bonds, litigation shall be required to be instituted and maintained) in the City of Chino, State of California (and the Security Instrument shall so provide).

(ii) Each Security Instrument shall have a minimum term of one (1) year after the deadline for Developer's completing the Works of Improvement, in accordance with Section 2.1 (other than Instruments of Credit, which shall have no defined term or expiration date).

(iii) Each Security Instrument shall provide that changes may be made in the Works of Improvement pursuant to the terms of this Agreement without notice to any issuer or surety and without affecting the obligations under such Security Instrument.

(iv) If the Developer seeks to replace any security with another security, the replacement shall: (1) comply with all the requirements for security in this Agreement; (2) be provided by the Developer to the City Engineer; and (3) upon its written acceptance by the City Engineer, be deemed a part of this Agreement. Upon the City Engineer's acceptance of a replacement security, the former security may be released by the City.

4.3. Developer's Liability. While no action of Developer shall be required in order for City to realize on its security under any Security Instrument, Developer agrees to cooperate with City to facilitate City's realization under any Security Instrument, and to take no action to prevent City from such realization of any Security Instrument. Notwithstanding the giving of any Security Instrument or the subsequent expiration of any Security Instrument or any failure by any surety or financial institution to perform its obligations with respect thereto, Developer shall be personally liable for performance under this Agreement and for payment of the cost of the labor and materials for the improvements required to be constructed or installed hereby and shall, within ten (10) days after written demand therefor, deliver to City such substitute security as City shall require satisfying the requirements in this Section 4.

4.4. Letters of Credit.

(a) In the event a letter of credit is given pursuant to Section 4.2(b), City shall be entitled to draw on any such letter of credit if a replacement letter of credit

(expiring in not less than one (1) year, unless City agrees to a lesser term in City's sole and absolute discretion) is not delivered not less than thirty (30) days prior to the expiration of the original letter of credit, such substitute letter of credit being in the same amount and having the terms and conditions as the initial letter of credit delivered hereunder, issued by a financial institution acceptable to City as of the date of delivery of the replacement letter of credit.

(b) In the event of draw by the City on a letter of credit, the City may elect, in its sole and absolute discretion, to apply any such funds drawn to the obligations secured by such letter of credit or to hold such funds in an account under the control of the City, with no interest accruing thereon for the benefit of the Developer. If the City elects to hold the funds in an account pursuant to the foregoing, City may thereafter at any time elect instead to apply such funds as provided in the foregoing. Developer agrees and hereby grants City a security interest in such account to the extent required for City to realize on its interests therein, and agrees to execute and deliver to City any other documents requested by City in order to evidence the creation and perfection of City's security interest in such account.

4.5. Release of Security Instruments. The City shall release all Security Instruments consistent with Government Code Sections 66499.7 and 66499.8, Section 19.09.010 of the Chino Municipal Code, and as follows:

(a) City shall release the Faithful Performance Security Instrument and Labor and Materials Security Instrument when all of the following have occurred:

(i) Developer has made written request for release and provided evidence of satisfaction of all other requirements in this Section 4.5;

(ii) the Works of Improvement have been accepted;

(iii) Developer has delivered the Maintenance and Warranty Security Instrument; and

(iv) after passage of the time within which lien claims are required to be made pursuant to Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code of the State of California. If lien claims have been timely filed, City shall hold the Labor and Materials Security Instrument until such claims have been resolved, Developer has provided a statutory bond, or otherwise as required by applicable law.

(b) City shall release the Maintenance and Warranty Security Instrument upon Developer's written request upon the expiration of the warranty period, and settlement of any claims filed during the warranty period.

(c) The City may retain from any security released, an amount sufficient to cover costs and reasonable expenses and fees, including reasonable attorney's fees.

5. Cost of Construction and Provision of Inspection Service.

5.1. Developer Responsible for All Costs of Construction. Developer shall be responsible for payment of all costs incurred for construction and installation of the Works of Improvement. In the event Developer is entitled to reimbursement from City for any of the Works of Improvement, such reimbursement shall be subject to a separate Reimbursement Agreement to be entered into between Developer and City prior to construction of the Works of Improvement.

5.2. Payment to City for Cost of Related Inspection and Engineering Services. Developer shall compensate City for all of City's costs reasonably incurred in having its authorized representative make the usual and customary inspections of the Works of Improvement. In addition, Developer shall compensate City for all design, plan check, evaluating any proposed or agreed-upon changes in the work. The procedures for deposit and payment of such fees shall be as established by the City. In no event shall Developer be entitled to additional inspections or a final inspection and acceptance of any of the Works of Improvement until all City fees and charges have been fully paid, including without limitation, charges for applicable penalties and additional required inspections.

5.3. Payment of Development Impact Fees. Developer shall pay Development Impact Fees pursuant to and in accordance with Chino Municipal Code Chapter 3.40 and Chapter 3.45, as applicable.

6. Acceptance of Offers of Dedication. The City Council shall pass as appropriate resolution or resolutions accepting all offers of dedication shown on the approvals for the Project, with acceptance to become effective upon completion and acceptance by City of the Works of Improvement.

7. Warranty of Work. Developer shall guarantee all Works of Improvement against defective materials and workmanship for a period of one (1) year from the date of final acceptance. If any of the Works of Improvement should fail or prove defective within said one (1) year period due to any reason other than improper maintenance, or if any settlement of fill or backfill occurs, or should any portion of the Works of Improvement fail to fulfill any requirements of the Plans, Developer, within fifteen (15) days after written notice of such defects, or within such shorter time as may reasonably be determined by the City in the event of emergency, shall commence to repair or replace the same together with any other work which may be damaged or displaced in so doing. Should Developer fail to remedy defective material and/or workmanship or make replacements or repairs within the period of time set forth above, City may make such repairs and replacements and the actual cost of the required labor and materials shall be chargeable to and payable by Developer. The warranty provided herein shall not be in lieu of, but shall be in addition to, any warranties or other obligations otherwise imposed by law.

8. Default.

8.1. Default by Developer. Default by Developer shall include, but not be limited to:

(a) Developer's failure to timely commence construction of Works of Improvement under this Agreement;

(b) Developer's failure to timely complete construction of the Works of Improvement;

(c) Developer's failure to perform substantial construction work for a period for 20 consecutive calendar days after commencement of the work;

(d) Developer's insolvency, appointment of a receiver, or the filing of any petition in bankruptcy, either voluntary or involuntary, which Developer fails to discharge within 30 days;

(e) The commencement of a foreclosure action against the Property or a portion thereof, or any conveyance in lieu or in avoidance of foreclosure; or

(f) Developer's failure to perform any other obligation under this Agreement.

8.2. Remedies. The City reserves all remedies available to it at law or in equity for a default or breach of Developer's obligations under this Agreement. The City shall have the right, subject to this Section, to draw upon or use the appropriate security to mitigate the City's damages in the event of default by Developer. The City's right to draw upon or use the security is in addition to any other remedy available to City. The parties acknowledge that the estimated costs and security amounts may not reflect the actual cost of construction of the improvements and, therefore, City's damages for Developer's default shall be measured by the cost of completing the required improvements. The City may use the sums provided by the securities for the completion of the Works of Improvement in accordance with the plans. In the event the Developer fails to cure any default under this Agreement within 20 days after the City mails a notice of such default to the Developer and the Developer's surety, Developer authorizes the City to perform the obligation for which Developer is in default and agrees to pay the entire cost of such performance by the City. The City may take over the work and complete the Works of Improvement, by contract or by any other method City deems appropriate, at the expense of the Developer. In such event, City, without liability for doing so, may complete the Works of Improvement using any of Developer's materials, appliances, plans and other property that are at the work site and that are necessary to complete the Works of Improvement.

8.3. Notice of Violation. The Developer's failure to comply with the terms of this Agreement constitutes Developer's consent for the City to file a notice of violation against the Property.

8.4. Remedies Not Exclusive. In any case where this Agreement provides a specific remedy to City for a default by Developer hereunder, the Developer agrees that the choice of remedy or remedies for Developer's breach shall be in the discretion of the City. Additionally, any remedy specifically provided in this Agreement shall be in addition to, and not exclusive of, City's right to pursue any other administrative, legal, or equitable remedy to which it may by entitled.

8.5. Attorney's Fees and Costs. In the event that Developer fails to perform any obligation under this Agreement, Developer agrees to pay all costs and expenses incurred by City in securing performance of such obligations, including costs of suit and reasonable attorney's fees. In the event of any dispute arising out of Developer's performance of its

obligations under this Agreement or under any of the Security Instruments referenced herein, the prevailing party in such action, in addition to any other relief which may be granted, shall be entitled to recover its reasonable attorney's fees and costs. Such attorney's fees and cost shall include fees and costs on any appeal, and in addition a party entitled to attorney's fees and costs shall be entitled to all other reasonable costs incurred in investigating such action, taking depositions and discovery, retaining expert witnesses, and all other necessary and related costs with respect to the litigation. All such fees and costs shall be deemed to have accrued on commencement of the action and shall be enforceable whether or not the action is prosecuted to judgment.

8.6. Waiver. No waiver by the City of any breach or default by the Developer shall be considered valid unless in writing, and no such waiver by the City shall be deemed a waiver of any subsequent breach or default by the Developer.

9. Indemnity/Hold Harmless. City or any officer, employee or agent thereof shall not be liable for any injury to persons or property occasioned by reason of the acts or omissions of Developer, its agents, employees, contractors and subcontractors in the performance of this Agreement. Developer further agrees to protect, defend, indemnify and hold harmless City, its officials, boards and commissions, and members thereof, agents, and employees from any and all claims, demands, causes of action, liability or loss of any sort, because of, or arising out of, acts or omissions of Developer, its agents, employees, contractors and subcontractors in the performance of this Agreement, except for such claims, demands, causes of action, liability or loss arising out of the sole active negligence of the City, its officials, boards, commissions, the members thereof, agents and employees, including all claims, demands, causes of action, liability or loss because of or arising out of, in whole or in part, the design or construction of the improvements. This indemnification and agreement to hold harmless shall extend to injuries to persons and damages or taking of property resulting from the design or construction of said Project, and the public improvements as provided herein, and in addition, to adjacent property owners as a consequence of the diversion of waters from the design and construction of public drainage systems, streets and other improvements. Recordation of the Notice of Acceptance by the City of the Works of Improvements shall not constitute an assumption by the City of any responsibility for any damage or taking covered by this Section. City shall not be responsible for the design or construction of the property to be dedicated or the improvements pursuant to the approved improvement plans or map, regardless of any negligent action or inaction taken by the City in approving the plans or map, unless the particular improvement design was specifically required by City over written objection by Developer submitted to the City Engineer before approval of the particular improvement design, which objection indicated that the particular improvement design was dangerous or defective and suggested an alternative safe and feasible design.

After recordation of the Notice of Acceptance, the Developer shall remain obligated to eliminate any latent defect in design or dangerous condition caused by the design or construction defect; however, Developer shall not be responsible for routine maintenance. The provisions of this paragraph shall remain in full force and effect for ten (10) years following the recordation of the Notice of Acceptance by the City of the Works of Improvements. It is the intent of this section that Developer shall be responsible for all liability for design and construction of the improvements installed or work done pursuant to this Agreement and that City shall not be liable for any negligence, nonfeasance, misfeasance or malfeasance in

approving or reviewing any work or construction. The improvement security shall not be required to cover the provisions of this Paragraph.

Developer shall reimburse the City for all costs and expenses, including but not limited to fees and charges of architects, engineers, attorneys, and other professionals, and court costs, incurred by City in enforcing this Section.

10. Developer's Indemnity of Project Approval. Developer shall defend, indemnify, and hold harmless the City and its agents, officers, and employees from any claim, action, or proceeding against the City or its agents, officers, or employees to attack, set aside, void, or annul, an approval of the City, advisory agency, appeal board, or legislative body concerning the Project. The City shall promptly notify the Developer of any claim, action, or proceeding and cooperate fully in the defense of any such claim, action, or proceeding. In the event City fails to promptly notify the Developer of any claim, action, or proceeding, or if the City fails to cooperate in the defense, the Developer shall not thereafter be responsible to defend, indemnify, or hold harmless the City. Nothing in this Section prohibits the City from participating in the defense of any claim, action, or proceeding if City bears its own attorney's fees and costs and defends the action in good faith. Developer shall not be required to pay or perform any settlement unless the settlement is approved by the Developer.

11. Insurance Requirements. Developer, at Developer's sole cost and expense and for the full term of this Agreement and any extensions thereto, shall obtain and maintain all of the following minimum insurance requirements in a form approved by the City's authorized designee for Risk Management prior to commencing any work:

(a) Commercial General Liability policy with a minimum $1 million combined single limit for bodily injury and property damage providing all of the following minimum coverage without deductibles:

(i) Premises operations; including X, C, and U coverage;

(ii) Owners' and contractors' protection;

(iii) Blanket contractual;

(iv) Completed operations; and

(v) Products.

(b) Commercial Business Auto policy with a minimum $1 million combined single limit for bodily injury and property damage, providing all of the following minimum coverage without deductibles:

(i) Coverage shall apply to any and all leased, owned, hired, or non-owned vehicles used in pursuit of any of the activities associated with this Agreement; and

(ii) Any and all mobile equipment including cranes which are not covered under the above Commercial Business Auto policy shall

have said coverage provided under the Commercial General Liability policy.

(c) Workers Compensation and Employers' Liability policy in accordance with the laws of the State of California and providing coverage for any and all employees of the Developer:

(i) This policy shall provide coverage for Workers' Compensation (Coverage A); and

(i) This policy shall provide coverage for $1,000,000 Employers' Liability (Coverage B).

(ii) Pursuant to Labor Code section 1861, Developer by executing this Agreement certifies: "*I am aware of the provisions of Section 3700 of the Labor Code which requires 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.*"

(iii) Prior to commencement of work, the Developer shall file with the City's Risk Manager a Certificate of Insurance or certification of permission to self-insure workers' compensation conforming to the requirements of the Labor Code.

(d) Endorsements. All of the following endorsements are required to be made a part of each of the above-required policies as stipulated below:

(i) "The City of Chino, its officers, employees and agents are hereby added as additional insureds."

(ii) "This policy shall be considered primary insurance with respect to any other valid and collectible insurance the City may possess, including any self- insured retention the City may have and any other insurance the City does possess shall be considered excess insurance only."

(iii) "This insurance shall act for each insured and additional insured as though a separate policy has been written for each. This, however, will not act to increase the limit of the insuring company."

(iv) "Thirty (30) days prior written notice of cancellation shall be given to the City of Chino in the event of cancellation and/or reduction in coverage, except that ten (10) days prior written notice shall apply in the event of cancellation for non-payment of premium." Such notice shall be sent to the Risk Manager at the address indicated in Subsection f below.

(v) Subsection d(iv) hereinabove "Cancellation Notice" is the only endorsement required of the Workers' Compensation and Employers' Liability policy.

(e) Admitted Insurers. All insurance companies providing insurance to the Developer under this Agreement shall be admitted to transact the business of insurance by the California Insurance Commissioner.

(f) Proof of Coverage. Copies of all required endorsements shall be attached to the Certificate of Insurance which shall be provided by the Developer's insurance company as evidence of the coverage required herein and shall be mailed to:

City of Chino
Risk Management
13220 Central Avenue
Chino, CA 91710

12. Environmental Warranty.

12.1. Prior to the acceptance of any dedications or Works of Improvement by City, Developer shall provide City with a written warranty in a form substantially similar to Exhibit "C" attached hereto and incorporated herein by reference, that:

(a) Neither the property to be dedicated nor Developer are in violation of any environmental law, and neither the property to be dedicated nor the Developer are subject to any existing, pending or threatened investigation by any federal, state or local governmental authority under or in connection with the environmental laws relating to the property to be dedicated.

(b) Neither Developer nor any other person with Developer's permission to be upon the property to be dedicated shall use, generate, manufacture, produce, or release, on, under, or about the property to be dedicated, any Hazardous Substance except in compliance with all applicable environmental laws. For the purposes of this Agreement, the term "Hazardous Substances" shall mean any substance or material which is capable of posing a risk of injury to health, safety or property, including all those materials and substances designated as hazardous or toxic by any federal, state or local law, ordinance, rule, regulation or policy, including but not limited to, all of those materials and substances defined as "Toxic Materials" in Sections 66680 through 66685 of Title 22 of the California Code of Regulations, Division 4, Chapter 30, as the same shall be amended from time to time, or any other materials requiring remediation under federal, state or local laws, ordinances, rules, regulations or policies.

(c) Developer has not caused or permitted the release of, and has no knowledge of the release or presence of, any Hazardous Substance on the property to be dedicated or the migration of any hazardous substance from or to any other property adjacent to, or in the vicinity of, the property to be dedicated.

(d) Developer's prior and present use of the property to be dedicated has not resulted in the release of any hazardous substance on the property to be dedicated.

12.2. Developer shall give prompt written notice to City of:

(a) Any proceeding or investigation by any federal, state or local governmental

(b) authority with respect to the presence of any hazardous substance on the property to be dedicated or the migration thereof from or to any other property adjacent to, or in the vicinity of, the property to be dedicated.

(c) Any claims made or threatened by any third party against City or the property to be dedicated relating to any loss or injury resulting from any hazardous substance; and

(d) Developer's discovery of any occurrence or condition on any property adjoining or in the vicinity of the property to be dedicated that could cause the property to be dedicated or any part thereof to be subject to any restrictions on its ownership, occupancy, use for the purpose for which it is intended, transferability or suit under any environmental law.

13. General Provisions.

13.1. Successors and Assigns. This Agreement shall be binding upon all successors and assigns to Developer's right, title, and interest in and to the Property and any portion thereof. Developer hereby consents to City recording this Agreement as official records of San Bernardino County, affecting fee title interest to the Property to provide constructive notice of the rights and obligations incurred by Developer in the City's approval of this Agreement. In the event the Property is subsequently conveyed by Developer to a third party prior to completion of the Works of Improvement, whereby the third party is intended to assume Developer's responsibilities with regard to this Agreement, (the "Replacement Developer"), the rights and obligations of this Agreement shall transfer to the Replacement Developer; however, the Security Instruments required pursuant to Section 4 of this Agreement, and furnished by Developer as a condition of the City's approval of this Agreement, shall remain Developer's responsibility to maintain until such time as Developer and its Replacement Developer enter into a Transfer and Assignment of Public Improvement Agreement, (the "Transfer Agreement"), to acknowledge the transfer of fee title to the Property from the Developer to its Replacement Developer, and to acknowledge the rights and obligations associated with this Agreement upon the Replacement Developer, including Replacement Developer's responsibility to furnish replacement Security Instruments meeting the City's approval pursuant to Section 4 of this Agreement. Until such time as a Transfer Agreement, meeting the City's approval, is executed by Developer and its Replacement Developer, and replacement Security Instruments meeting City's approval are furnished by the Replacement Developer, Developer retains sole responsibility for maintaining all Security Instruments required pursuant to Section 4 of this Agreement.

13.2. No Third-Party Beneficiaries. This Agreement is intended to benefit only the parties hereto and their respective successors and assigns. Neither City nor Developer intend

to create any third-party beneficiary rights in this Agreement in any contractor, subcontractor, member of the general public, or other person or entity.

13.3. No Vesting Rights. Performance by the Developer of this Agreement shall not be construed to vest Developer's rights with respect to any change in any zoning or building law or ordinance.

13.4. Developer is Not Agent of City. Neither Developer nor Developer's agents, contractors, or subcontractors are agents or contractors of the City in connection with the performance of Developer's obligations under this Agreement.

13.5. Time of the Essence. Time is of the essence of Developer's performance of all of its obligations under this Agreement.

13.6. Notices. Unless otherwise specified in this Agreement, all notices required or provided for under this Agreement shall be in writing and delivered in person or sent by mail, postage prepaid and addressed as provided in this Section. Notice shall be effective on the date is delivered in person, or, if mailed, on the date of deposit in the United States Mail. Notice shall be provided to the persons listed on Pages 1 and 2 of this Agreement by the parties for this purpose.

Either party may provide a new designated representative and/or address by written notice as provided in this Section.

13.7. No Apportionment. Nothing contained in this Agreement shall preclude City from expending monies pursuant to agreements concurrently or previously executed between the parties, or from entering into agreements with other Developers for the apportionment of costs of water and sewer mains, or other improvements pursuant to the provisions of the City ordinances providing therefore. Nor shall anything in the Agreement commit City to any such apportionment.

13.8. Severability. If any portion of this Agreement is held invalid by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect unless amended or modified by mutual written consent of the parties.

13.9. Captions. The captions of this Agreement are for convenience and reference only and shall not be used in the interpretation of any provision of this Agreement.

13.10. Incorporation of Recitals. The recitals to this Agreement are hereby incorporated into the terms of this Agreement.

13.11. Interpretation. This Agreement shall be interpreted in accordance with the laws of the State of California.

13.12. Entire Agreement; Waivers and Amendments. This Agreement integrates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations and previous agreements between the parties with respect to all or part of the subject matter hereof, except as may be expressly provided herein. All waivers of the provisions of this Agreement must be in writing and signed by an authorized representative of

the party to be charged, and all amendments hereto must be in writing and signed by the appropriate representatives of both parties.

13.13. Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall be deemed one original.

14. Authority. The persons executing this Agreement on behalf of the parties warrant the (I) 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) the entering into of this Agreement does not violate any provisions of any other agreement to which said party is bound.

***[SIGNATURES ON NEXT PAGE]***

**IN WITNESS WHEREOF,** the City and the Developer have caused this Agreement to be executed the day and year first above written.

**APPROVED AS TO FORM:**

Fred Galante, City Attorney

**APPROVED AS TO CONTENT:**

Nicholas S. Liguori, AICP
Development Services Director

**G&SS RESTAURANT CORPORATION:**

By _____ 12/08/20
(Signature and Date)

Name: SOTIROPOULOS GEORGE
(Please type or print name)

Title: OWNER
(Please type or print title)

**CITY OF CHINO**

Matthew Ballantyne, City Manager

Dated: 12.14.20

**ATTEST:**

By _____
Angela Robles, City Clerk

Dated: 12-15-2020

**IN WITNESS WHEREOF,** the City and the Developer have caused this Agreement to be executed the day and year first above written.

**APPROVED AS TO FORM:**

DocuSigned by:
Fred Galante
7D0F5E4E9D8F405...
Fred Galante, City Attorney

**APPROVED AS TO CONTENT:**

Nicholas S. Liguori, AICP
Development Services Director

**G&SS RESTAURANT CORPORATION:**

By _____ 12/08/20
(Signature and Date)

Name: SOTIROPOULOS GEORGE
(Please type or print name)

Title: OWNER
(Please type or print title)

**CITY OF CHINO**

Matthew Ballantyne, City Manager

Dated: _____

**ATTEST:**

By _____
Angela Robles, City Clerk

Dated: _____

# ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Bernardino )

On 12/08/2020 before me, Abraham Viteri, Notary Public
(insert name and title of the officer)

personally appeared GEORGE SOTIROPOULOS,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

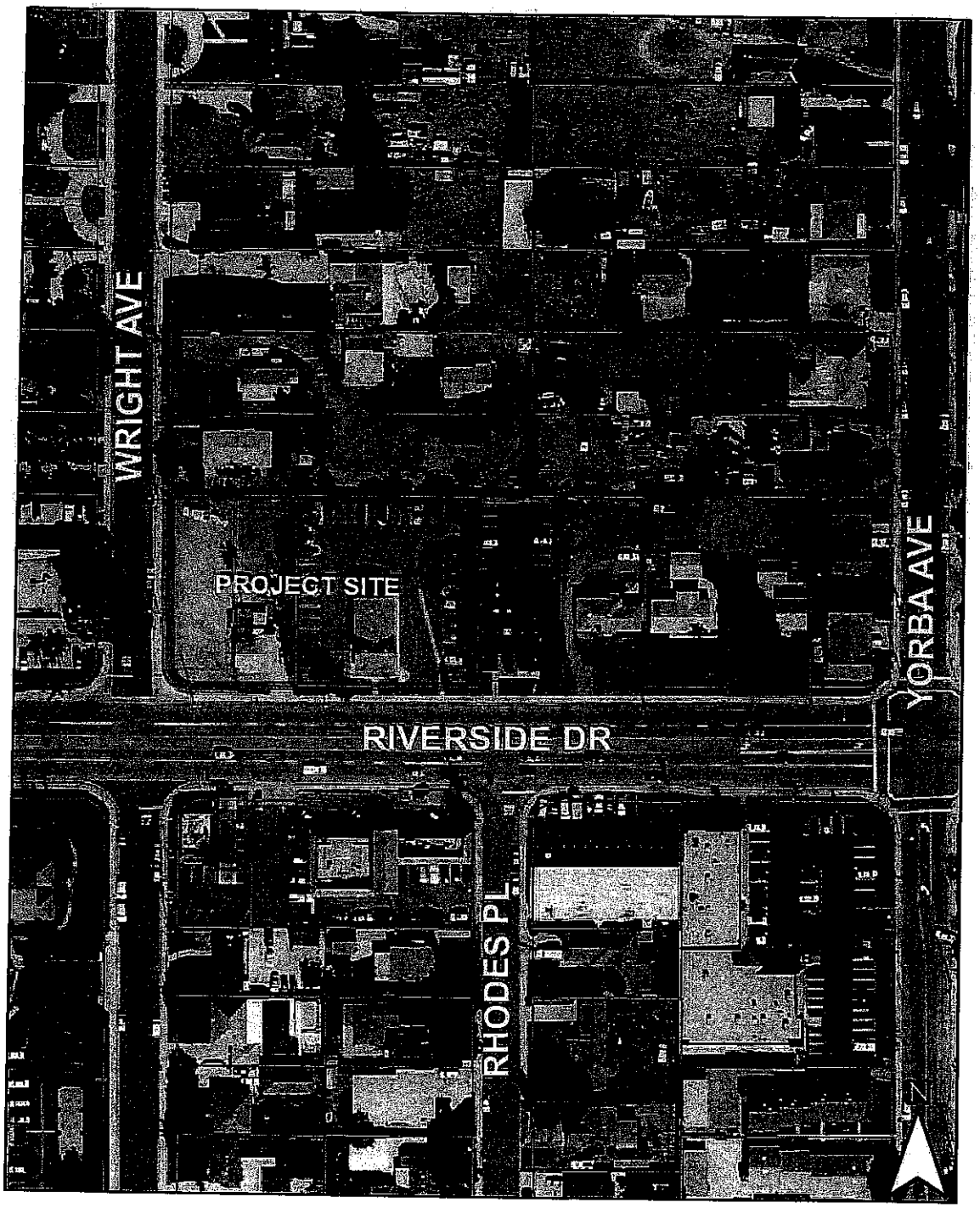
Signature _____ (Seal)

ABRAHAM VITERI
COMM # 2251866
SAN BERNARDINO County
California Notary Public
Comm Exp. July 30, 2022
NXC1

# Exhibit "A"

**PL16-0671 (Site Approval)**

## LOCATION MAP




A-1

## EXHIBIT "B"

## WORKS OF IMPROVEMENT

A. Removal of undesirable, dangerous and dead plant materials and roots.

B. All onsite and offsite grading as specified on the approved grading plan.

C. Relocation of all public utility structures as necessary to properly construct the required improvements.

D. Sanitary sewers constructed as shown on the approved, engineered plans and in accordance with City Standards.

E. Water mains, valves, hydrants, services, meters and appurtenances to serve each lot as shown on the approved construction plans and in accordance with City Standards.

F. Underground installation of all electrical, telephone, cable television and any other energy or communication lines that abut or are within the project site.

G. A street lighting system (City-owned) in accordance with City Standards.

H. Disposal of all rocks and debris located within any public right-of-way within said development or on the boundary streets thereof.

I. Installation of concrete curbs, gutters, sidewalks, cross gutters, driveways and intersections as shown on approved construction plans and in accordance with City Standards.

J. Installation of asphalt concrete or Portland Cement Concrete street pavement on base material as shown on approved construction plans and in accordance with City Standards.

K. Street signs at intersections per the City Standards.

L. Installation of approved landscaping (plants and materials).

M. Setting monuments as required by the State Code.

The Developer shall also perform all work and furnish all materials necessary, in the opinion of the Director of Development Services or his designee and on his order, to complete the improvements in accordance with the plans and specifications on file as hereinbefore specified, or any changes required or ordered by said Engineer which, in his opinion, are necessary or required to complete this work.

# CITY OF CHINO

## ENGINEERING COST ESTIMATE

PROJECT NO: PL16-0671

LOCATION : OFF SITE - 4632 Riverside Drive, Chino CA. 91710

By: Troy Tryfonopoulos

DATE: 4/20/2020

| Quantity | Unit | Item | Unit Price | Total Cost Per Item |
|---|---|---|---|---|
| **STREETS** | | | | |
| | LS | Traffic Control (5% of construction cost) | 5% | $ 5,707.07 |
| | LS | Clear & Grub Site (5% of construction cost) | 5% | $ 5,707.07 |
| | EA | Tree Removal | $ 800.00 | $ - |
| 34 | CY | Concrete Removal | $ 300.00 | $ 10,200.00 |
| 11 | CY | AC Pavement Removal | $ 100.00 | $ 1,100.00 |
| | LS | Excavation (Clean Material) (5% of Construction Cost) | 5% | $ 5,707.07 |
| | CY | Imported Common Fill (Incl. Compaction) | $ 34.00 | $ - |
| 5000 | SF | Preparation of Subgrade | $ 1.00 | $ 5,000.00 |
| 120 | LF | PCC 8" Curb & 24" Gutter | $ 23.00 | $ 2,760.00 |
| | LF | PCC Curb Only | $ 20.00 | $ - |
| | LF | 8" A.C. Berm | $ 20.00 | $ - |
| 375 | SF | 8" PCC Cross Gutter | $ 11.00 | $ 4,125.00 |
| 2547 | SF | 4" PCC Sidewalk | $ 5.80 | $ 14,772.60 |
| | SF | 6" PCC Thick Drive Approach | $ 7.40 | $ - |
| 1387 | SF | 8" PCC Thick Drive Approach | $ 9.00 | $ 12,483.00 |
| | LF | 2" x 6" Redwood Header | $ 5.00 | $ - |
| 2 | EA | Street Sign | $ 475.00 | $ 950.00 |
| 6 | EA | Traffic Sign and Post | $ 400.00 | $ 2,400.00 |
| | EA | Reflector Sign and Post | $ 175.00 | $ - |
| 1 | EA | Painted Legend | $ 6.50 | $ 6.50 |
| | SF | Prime or Tack Coat | $ 0.05 | $ - |
| 11.2 | TON | AC Variable - <300T | $ 90.00 | $ 1,008.00 |
| | TON | AC Variable - >300T | $ 80.00 | $ - |
| 2 | EA | ADA Curb Ramp | $ 4,500.00 | $ 9,000.00 |

# CITY OF CHINO

## ENGINEERING COST ESTIMATE

**PROJECT NO:** PL16-0671

**LOCATION :** OFF SITE - 4632 Riverside Drive, Chino CA. 91710

**By:** Troy Tryfonopoulos

**DATE:** 4/20/2020

| Quantity | Unit | Item | Unit Price | Total Cost Per Item |
|---|---|---|---|---|
| **STREETS** | | | | |
| | TON | CAB Variable - <300T | $ 75.00 | $ - |
| | TON | CAB Variable - >300T | $ 65.00 | $ - |
| | EA | Adjust Sewer Manhole to Grade | $ 665.00 | $ - |
| | LS | Mobilization | 5% | $ 5,707.07 |
| | EA | Adjust Sewer Cleanout to Grade | $ 350.00 | $ - |
| 1 | EA | Adjust Water Valve to Grade | $ 265.00 | $ 265.00 |
| 2 | EA | Street Light (City Owner) | $ 6,700.00 | $ 13,400.00 |
| | EA | Lot Monument Setting Fee | $ 550.00 | $ - |
| 300 | LF | Sawcut A.C. | $ 3.00 | $ 900.00 |
| 104 | LF | Sawcut Concrete | $ 3.00 | $ 312.00 |
| 2140 | SF | Cold Plan A.C (5 foot wide) | $ 0.28 | $ 599.20 |
| 160 | LF | Signing & Striping for | $ 7.00 | $ 1,120.00 |
| | | Arterial | $ 19.00 | $ - |
| | | Collector | $ 13.00 | $ - |
| | | Local | $ 7.00 | $ - |
| | EA | Traffic Signal (8 - Phase Controller) | $ 250,000.00 | $ - |
| | EA | Modify existing Traffic Signal per Quadrant | $ 50,000.00 | $ - |
| | LF | Chain Link Fence | | |
| | | 4 foot Residential Grade (Add $7.00/LF for Removal of Existing Fence) | $ 25.00 | $ - |
| | | 6 foot School fence (Add $9.00/LF for Removal of Existing Fence) | $ 35.00 | $ - |
| | EA | Utility Poles | | |
| | | Transmission | $ 11,500.00 | $ - |
| | | Distribution | $ 8,000.00 | $ - |
| | | Service | $ 3,000.00 | $ - |

# CITY OF CHINO

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**PROJECT NO:** PL16-0671

**LOCATION :** OFF SITE - 4632 Riverside Drive, Chino CA, 91710

**By:** Troy Tryfonopoulos

**DATE:** 4/20/2020

| Quantity | Unit | Item | Unit Price | Total Cost Per Item |
|---|---|---|---|---|
| **STREETS** | | | | |
| 3374 | SF | Landscape (Including shrubs, Hardscape, Irrigation, Ground Cover, Lighting, Installation Labor and Connection to Existing Systems) | $ 10.00 | $ 33,740.00 |
| | LF | 14 foot Median with Landscape, Irrigation, Lighting, Hardscape, Curb, Gutter & Pavement | $ 300.00 | $ - |
| | | Rail Road Crossing | | |
| | LS | Safety Equipment (Complete Including Crossing Gates, Signs, and Lights) | $ 400,000.00 | $ - |
| | SF | Track Crossing (Concrete) | $ 150.00 | $ - |
| | SF | Approach | $ 2.25 | $ - |
| | EA | S.W. Ramps (A.D.A. Compliant) | $ 4,000.00 | $ - |
| | EA | Traffic Signal Loops | $ 400.00 | $ - |
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| | | **STREET SUBTOTAL** | | $ 136,969.56 |

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|---|---|---|---|---|
| **PROJECT ADDITIVES** | | ***Project Contingencies*** | 10% | $ 13,696.96 |
| | | ***Construction Staking*** | 3% | $ 4,109.09 |
| | | ***Soils Testing*** | 1% | $ 1,369.70 |
| | | ***Material Testing*** | 1% | $ 1,369.70 |
| | | ***Construction Inspection*** | 2% | $ 2,739.39 |
| | | ***Contract Administration*** | 1% | $ 1,369.70 |

| | |
|---|---|
| **GRAND TOTAL STREETS ONLY** | **$ 161,624.08** |

# CITY OF CHINO

## ENGINEERING COST ESTIMATE

**PROJECT NO:** PL16-0671

**LOCATION :** OFF SITE - 4632 Riverside Drive, Chino CA. 91710

**By:** Troy Tryfonopoulos

**DATE:** 4/20/2020

| Quantity | Unit | Item | Unit Price | Total Cost Per Item |
|---|---|---|---|---|
| **WATER** | | | | |
| | LS | Traffic Control (5% of Construction Cost) | 5% | $ 788.00 |
| 145 | LF | Trench Support/Shoring (6 foot depth) | $ 15.00 | $ 2,175.00 |
| 13 | CY | Pipe Bedding (Imported) | $ 45.00 | $ 585.00 |
| 50 | LF | 6" Pipe & Fittings Installed, including excavation, bedding, backfill and pavement restoration | $ 60.00 | $ 3,000.00 |
| | LF | 8" Pipe & Fittings Installed, including excavation, bedding, backfill and pavement restoration. | $ 75.00 | $ - |
| | LF | 10" Pipe & Fittings Installed, including excavation, bedding, backfill and pavement restoration | $ 80.00 | $ - |
| | LF | 12" Pipe & Fittings Installed, including excavation, bedding, backfill and pavement restoration | $ 90.00 | $ - |
| | LF | 16" Pipe & Fittings Installed, including excavation, bedding, backfill and pavement restoration | $ 105.00 | $ - |
| 1 | EA | 6" Gate Valve | $ 1,500.00 | $ 1,500.00 |
| | EA | 8" Gate Valve | $ 2,000.00 | $ - |
| | EA | 10" Gate Valve | $ 2,400.00 | $ - |
| | EA | 12" Gate Valve | $ 2,800.00 | $ - |
| | EA | 16" Gate Valve | $ 3,500.00 | $ - |
| | EA | Fire Hydrant Assembly per City Std. | $ 7,500.00 | $ - |
| | EA | Blow-off Assembly 6" per City Std. | $ 4,500.00 | $ - |
| | EA | 2" Air Relief Assembly | $ 4,500.00 | $ - |
| | EA | 1" Water Service/Meter | $ 3,500.00 | $ - |
| 1 | EA | 2" Water Service/Meter | $ 4,500.00 | $ 4,500.00 |
| 1 | EA | 1-1/2" Water Service/Meter (landscape) | $ 4,000.00 | $ 4,000.00 |
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# CITY OF CHINO

## ENGINEERING COST ESTIMATE

PROJECT NO: PL16-0671

LOCATION : OFF SITE - 4632 Riverside Drive, Chino CA. 91710

By: Troy Tryfonopoulos

DATE: 4/20/2020

| Quantity | Unit | Item | Unit Price | Total Cost Per Item |
|---|---|---|---|---|
| **WATER** | | | | |
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| | | WATER SUBTOTAL | | $ 16,548.00 |

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|---|---|---|---|---|---|
| PROJECT ADDITIVES | | *Project Contingencies* | 10% | $ | *1,654.80* |
| | | *Construction Staking* | 3% | $ | *496.44* |
| | | *Soils Testing* | 1% | $ | *165.48* |
| | | *Material Testing* | 1% | $ | *165.48* |
| | | *Construction Inspection* | 2% | $ | *330.96* |
| | | *Contract Administration* | 1% | $ | *165.48* |

| | | |
|---|---|---|
| GRAND TOTAL WATER ONLY | $ | 19,526.64 |

# CITY OF CHINO

## ENGINEERING COST ESTIMATE

**PROJECT NO:** PL16-0671

**LOCATION :** OFF SITE - 4632 Riverside Drive, Chino CA. 91710

**By:** Troy Tryfonopoulos

**DATE:** 4/20/2020

| Quantity | Unit | Item | Unit Price | Total Cost Per Item |
|---|---|---|---|---|
| **RECYCLED WATER** | | | | |
| | LS | Traffic Control (5% of Construction Cost) | 5% | $ - |
| | LF | Trench Support/Shoring (6 foot depth) | $ 15.00 | $ - |
| | CY | Pipe Bedding (Imported) | $ 45.00 | $ - |
| | LF | 6" Pipe & Fittings Installed, including excavation, bedding, backfill and pavement restoration | $ 60.00 | $ - |
| | LF | 8" Pipe & Fittings Installed, including excavation, bedding, backfill and pavement restoration. | $ 75.00 | $ - |
| | LF | 10" Pipe & Fittings Installed, including excavation, bedding, backfill and pavement restoration | $ 80.00 | $ - |
| | LF | 12" Pipe & Fittings Installed, including excavation, bedding, backfill and pavement restoration | $ 90.00 | $ - |
| | LF | 16" Pipe & Fittings Installed, including excavation, bedding, backfill and pavement restoration | $ 105.00 | $ - |
| | EA | 6" Gate Valve | $ 1,500.00 | $ - |
| | EA | 8" Gate Valve | $ 2,000.00 | $ - |
| | EA | 10" Gate Valve | $ 2,400.00 | $ - |
| | EA | 12" Gate Valve | $ 2,800.00 | $ - |
| | EA | 16" Gate Valve | $ 3,800.00 | $ - |
| | EA | Fire Hydrant Assembly per City Std. | $ 7,500.00 | $ - |
| | EA | Blow-off Assembly 6" per City Std. | $ 4,500.00 | $ - |
| | EA | 2" Air Relief Assembly | $ 4,500.00 | $ - |
| | EA | 1" Water Service/Meter | $ 3,500.00 | $ - |
| | EA | 2" Water Service/Meter | $ 4,500.00 | $ - |
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# CITY OF CHINO

## ENGINEERING COST ESTIMATE

PROJECT NO: PL16-0671

LOCATION : OFF SITE - 4632 Riverside Drive, Chino CA. 91710

By: Troy Tryfonopoulos

DATE: 4/20/2020

| Quantity | Unit | Item | Unit Price | Total Cost Per Item |
|---|---|---|---|---|
| RECYCLED WATER | | | | |
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| | | RECYCLED WATER SUBTOTAL | | $ - |

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|---|---|---|---|---|
| PROJECT ADDITIVES | | *Project Contingencies* | 10% | $ - |
| | | *Construction Staking* | 3% | $ - |
| | | *Soils Testing* | 1% | $ - |
| | | *Material Testing* | 1% | $ - |
| | | *Construction Inspection* | 2% | $ - |
| | | *Contract Administration* | 1% | $ - |

| | |
|---|---|
| GRAND TOTAL RECYCLED WATER ONLY | $ - |

# CITY OF CHINO

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PROJECT NO: PL16-0671

LOCATION : OFF SITE - 4632 Riverside Drive, Chino CA. 91710

By: Troy Tryfonopoulos

DATE: 4/20/2020

| Quantity | Unit | Item | Unit Price | Total Cost Per Item |
|---|---|---|---|---|
| **SEWER** | | | | |
| | LS | Traffic Control (5% of Construction cost) | 5% | $ 170.25 |
| 15 | LF | Trench Support/Shoring | $ 15.00 | $ 225.00 |
| 15 | LF | 8" V.C.P Installed, including excavation, bedding, backfill and pavement restoration | $ 92.00 | $ 1,380.00 |
| | LF | 10" V.C.P. Installed, including excavation, bedding, backfill and pavement restoration | $ 98.00 | $ - |
| | LF | 12" V.C.P. Installed, including excavation, bedding, backfill and pavement restoration | $ 104.00 | $ - |
| | LF | 15" V.C.P. Installed, including excavation, bedding, backfill and pavement restoration | $ 110.00 | $ - |
| | LF | 18" V.C.P. Installed, including excavation, bedding, backfill and pavement restoration | $ 140.00 | $ - |
| | LF | 21" V.C.P. Installed, including excavation, bedding, backfill and pavement restoration | $ 150.00 | $ - |
| | LF | 24" V.C.P. Installed, including excavation, bedding, backfill and pavement restoration | $ 170.00 | $ - |
| | EA | Sewer Saddle | $ 450.00 | $ - |
| | EA | Wyes 4" x 8" Typical | $ 225.00 | $ - |
| | EA | 48" Sewer Manhole | $ 5,000.00 | $ - |
| | EA | 60" Sewer Manhole | $ 6,400.00 | $ - |
| 1 | EA | Sewer Cleanout | $ 1,800.00 | $ 1,800.00 |
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# CITY OF CHINO

## ENGINEERING COST ESTIMATE

PROJECT NO: PL16-0671

LOCATION : OFF SITE - 4632 Riverside Drive, Chino CA. 91710

By: Troy Tryfonopoulos

DATE: 4/20/2020

| Quantity | Unit | Item | Unit Price | Total Cost Per Item |
|---|---|---|---|---|
| SEWER | | | | |
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| | | SEWER SUBTOTAL | | $ 3,575.25 |

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|---|---|---|---|---|---|
| PROJECT ADDITIVES | | *Project Contingencies* | 10% | $ | *357.53* |
| | | *Construction Staking* | 3% | $ | *107.26* |
| | | *Soils Testing* | 1% | $ | *35.75* |
| | | *Material Testing* | 1% | $ | *35.75* |
| | | *Construction Inspection* | 2% | $ | *71.51* |
| | | *Contract Administration* | 1% | $ | *35.75* |

| | | |
|---|---|---|
| GRAND TOTAL SEWER ONLY | $ | 4,218.80 |

# CITY OF CHINO

## ENGINEERING COST ESTIMATE

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By: Troy Tryfonopoulos

DATE: 4/20/2020

| Quantity | Unit | Item | Unit Price | Total Cost Per Item |
|---|---|---|---|---|
| **STORM DRAIN** | | | | |
| | LS | Traffic Control (5% of Construction Cost) | 5% | $ 240.00 |
| | LF | 24" X 36" C.M.P.A. (10 Gauge) | $ 230.00 | $ - |
| | LF | 27" x 43" C.M.P.A (10 Gauge) | $ 250.00 | $ - |
| | EA | Storm Drain Manhole #1 | $ 5,000.00 | $ - |
| | EA | Junction Structure #2 (24" or larger) | $ 4,400.00 | $ - |
| | EA | Junction Structure #4 (24" or smaller) | $ 2,500.00 | $ - |
| | EA | Outlet Structure | $ 5,000.00 | $ - |
| | EA | Catch Basin 3.5' Width | $ 5,500.00 | $ - |
| | EA | Catch Basin 7' Width/L.D. | $ 6,100.00 | $ - |
| | EA | Catch Basin 10' Width/L.D. | $ 7,000.00 | $ - |
| | EA | Catch Basin 14' Width/L.D. | $ 8,000.00 | $ - |
| | EA | Catch Basin 21' Width/L.D. | $ 10,000.00 | $ - |
| | LF | 18 inch RCP Installed, including excavation, bedding, backfill and pavement restoration | $ 130.00 | $ - |
| | LF | 24 inch RCP Installed, including excavation, bedding, backfill and pavement restoration | $ 150.00 | $ - |
| | LF | 27 inch RCP Installed, including excavation, bedding, backfill and pavement restoration | $ 160.00 | $ - |
| | LF | 30 inch RCP Installed, including excavation, bedding, backfill and pavement restoration | $ 175.00 | $ - |
| | LF | 33 inch RCP Installed, including excavation, bedding, backfill and pavement restoration | $ 190.00 | $ - |
| | LF | 36 inch RCP Installed, including excavation, bedding, backfill and pavement restoration | $ 240.00 | $ - |
| | LF | 39 inch RCP Installed, including excavation, bedding, backfill and pavement restoration | $ 260.00 | $ - |
| | LF | 42 inch RCP Installed, including excavation, bedding, backfill and pavement restoration | $ 275.00 | $ - |

# CITY OF CHINO

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**By:** Troy Tryfonopoulos

**DATE:** 4/20/2020

| Quantity | Unit | Item | Unit Price | Total Cost Per Item |
|---|---|---|---|---|
| **STORM DRAIN** | | | | |
| | LF | 45 inch RCP Installed, including excavation, bedding, backfill and pavement restoration | $ 280.00 | $ - |
| | LF | 48 inch RCP Installed, including excavation, bedding, backfill and pavement restoration | $ 300.00 | $ - |
| | LF | 51 inch RCP Installed, including excavation, bedding, backfill and pavement restoration | $ 325.00 | $ - |
| | LF | 54 inch RCP Installed, including excavation, bedding, backfill and pavement restoration | $ 350.00 | $ - |
| | LF | 60 inch RCP Installed, including excavation, bedding, backfill and pavement restoration | $ 360.00 | $ - |
| | LF | 63 inch RCP Installed, including excavation, bedding, backfill and pavement restoration | $ 370.00 | $ - |
| | LF | 66 inch RCP Installed, including excavation, bedding, backfill and pavement restoration | $ 400.00 | $ - |
| | LF | 72 inch RCP Installed, including excavation, bedding, backfill and pavement restoration | $ 460.00 | $ - |
| | LF | 78 inch RCP Installed, including excavation, bedding, backfill and pavement restoration | $ 470.00 | $ - |
| | LF | 81 inch RCP Installed, including excavation, bedding, backfill and pavement restoration | $ 490.00 | $ - |
| | LF | 84 inch RCP Installed, including excavation, bedding, backfill and pavement restoration | $ 510.00 | $ - |
| | LF | 90 inch RCP Installed, including excavation, bedding, backfill and pavement restoration | $ 540.00 | $ - |
| | LF | 96 inch RCP Installed, including excavation, bedding, backfill and pavement restoration | $ 570.00 | $ - |
| | LF | 102 inch RCP Installed, including excavation, bedding, backfill and pavement restoration | $ 610.00 | $ - |
| | LF | 108 inch RCP Installed, including excavation, bedding, backfill and pavement restoration | $ 640.00 | $ - |
| | LF | 7' x 6' RCB Installed, including excavation, bedding, backfill and pavement restoration | $ 700.00 | $ - |
| | LF | 7' x 8.5' RCB Installed, including excavation, bedding, backfill and pavement restoration | $ 820.00 | $ - |
| | LF | 7' x 9.5' RCB Installed, including excavation, bedding, backfill and pavement restoration | $ 870.00 | $ - |
| | LF | 8' x 11' RCB Installed, including excavation, bedding, backfill and pavement restoration | $ 1,000.00 | $ - |
| | LF | 8' x 13' RCB Installed, including excavation, bedding, backfill and pavement restoration | $ 1,100.00 | $ - |
| | LF | 9' x 9' RCB Installed, including excavation, bedding, backfill and pavement restoration | $ 1,000.00 | $ - |
| | LF | 9' x 12' RCB Installed, including excavation, bedding, backfill and pavement restoration | $ 1,100.00 | $ - |
| | LF | 4' x 6' RCB Installed, including excavation, bedding, backfill and pavement restoration | $ 680.00 | $ - |
| 2 | EA | Parkway Culvert | $ 2,400.00 | $ 4,800.00 |

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By: Troy Tryfonopoulos

DATE: 4/20/2020

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|---|---|---|---|---|
| STORM DRAIN | | | | |
| | | | | |
| | | | | |
| | | STORM DRAIN SUBTOTAL | | $ 5,040.00 |

| | | | | |
|---|---|---|---|---|
| PROJECT ADDITIVES | | *Project Contingencies* | 10% | $ 504.00 |
| | | *Construction Staking* | 3% | $ 151.20 |
| | | *Soils Testing* | 1% | $ 50.40 |
| | | *Material Testing* | 1% | $ 50.40 |
| | | *Construction Inspection* | 2% | $ 100.80 |
| | | *Contract Administration* | 1% | $ 50.40 |

| | |
|---|---|
| GRAND TOTAL STORM DRAIN ONLY | $ 5,947.20 |

# CITY OF CHINO

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DATE: 4/20/2020

| Quantity | Unit | Item | Unit Price | Total Cost Per Item |
|---|---|---|---|---|
| | | **ENGINEER'S ESTIMATE GRAND TOTAL** | $ | 191,316.72 |

**BY ENGINEER**

*Prepared By:* Troy Tryfonopoulos

*R.C.E. Number:* C65859

*Expiration:* 12/31/21

REGISTERED PROFESSIONAL ENGINEER
TRYFON P. TRYFONOPOULOS
C65859
Exp. 12/31/21
STATE OF CALIFORNIA

*Place R.C.E. Stamp Here*

**BY CITY**

| | | |
|---|---|---|
| *Faithful Performance Bond (100% of Construction Cost)* | $ | 191,300.00 |
| *Labor & material Bond (50% of Construction Cost)* | $ | 95,700.00 |
| *Warranty Bond (10% of Construction Cost)* | $ | 19,100.00 |

**EXHIBIT "C"**

**PL16-0671**

**G&SS RESTAURANT CORPORATION**

**ENVIRONMENTAL WARRANTY**

As a condition precedent to acceptance of the dedications and public improvements to be conveyed by the above-named Developer to the City of Chino for the above-referenced Subdivision, Developer hereby warrants to the City of Chino that:

1. Neither the property to be dedicated nor Developer are in violation of any environmental law, and neither the property to be dedicated nor the Developer are subject to any existing, pending or threatened investigation by any federal, state or local governmental authority under or in connection with the environmental laws relating to the property to be dedicated.

2. Neither Developer nor any other person with Developer's permission to be upon the property to be dedicated has used, generated, manufactured, produced, or released, on, under, or about the property to be dedicated, any Hazardous Substance except in compliance with all applicable environmental laws. For the purposes of this warranty, the term "Hazardous Substances" shall mean any substance or material which is capable of posing a risk of injury to health, safety or property, including all those materials and substances designated as hazardous or toxic by any federal, state or local law, ordinance, rule, regulation or policy, including but not limited to, all of those materials and substances defined as "Toxic Materials" in Sections 66680 through 66685 of Title 22 of the California Code of Regulations, Division 4, Chapter 30, as the same shall be amended from time to time, or any other materials requiring remediation under federal, state or local laws, ordinances, rules, regulations or policies.

3. Developer has not caused or permitted the release of, and has no knowledge of the release or presence of, any Hazardous Substance on the property to be dedicated or the migration of any hazardous substance from or to any other property adjacent to, or in the vicinity of, the property to be dedicated.

4. Developer's prior and present use of the property to be dedicated has not resulted in the release of any Hazardous Substance on the property to be dedicated.

5. All persons executing this warranty hereby represent and warrant to the City of Chino, and Developer hereby represents and warrants, that the signators hereto have the legal power, right and authority to execute this warranty on behalf of the Developer and that the signators hereto have sufficient knowledge or expertise, either personally, through reasonable inspection and investigation of the property, or through reasonable reliance upon the investigation and professional opinion of Developer's environmental experts, to make the representations herein, and that no consent of any other party is

required to execute this warranty and make the representations herein on behalf of the Developer to the City of Chino.

Each of the undersigned persons declares under penalty of perjury that the foregoing is true and correct.

Dated: 12/08/20

**G&SS RESTAURANT CORPORATION**

By: _____

SOTIROPOULOS GEORGE

*Proof of authorization for Developer's signatures is required to be submitted concurrently with this environmental warranty.

# ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Bernardino )

On 12/08/2020 before me, Abraham Viteri, Notary Public
(insert name and title of the officer)

personally appeared GEORGE SOTIROPOULOS,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/she/~~they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

ABRAHAM VITERI
COMM # 2251866
SAN BERNARDINO County
California Notary Public
Comm Exp. July 30, 2022
NXC1

ISSUED IN ONE ORIGINAL COUNTERPART.

PREMIUM: $4,326.00

ORIGINAL

Bond No.: 4440023
Contract No.: 2021-193
Approved: 6/16/20 #16

# FAITHFUL PERFORMANCE BOND

PL16-0671

WHEREAS, the City Council of the City of Chino, State of California, hereinafter designated as "CITY" and G&SS Restaurant Corporation, hereinafter designated as "PRINCIPAL," have entered into an agreement whereby Principal agrees to install and complete certain designated public improvements, which said agreement, dated June 16, 2020, and identified as Project No. PL16-0671 (Andy's Burgers), is hereby referred to and made a part hereof; and

WHEREAS, said Principal is required under the terms of said agreement to furnish a bond for the faithful performance of said agreement.

NOW, THEREFORE, we, the Principal and SureTec Insurance Company, as surety, are held and firmly bound unto the City of Chino in the penal sum of One Hundred Ninety One Thousand Three Hundred and 00/100's---------- Dollars ($191,300.00----------) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors, and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above-bound Principal, his or its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and provisions in said agreement and any alteration thereof made as therein provided, on his or its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless City, its officers, agents, and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees including reasonable attorneys' fees, incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the agreement or to the work or to the specifications.

IN WITNESS WHEREOF, this instrument has been duly executed by Principal and Surety above named, on December 8, 2020.

G&SS Restaurant Corporation
PRINCIPAL

By: _____

SureTec Insurance Company
SURETY

By: _____
Julia B. Bales, Attorney In Fact

***SIGNATURES MUST BE NOTARIZED***

POA# 510018

# JOINT LIMITED POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That SureTec Insurance Company, a Corporation duly organized and existing under the laws of the State of Texas and having its principal office in the County of Harris, Texas and Markel Insurance Company (the "Company"), a corporation duly organized and existing under the laws of the state of Illinois, and having its principal administrative office in Glen Allen, Virginia, does by these presents make, constitute and appoint:

Kenneth A. Coate, Julia B. Bales, Stephanie Fisher, Renae Balderas

Their true and lawful agent(s) and attorney(s)-in-fact, each in their separate capacity if more than one is named above, to make, execute, seal and deliver for and on their own behalf, individually as a surety or jointly, as co-sureties, and as their act and deed any and all bonds and other undertaking in suretyship provided; however, that the penal sum of any one such instrument executed hereunder shall not exceed the sum of:

Ten Million and 00/100 Dollars ($10,000,000.00)

This Power of Attorney is granted and is signed and sealed under and by the authority of the following Resolutions adopted by the Board of Directors of SureTec Insurance Company and Markel Insurance Company:

"RESOLVED, That the President, Senior Vice President, Vice President, Assistant Vice President, Secretary, Treasurer and each of them hereby is authorized to execute powers of attorney, and such authority can be executed by use of facsimile signature, which may be attested or acknowledged by any officer or attorney, of the company, qualifying the attorney or attorneys named in the given power of attorney, to execute in behalf of, and acknowledge as the act and deed of the SureTec Insurance Company and Markel Insurance Company, as the case may be, all bond undertakings and contracts of suretyship, and to affix the corporate seal thereto."

IN WITNESS WHEREOF, Markel Insurance Company and SureTec Insurance Company have caused their official seal to be hereunto affixed and these presents to be signed by their duly authorized officers on the 7th day of December, 2020.

SureTec Insurance Company

By: _____
Michael C. Keimig, President

SURETEC INSURANCE COMPANY — TEXAS

MARKEL INSURANCE COMPANY — CORPORATE SEAL — ILLINOIS

Markel Insurance Company

By: _____
Robin Russo, Senior Vice President

Commonwealth of Virginia
County of Henrico SS:

On this 7th day of December, 2020 A. D., before me, a Notary Public of the Commonwealth of Virginia, in and for the County of Henrico, duly commissioned and qualified, came THE ABOVE OFFICERS OF THE COMPANIES, to me personally known to be the individuals and officers described in, who executed the preceding instrument, and they acknowledged the execution of same, and being by me duly sworn, disposed and said that they are the officers of the said companies aforesaid, and that the seals affixed to the proceeding instrument are the Corporate Seals of said Companies, and the said Corporate Seals and their signatures as officers were duly affixed and subscribed to the said instrument by the authority and direction of the said companies, and that Resolutions adopted by the Board of Directors of said Companies referred to in the preceding instrument is now in force.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed my Official Seal at the County of Henrico, the day and year first above written.

DONNA DONAVANT NOTARY PUBLIC MY COMMISSION NUMBER 7083968 COMMONWEALTH OF VIRGINIA

By: _____
Donna Donavant, Notary Public
My commission expires 1/31/2023

We, the undersigned Officers of SureTec Insurance Company and Markel Insurance Company, do hereby certify that the original POWER OF ATTORNEY of which the foregoing is a full, true and correct copy is still in full force and effect and has not been revoked.

IN WITNESS WHEREOF, we have hereunto set our hands, and affixed the Seals of said Companies, on the DEC 08 2020

SureTec Insurance Company

By: _____
M. Brent Beaty, Assistant Secretary

Markel Insurance Company

By: _____
Richard R. Grinnan, Vice President and Secretary

Any instrument issued in excess of the penalty stated above is totally void and without any validity. 510018
For verification of the authority of this Power you may call (713)812-0800 on any business day between 8:30 AM and 5:00 PM CST.

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT** **CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )
County of Riverside )

On DEC 0 8 2020 before me, R. Balderas, Notary Public,
*Date* *Here Insert Name and Title of the Officer*

personally appeared Julia B. Bales
*Name(s) of Signer(s)*

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that ~~he~~/she/~~they~~ executed the same in ~~his~~/her/~~their~~ authorized capacity(~~ies~~), and that by ~~his~~/her/~~their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

R. BALDERAS
COMM. #2305953
NOTARY PUBLIC - CALIFORNIA
RIVERSIDE COUNTY
My Comm. Expires Sept. 26, 2023

Signature R Balderas
*Signature of Notary Public*

*Place Notary Seal Above*

**OPTIONAL**

*Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.*

**Description of Attached Document**
Title or Type of Document: _____ Document Date: _____
Number of Pages: _____ Signer(s) Other Than Named Above: _____

**Capacity(ies) Claimed by Signer(s)**

| | |
|---|---|
| Signer's Name: _____ | Signer's Name: _____ |
| ☐ Corporate Officer — Title(s): _____ | ☐ Corporate Officer — Title(s): _____ |
| ☐ Partner — ☐ Limited ☐ General | ☐ Partner — ☐ Limited ☐ General |
| ☐ Individual ☐ Attorney in Fact | ☐ Individual ☐ Attorney in Fact |
| ☐ Trustee ☐ Guardian or Conservator | ☐ Trustee ☐ Guardian or Conservator |
| ☐ Other: _____ | ☐ Other: _____ |
| Signer Is Representing: _____ | Signer Is Representing: _____ |

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# ACKNOWLEDGMENT

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State of California
County of San Bernardino )

On 12/08/2020 before me, Abraham Viteri, Notary Public
(insert name and title of the officer)

personally appeared GEORGE SOTIROPOULOS,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

ABRAHAM VITERI
COMM # 2251866
SAN BERNARDINO County
California Notary Public
Comm Exp. July 30, 2022

NXC1

ISSUED IN ONE ORIGINAL COUNTERPART.

ORIGINAL

PREMIUM: INCLUDED IN THE PREMIUM CHARGED FOR THE PERFORMANCE BOND.

Bond No.: 4440023
Contract No.: 2021 - 193
Approved: 6/16/20 #16

# LABOR AND MATERIAL BOND

PL16-0671

WHEREAS, the City Council of the City of Chino, State of California, hereinafter designated as "CITY" and G&SS Restaurant Corporation, hereinafter designated as "PRINCIPAL," have entered into an agreement whereby Principal agrees to install and complete certain designated public improvements, which said agreement, dated June 16, 2020, and identified as Project No. PL16-0671 (Andy's Burgers), is hereby referred to and made a part hereof; and

WHEREAS, under the terms of said agreement, Principal is required, before entering upon the performance of the work, to file a good and sufficient payment bond with the City of Chino to secure the claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code of the State of California.

NOW, THEREFORE, said Principal and the undersigned, as corporate surety, are held and firmly bound unto the City of Chino, and all contractors, subcontractors, laborers, material, men, and other persons employed in the performance of the aforesaid agreement and referred to in the aforesaid Code of Civil Procedure in the sum of Ninety Five Thousand Seven Hundred and 00/100's---------- Dollars ($95,700.00----) for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that said surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by City in successfully enforcing such obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

The surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the agreement or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by Principal and Surety above named, on December 8, 2020.

G&SS Restaurant Corporation
PRINCIPAL

By: _____

SureTec Insurance Company
SURETY

By: _____
Julia B. Bales, Attorney In Fact

***SIGNATURE(S) MUST BE NOTARIZED***

POA# 510018

# JOINT LIMITED POWER OF ATTORNEY

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Kenneth A. Coate, Julia B. Bales, Stephanie Fisher, Renae Balderas

Their true and lawful agent(s) and attorney(s)-in-fact, each in their separate capacity if more than one is named above, to make, execute, seal and deliver for and on their own behalf, individually as a surety or jointly, as co-sureties, and as their act and deed any and all bonds and other undertaking in suretyship provided; however, that the penal sum of any one such instrument executed hereunder shall not exceed the sum of:

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IN WITNESS WHEREOF, Markel Insurance Company and SureTec Insurance Company have caused their official seal to be hereunto affixed and these presents to be signed by their duly authorized officers on the 7th day of December, 2020.

SureTec Insurance Company

By: _____
Michael C. Keimig, President

SURETEC INSURANCE COMPANY — HOUSTON, TEXAS

MARKEL INSURANCE COMPANY — CORPORATE SEAL — ILLINOIS

Markel Insurance Company

By: _____
Robin Russo, Senior Vice President

Commonwealth of Virginia
County of Henrico SS:

On this 7th day of December, 2020 A. D., before me, a Notary Public of the Commonwealth of Virginia, in and for the County of Henrico, duly commissioned and qualified, came THE ABOVE OFFICERS OF THE COMPANIES, to me personally known to be the individuals and officers described in, who executed the preceding instrument, and they acknowledged the execution of same, and being by me duly sworn, disposed and said that they are the officers of the said companies aforesaid, and that the seals affixed to the proceeding instrument are the Corporate Seals of said Companies, and the said Corporate Seals and their signatures as officers were duly affixed and subscribed to the said Instrument by the authority and direction of the said companies, and that Resolutions adopted by the Board of Directors of said Companies referred to in the preceding instrument is now in force.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed my Official Seal at the County of Henrico, the day and year first above written.

DONNA DONAVANT NOTARY PUBLIC MY COMMISSION NUMBER 7083968 COMMONWEALTH OF VIRGINIA

By: _____
Donna Donavant, Notary Public
My commission expires 1/31/2023

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IN WITNESS WHEREOF, we have hereunto set our hands, and affixed the Seals of said Companies, on the _____ day of DEC 08 2020

SureTec Insurance Company

By: _____
M. Brent Beaty, Assistant Secretary

Markel Insurance Company

By: _____
Richard R. Grinnan, Vice President and Secretary

Any Instrument issued in excess of the penalty stated above is totally void and without any validity. 510018
For verification of the authority of this Power you may call (713)812-0800 on any business day between 8:30 AM and 5:00 PM CST.

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT** **CIVIL CODE § 1189**

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State of California )
County of Riverside )

On DEC 0 8 2020 before me, R. Balderas, Notary Public,
*Date* *Here Insert Name and Title of the Officer*

personally appeared Julia B. Bales,
*Name(s) of Signer(s)*

who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ is/~~are~~ subscribed to the within instrument and acknowledged to me that ~~he~~/she/~~they~~ executed the same in ~~his~~/her/~~their~~ authorized capacity~~(ies)~~, and that by ~~his~~/her/~~their~~ signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

R. BALDERAS
COMM. #2305953
NOTARY PUBLIC - CALIFORNIA
RIVERSIDE COUNTY
My Comm. Expires Sept. 26, 2023

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature R Balderas
*Signature of Notary Public*

*Place Notary Seal Above*

**OPTIONAL**

*Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.*

**Description of Attached Document**

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

Signer's Name: _____
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WITNESS my hand and official seal.

Signature _____ (Seal)

ABRAHAM VITERI
COMM # 2251866
SAN BERNARDINO County
California Notary Public
Comm Exp. July 30, 2022
NXC1

ISSUED IN ONE ORIGINAL COUNTERPART.

ORIGINAL

PREMIUM: INCLUDED IN THE PREMIUM CHARGED FOR THE PERFORMANCE BOND.

Bond No.: 4440023

Contract No.: 2021-193

Approved: 6/16/20 #16

# *WARRANTY BOND*

PL16-0671

WHEREAS, the City Council of the City of Chino, State of California, hereinafter designated as "CITY" and G&SS Restaurant Corporation, hereinafter designated as "PRINCIPAL," have entered into an agreement whereby Principal has agreed to warrant and guarantee the installation, completion, and maintenance of certain designated public improvements, which said agreement, dated June 16, 2020, and identified as Project No. PL16-0671 (Andy's Burgers), is hereby referred to and made a part hereof; and

WHEREAS, said Principal is required under the terms of said agreement to furnish a bond for the warranty of said improvements.

NOW, THEREFORE, we, the Principal, and SureTec Insurance Company, as surety, are held and firmly bound unto the City of Chino in the penal sum of Nineteen Thousand One Hundred and 00/100's---------- Dollars ($19,100.00----------) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors, and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above bound Principal, his or its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and provisions in said agreement and any alteration thereof made as therein provided, on his or their part, to be kept and performed thereof made as therein provided, on his or its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless City, its officers, agents, and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby, and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees including reasonable attorneys' fees, incurred by the City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the agreement or to the work or to the specifications.

IN WITNESS WHEREOF, this instrument has been duly executed by Principal and Surety above named, on December 8, 2020.

G&SS Restaurant Corporation
PRINCIPAL

By: _____

SureTec Insurance Company
SURETY

By: _____
Julia B. Bales, Attorney In Fact

***SIGNATURE(S) MUST BE NOTARIZED***

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By: _____
Michael C. Keimig, President

SURETEC INSURANCE COMPANY — TEXAS

MARKEL INSURANCE CORPORATE SEAL COMPANY — ILLINOIS

Markel Insurance Company

By: _____
Robin Russo, Senior Vice President

Commonwealth of Virginia
County of Henrico SS:

On this 7th day of December, 2020 A. D., before me, a Notary Public of the Commonwealth of Virginia, in and for the County of Henrico, duly commissioned and qualified, came THE ABOVE OFFICERS OF THE COMPANIES, to me personally known to be the individuals and officers described in, who executed the preceding instrument, and they acknowledged the execution of same, and being by me duly sworn, disposed and said that they are the officers of the said companies aforesaid, and that the seals affixed to the proceeding instrument are the Corporate Seals of said Companies, and the said Corporate Seals and their signatures as officers were duly affixed and subscribed to the said instrument by the authority and direction of the said companies, and that Resolutions adopted by the Board of Directors of said Companies referred to in the preceding instrument is now in force.

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DONNA DONAVANT NOTARY PUBLIC MY COMMISSION NUMBER 7083968 COMMONWEALTH OF VIRGINIA

By: _____
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DEC 08 2020

IN WITNESS WHEREOF, we have hereunto set our hands, and affixed the Seals of said Companies, on the _____ day of _____, _____.

SureTec Insurance Company

By: _____
M. Brent Beaty, Assistant Secretary

Markel Insurance Company

By: _____
Richard R. Grinnan, Vice President and Secretary

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State of California )
County of Riverside )

On DEC 0 8 2020 *Date* before me, R. Balderas, Notary Public *Here Insert Name and Title of the Officer*,

personally appeared Julia B. Bales *Name(s) of Signer(s)*,

who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ is/~~are~~ subscribed to the within instrument and acknowledged to me that ~~he~~/she/~~they~~ executed the same in ~~his~~/her/~~their~~ authorized capacity~~(ies)~~, and that by ~~his~~/her/~~their~~ signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

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RIVERSIDE COUNTY
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Signature R Balderas
*Signature of Notary Public*

*Place Notary Seal Above*

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**Capacity(ies) Claimed by Signer(s)**

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☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
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☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
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State of California
County of San Bernardino )

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(insert name and title of the officer)

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Signature _____ (Seal)

ABRAHAM VITERI
COMM # 2251866
SAN BERNARDINO County
California Notary Public
Comm Exp. July 30, 2022

NXC1

# MEMORANDUM
# CITY OF CHINO
# COMMUNITY SERVICES, PARKS & RECREATION DEPARTMENT

---

**CITY COUNCIL MEETING DATE: MAY 21, 2024**

**TO:** **LINDA REICH, CITY MANAGER**

**FROM:** **SILVIA AVALOS, DIRECTOR OF COMMUNITY SERVICES, PARKS & RECREATION**

---

## SUBJECT

Naming of Falloncrest Community Park Site.

## RECOMMENDATION

Adopt the name “Stueve Family Park” as the name of the new community park set to be part of the Falloncrest development.

## FISCAL IMPACT

There is no fiscal impact.

## CITY OF CHINO MISSION / VISION / VALUES / STRATEGIC ISSUES

The recommendation detailed above further the City’s values and strategic issues that serve as key pillars on which identified priorities, goals, and action plans are built, by fostering:

- Positive City Image
- Responsible Long-Range Planning

| | |
|---|---|
| Revenue: | Expenditure: |
| Transfer In: | Transfer Out: |

## BACKGROUND

The City's park naming guidelines provide several steps during the process. First, a list of potential park names is compiled from suggestions submitted by the public, City staff, and the developer. The suggestions are then forwarded to the Community Services, Parks & Recreation Commission for review. The Commission has the option to review the names as an entire body or through a Sub-Committee prior to making a final recommendation to the full Commission. The Commission's final recommendation is then forwarded to the City Council for final adoption. The park naming guidelines allow a park or facility to be named after an individual, living or deceased, who has provided a significant contribution to the development or improvement of the quality of life in the City (i.e. Ruben S. Ayala Park, Fred Aguiar Square). Further, the park sites can be based on themes that characterize the individual park sites, such as neighborhood street names or significant site landmarks (i.e. Discovery Park, Walnut Park).

The development of the Falloncrest Master Planned area in The Preserve includes the construction of a park required by the development agreement with Loyola Properties 1, L.P., and Ronald and Kristine Pietersma. As conditioned by the Falloncrest Development Agreement, the developer is required to design and construct a park in-lieu of paying development impact fees for these facilities.

## ISSUES/ANALYSIS

The 10-acre Falloncrest Community Park is being built in two phases. Tri Pointe Homes Holdings, Inc., is currently in development of Phase 1 of the 6.99-acre public park located west of East Preserve Loop, south of the Southern California Edison (SCE) easement, and north of Bickmore Avenue. This park proposes the following amenities: open turf field with Musco lighting, three pickleball courts, two basketball courts, tot lot, shade structure, barbeques, and public restroom. The park is anticipated to open in early 2025.

The Community Services, Parks & Recreation Commission received three park name recommendations.

The park is being developed on land that was originally purchased by the Stueve brothers in 1950. The Stueve brothers are the founders of Alta Dena Dairy, the largest dairy in California. They expanded their operations in Chino and purchased additional acreage totaling 750 acres. The Stueve Family was involved in various community organizations and made significant contributions to the history of Chino and the dairy industry.

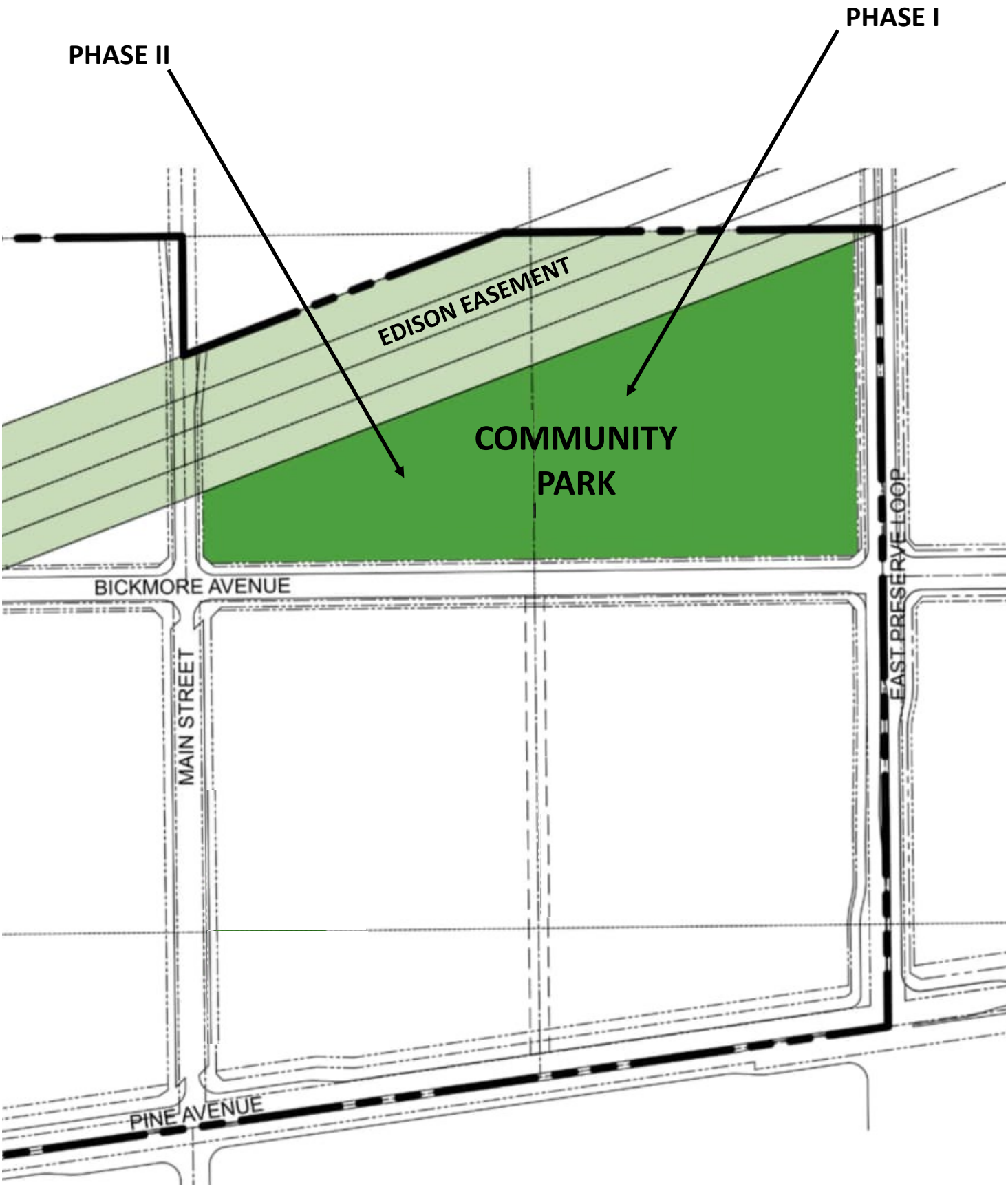
Jerry Stueve, the son of one of the original owners of the Stueve Family Dairy, submitted a letter to the City recommending the name "Stueve Family Heritage Park." The letter cited the contributions his family has made to the Chino community. Mike Bidart and Ronald Pietersma, who purchased property from the Stueve family and operated their own dairy, agreed that it would be appropriate to honor the Stueve Family by naming the park after them.

The developer proposed Cedar Trails Park or Sage Trails Park as these names are unique to the adjoining development, which will have trails and botanical street names.

On April 29, 2024, the Community Services, Parks & Recreation Commission met and voted unanimously in favor of recommending Stueve Family Park to be submitted to the City Council for adoption.

Attachments: Park Layout & Overview, Stueve Family Heritage Park Recommendation

# FALLONCREST COMMUNITY PARK DEVELOPMENT




PROPERTY LINE / LIMIT OF WORK
SCE EASEMENT
EAST PRESERVE LOOP
FUTURE NEW RESIDENTIAL
PUBLIC RIGHT OF WAY
ADJACENT PARK PARCEL TO BE DEVELOPED BY OTHERS PER FALLCREST DESIGN GUIDELINES
PROPERTY LINE / LIMIT OF WORK

Park Name Recommendation – “Stueve Family Heritage Park”

I think we can all agree that the dairy industry played a significant role in putting the City of Chino and the Chino Valley on the map and at one time was known as the “Dairy capital of the world.”

In the early 1940’s, the 3 oldest Stueve brothers of 18 siblings, later known as the Stueve Bros, moved to California after serving and completing their military service and began working for a local dairy called Foothill Dairy. In 1945, they started their own dairy in Monrovia. Along with operating the dairy, they started a home milk delivery service with their first route in Alta Dena, hence the name of Alta Dena Dairy.

In 1950, the Stueve brothers expanded their operation and purchased 3 properties in the City of Chino. In later years, they purchased 2 more properties, which then totaled 750 acres. In 1953, Alta Dena Dairy became the first and only dairy certified for raw milk production. In 1985, Alta Dena Dairy celebrated their 40$^{th}$ anniversary. At that time, the Chino dairies were milking cows in 12 milking parlors and had a herd of approximately 28,000 head of cattle, which included 10,000 milking cows that were producing 70,000 gallons of milk per day. Because of these numbers, the Alta Dena Dairies in Chino were known as the largest family-owned and operated dairy in the world.

Additional contributions to the dairy industry and City of Chino from the Stueve Family:

- Members of the Chino Chamber of Commerce
- Members of Chino Dairy Days committee
- Sponsored and promoted Chino Dairy Day at Van Vliet Dairy for many years which included supplying milk and ice cream for attendees
- Employed over 150 local people to work on the dairy and farmland
- Gave tours to local school children
- Hosted and gave dairy tours to over 30 foreign dairy industry groups

- As the family business grew, they contracted with over 30 local dairies in Chino to supply milk for the Alta Dena processing plant the Stueve family owned and operated
- Sponsored the Dairy milking barn exhibit at the LA County Fair for many years where they also enlisted the help of local feed companies and dairy supply companies to operate the milking barn for the world to learn “Where milk comes from”
- For many years, they took cows from the Chino dairies to Angel Stadium to participate in “Dairy Night” where players from each team competed to see who could milk the cow and get the most milk. Many families from the Chino Valley attended this event
- To this day, Stueve family members support the local Chino Fairy 4H Program each year

# MEMORANDUM
# CITY OF CHINO
# PUBLIC WORKS DEPARTMENT

**CITY COUNCIL MEETING DATE: MAY 21, 2024**

**TO:** **LINDA REICH, CITY MANAGER**

**FROM:** **HYE JIN LEE, PE, DIRECTOR OF PUBLIC WORKS**

## SUBJECT

Transportation Right-of-Way ADA Improvements Project (ST173) and the Street Rehabilitation FY 23-24 Project (ST241) - Approve a Construction Contract with CT & T Concrete Paving Inc., Professional Services Agreement with Leighton Consulting, Inc., and authorize expenditures for construction management services and overtime inspection costs.

## RECOMMENDATION

Approve the 1) appropriation of $3,165,486 to the Transportation Fund (320) for the Street Rehabilitation FY2023-2024 Project (ST241), with a corresponding year-end transfer in the same amount from the General Fund (100) reserves; 2) award a construction contract to CT&T Concrete Paving Inc., Diamond Bar, CA for the Transportation Right-of-Way ADA Improvements Project (ST173) and the Street Rehabilitation FY 23-24 Project (ST241) for $2,645,501.07 and authorize up to $264,551 (10% of the contract amount) for construction contingencies for a total amount not to exceed $2,910,052.07; 3) award a Professional Services Agreement with Leighton Consulting, Inc. Rancho Cucamonga, CA, for Geotechnical Engineering Services for the Transportation Right-of-Way ADA Improvements Project (ST173) and the Street Rehabilitation FY2023-2024 Project (ST241) for $54,223; 4) authorize expenditures of up to $191,210 for construction management services, and $10,000 for overtime inspection costs for the Transportation Right-of-Way ADA Improvements Project (ST173) and the Street Rehabilitation FY2023-2024 Project (ST241); and 5) authorize the City Manager to execute the necessary documents on behalf of the City.

## FISCAL IMPACT

The Street Rehabilitation FY2023-2024 Project (ST241) requires an appropriation of $3,165,486 to the Transportation Fund (320) with a corresponding year-end transfer in the same amount from the General Fund (100) reserves. Project ST241 will have a revised total project budget of $6,051,526. Estimated expenditures to date include $2,747,869.02 for the ongoing work under the Street Rehabilitation FY2023-2024 Project.

The additional appropriations and budget allocations are summarized below for project ST241:

| Funding Source | Adopted Budget | Additional Appropriation | Revised Project Budget |
|---|---|---|---|
| **Fund 320 Transportation** | $449,040.00 | $3,165,486.00 | $3,614,526.00 |
| **Fund 322 Measure I** | $500,000.00 | $0 | $500,000.00 |
| **Fund 327 RMRA (SB 1) *** | $1,937,000.00 | $0 | $1,937,000.00 |

| | | | |
|---|---|---|---|
| **TOTALS:** | $2,886,040.00 | $3,165,486.00 | $6,051,526.00 |

*Note: Road Maintenance and Rehabilitation Account (RMRA) is part of the gasoline tax passed as part of Senate Bill 1 (SB 1).

Sufficient funds are included in the Fiscal Year 2023-2024 Capital Improvement Program for the Transportation Right-of-Way ADA Improvements project (ST173). The estimated available budget is $300,891.75.

## CITY OF CHINO MISSION / VISION / VALUES / STRATEGIC ISSUES

The recommendation detailed above further the City's values and strategic issues that serve as key pillars on which identified priorities, goals, and action plans are built, by fostering:

- Positive City Image
- Responsible Long-Range Planning

| | |
|---|---|
| Revenue: Click or tap here to enter text. | Expenditure: 3207100 – 48004 \| 48005 \| 48009 – ST241<br>3207100 – 48004 \| 48005 \| 48009 – ST173 |
| Transfer In: 3201000-50000 | Transfer Out: 1001000-40001 |

## BACKGROUND

On June 13, 2023, the City Council held a workshop at which City Staff presented recommendations from the City's Pavement Management Inventory Program ("Program") to target a citywide Pavement Condition Index ("PCI") of 75. To meet the target PCI, the Program forecasts annual expenditures of approximately $11.8 million per year over the next five years. The adopted City budget for pavement management projects allocates approximately $5 million per year with primary sources of funding from Measure I and the Road Maintenance and Rehabilitation Account ("RMRA") revenues. Therefore, a shortfall of approximately $7 million per year was identified to achieve acceptable street conditions. The Council directed staff to devise a CIP plan to spend an additional $21 million during the next two fiscal years to achieve the targeted street conditions, including alleys, throughout the City.

Accordingly, on July 6, 2023, staff presented the Citywide Pavement Rehabilitation Project – Pilot Program to the Streets Infrastructure Committee. Due to the challenge of completing pavement rehabilitation projects meeting the City's Policy on Accessible Facilities in the Public Right of Way in a timely and cost-effective manner, staff proposed a pilot program to coordinate the design and build efforts. The program approach utilizes existing City standard ramp design guidelines with layouts customized to each intersection, reducing the design lead time. The work is further separated into two stages with a contract for concrete work and a contract for the asphalt work to follow. Staff presented the pilot program to the City Council on July 18, 2023, and received support and directives to move forward.

On January 31, 2024, staff presented the results of the initial phase of the pilot program and recommendations for the next phase of improvements at the Streets Infrastructure Committee. The City is now ready to move forward with the concrete work in preparation for the next set of streets identified for rehabilitation. The concrete improvements under project ST241 will consist of construction of sixty-seven (67) curb ramps and 10 alley approaches in the locations shown in Exhibit A. Project ST173 consists of construction of a sidewalk gap closure on the west side of Third Street between H Street and Schaefer Avenue as a result of a grievance under the American Disability Act (ADA).

## ISSUES/ANALYSIS

Construction Contract

A Notice Inviting Bids was published both locally, and in regional trade publications, and on the Planet Bid web-based bid system for both ST173 and ST241 combined. On March 14, 2024, at 10:00 a.m., the following two (2) Bids were received and opened:

| | | Bid Amounts | | |
|---|---|---|---|---|
| **Company** | **Location** | **ST173** | **ST241** | **Total** |
| CT & T Concrete Paving Inc. | Diamond Bar, CA | $187,300.00 | $2,458,201.07 | $2,645,501.07 |

| | | | | |
|---|---|---|---|---|
| Hardy & Harper, Inc | Lake Forest, CA | $225,000.00 | $4,375,000.00 | $4,600,000.00 |

The lowest, responsible, responsive bid was submitted by CT & T Concrete Paving, Inc., Diamond Bar, CA, as shown in the table above for a total amount of $2,645,501.07. Staff subsequently reviewed the contractor's licensing, bonding, references, and list of subcontractors submitted for the project, and found all bid submittal documentation to be in order.

Construction Support Services

Staff solicited an informal request for proposal ("RFP") for Geotechnical Engineering Services from three (3) consultants from the approved on-call list. On April 11, 2024, at 10:00am, two (2) RFPs were received and opened. Staff selected the proposal with the lowest bid.

| Company | Location | ST173 | ST241 | Bid Amount |
|---|---|---|---|---|
| Leighton Consulting, Inc. | Rancho Cucamonga, CA | $19,296.00 | $34,927.00 | $54,223.00 |
| GMU Geotechnical, Inc. | Rancho Santa Margarita, CA | $24,422.00 | $37,222.00 | $61,644.00 |

City Staff determined that Z&K Consultants Inc. ("Z&K") is the best qualified firm to manage the construction services due to the knowledge and experience Z&K has obtained, as they provided construction management and inspection services for the City's pilot program. Z&K also provides competitive hourly rates compared to other consultants with similar qualifications. The City will utilize the existing on-call consultant agreement with Z&K. Z&K hourly rate is $157 compared to other consultants on the on-call list who range from $150 to over $200.

The estimated project construction costs are itemized below:

| Project Task | Vendor | ST173 | ST241 | Totals |
|---|---|---|---|---|
| Construction | CT & T Concrete & Paving, Diamond Bar, CA | $187,300.00 | $2,458,201.07 | $2,645,501.07 |
| 10% Construction Contingency (1) | As allowable per the Public Contract Code | $18,730.00 | $245,821.00 | $264,551.00 |
| Geotechnical Engineering Services | Leighton Consulting, Inc., Rancho Cucamonga, CA | $19,296.00 | $34,927.00 | $54,223.00 |

| | | | | |
|---|---|---|---|---|
| Construction Management | Z & K Consultants Inc., Riverside, CA | $14,130.00 | $177,080.00 | $191,210 |
| Overtime Inspections | City Staff | $5,000.00 | $5,000.00 | $10,000.00 |
| **EST. TOTAL CONSTRUCTION COST** | | **$244,456** | **$2,921,029.07** | **$3,165,485.07** |

*Note: (1) Note that, as in all the City's public works contracts, the contract itself provides the Director of Public Works authority to issue change orders of up to 10% of the original contract amount. When the Council approves the contract, it approves this authority. Ten percent is generally considered within the normal range of changed conditions on a public works construction project and, by providing change order authority upfront, Council helps to reduce the possibility of delay on a construction project.*

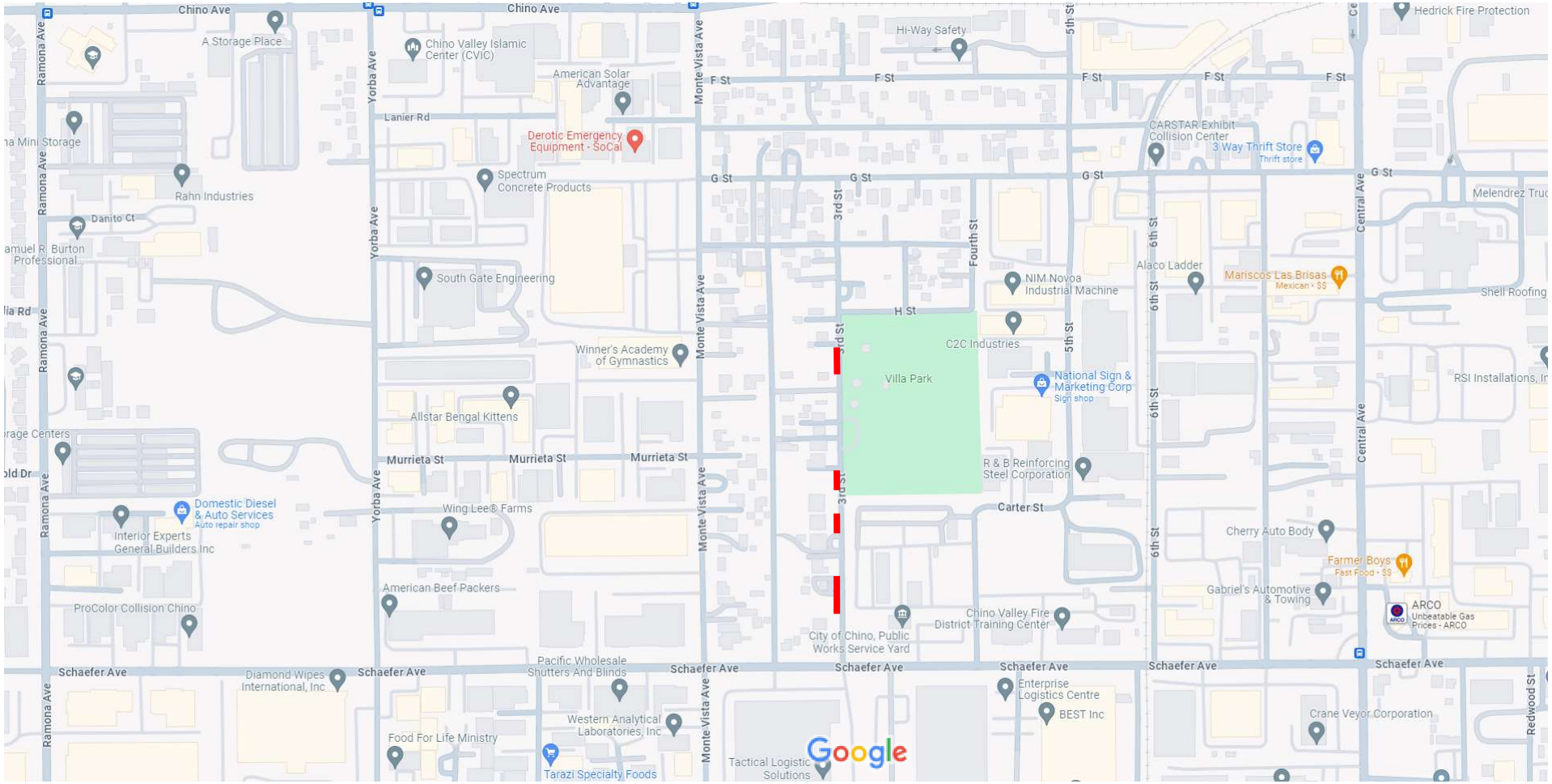
Staff recommends the following as summarized above:

1. Appropriate $3,165,486 from the Transportation Fund (320) for the Street Rehabilitation FY2023-2024 Project (ST241), with a corresponding year-end transfer in the same amount from the General Fund (100) reserves.
2. Award a construction contract to the lowest, responsive, responsible bidder CT & T Concrete & Paving, Diamond Bar, CA in an amount not to exceed $2,645,501.07.
3. Award a professional services agreement to Leighton Consulting, Inc., Rancho Cucamonga, CA in an amount not to exceed $54,233.
4. Authorize construction management fee not to exceed $191,210 using an existing on-call consultant agreement with Z&K Consultants Inc., Riverside, CA.
5. Authorization of expenditures up to $10,000 for overtime inspection costs and $264,551 for construction contingency costs.

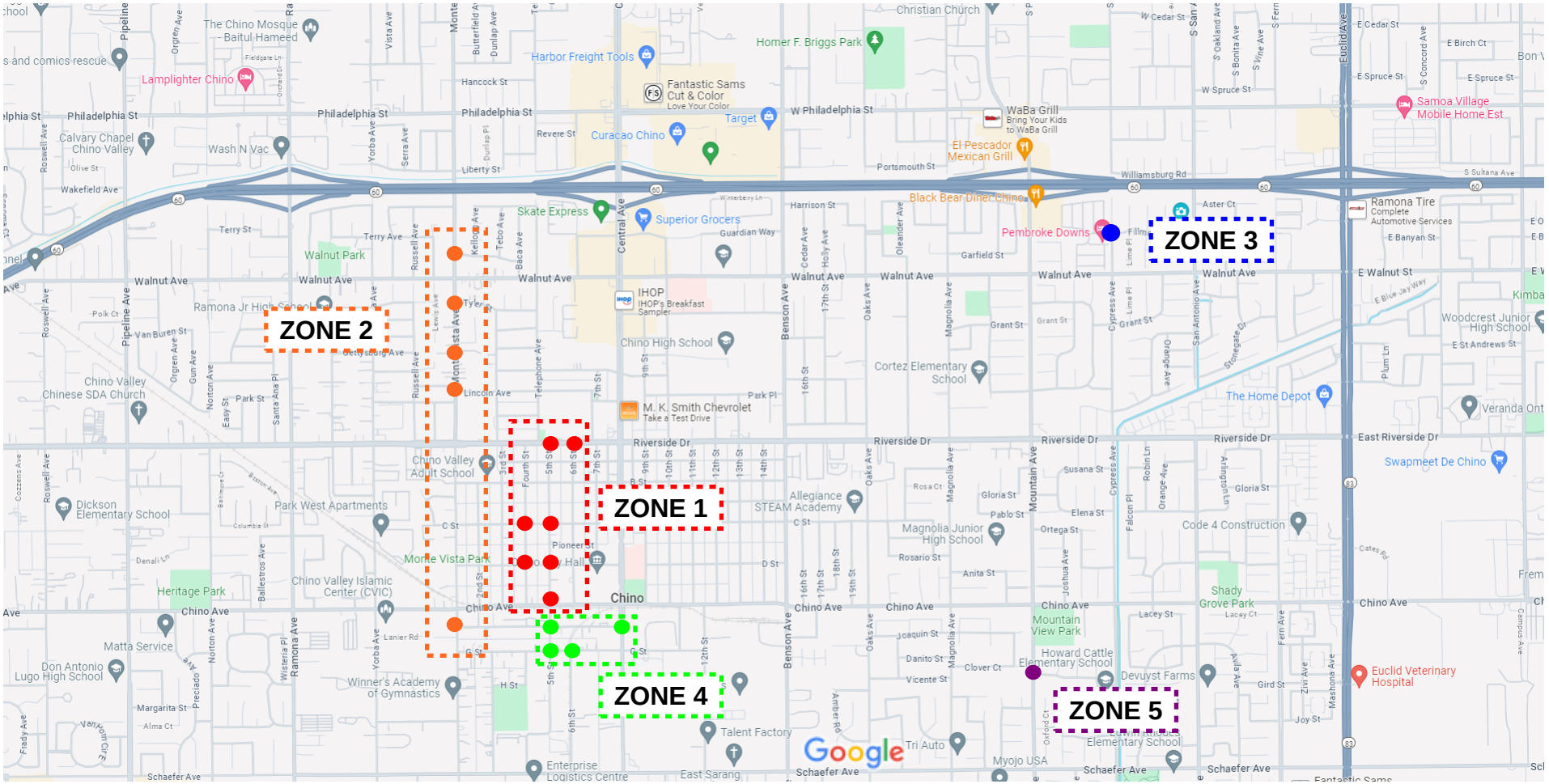
This project is exempt from the California Environmental Quality Act (CEQA) according to Section 15301(c) of the CEQA Guidelines - Existing Facilities, which includes the operation, repair, and maintenance of highways, streets, sidewalks, gutters, bicycle and pedestrian trails, and other similar facilities.

Attachments: Exhibit A – Project Location Map
Exhibit B – Construction Agreement – CT&T (ST173 & ST241)
Exhibit C – PSA – Leighton Consulting, Inc. (ST173 & ST241)

# Project No. ST173 - Sidewalk Completion



# Project No. ST241- Concrete Ramps



Contract No.:_____
Approved:_____

**AGREEMENT**

**TRANSPORTATION RIGHT-OF-WAY ADA IMPROVEMENTS PROJECT (ST173) & STREET REHABILITATION FY23-24 PROJECT (ST241)**

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**THIS AGREEMENT** is made and entered into this **7th day of May, 2024** by and between THE CITY OF CHINO, a municipal corporation, hereinafter called "City", and **CT&T Concrete Paving Inc.**, hereinafter called "Contractor".

**WITNESSETH**, that the parties hereto mutually agree as follows:

**ARTICLE I**: For and in consideration of the payments and agreements hereinafter mentioned to be made and performed by City, Contractor agrees to perform and complete all of the work for the projects entitled **Transportation Right-Of-Way ADA Improvements Project (ST173) & Street Rehabilitation FY23-24 Project (ST241)** in a good and workmanlike manner in accordance with all plans and specifications therefor, to furnish at Contractor's sole cost and expense all tools, equipment, labor, and materials necessary therefor, except such materials and equipment as are expressly stipulated to be furnished by City, and to do everything required by the Contract Documents.

**ARTICLE II**: Contractor shall be responsible for furnishing all labor, materials, equipment, tools, and services, furnishing and removing all plants, temporary structures, tools, and equipment, and doing everything required by this Agreement and by the Contract Documents. Contractor shall also be responsible for all losses and damages arising out of the performance of the Work, from the action of the elements, or from any unforeseen difficulties that may arise during the prosecution of the Work until its acceptance by City; for all risks of every description associated with the Work; and for all expenses resulting from the suspension or discontinuance of the Work. City shall pay Contractor, and Contractor shall receive, for completing the Work in accordance with the requirements of the Contract Documents and in full compensation therefor, the price named in the Bid Proposal. Subject to any additions or deductions that may be made by change order or amendment, and any penalties or damages that may be assessed against Contractor, Contractor shall receive a total contract amount of **Two Million Six Hundred Forty-Five Thousand Five Hundred One Dollars and Seven Cents ($2,645,501.07)** for completion of the contract work.

**ARTICLE III**: The City hereby employs said Contractor to perform the work according to the terms of this Agreement for the above-mentioned price(s), and agrees to pay the same at the time, in the manner, and upon the conditions stipulated in the Contract Documents; and the said parties for themselves, their heirs, executors, administrators, successors and assignees, do hereby agree to the full performance of the covenants herein contained.

**ARTICLE IV**: Contractor shall begin work within **fifty-five (55)** calendar days after receiving a Notice to Proceed from the City and the work shall be completed within **Ninety (90) working days.** If the work is not completed within said time period, liquidated damages shall apply.

**ARTICLE V**: The Notice Inviting Bids, the Summary of Work, the Instructions to Bidders, the Bid Documents, the Required Post-Bid Documents, the General Provisions, the Special Provisions, the Technical Specifications, and all other drawing, plans, or specifications for the Work (collectively, "Contract Documents") are hereby incorporated into and made part of this Agreement.

**ARTICLE VI**: Contractor shall indemnify, defend with legal counsel approved by City, and hold harmless

City, its officers, officials, employees and volunteers from and against all liability, loss, damage, expense, cost (including without limitation reasonable legal counsel fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with Contractor's negligence, recklessness or willful misconduct in the performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the sole or active negligence or willful misconduct of the City. In instances where City is shown to have been actively negligent and where City's active negligence accounts for only a percentage of the liability involved, the obligation of Contractor will be for that entire portion or percentage of liability not attributable to the active negligence of City. Should conflict of interest principles preclude a single legal counsel from representing both City and Contractor, or should City otherwise find Contractor's legal counsel unacceptable, then Contractor shall reimburse the City its costs of defense, including without limitation reasonable attorneys' fees, expert fees and all other costs and fees of litigation. The Contractor shall promptly pay any final judgment rendered against the City (and its officers, officials, employees and volunteers) with respect to claims determined by a trier of fact to have been the result of the Contractor's negligent, reckless or wrongful performance. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.

**ARTICLE VII**: No officer or employee of the City shall have any financial interest in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which affects his financial interest or the financial interest of any corporation, partnership or association in which he is interested, in violation of any State statute or regulation. Similarly, Contractor 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.

**ARTICLE VIII**: 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.

**ARTICLE IX**: 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 Contractor 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.

**ARTICLE X**: No officer or employee of the City shall be personally liable to the Contractor, 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 Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

**ARTICLE XI**: 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.

**ARTICLE XII**: In the course of its work under this Agreement, the Contractor, its agents and employees shall be bound by and comply with all applicable federal, state and local laws and requirements.

**ARTICLE XIII**: 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) the entering into this Agreement does not violate any provision of any other

Agreement to which said party is bound.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed on the day and year first above written.

Approved as to Form:

Fred Galante, City Attorney

Approved as to Content:

Hye Jin Lee, PE, Director of Public Works

**CT & T CONCRETE PAVING INC.:**

Dated: _____

By: _____

*(Signature)*

Name: _____

*(Please Type or Print Name)*

Title: _____

*(Please Type or Print Title)*

CITY OF CHINO

Dated: _____

Linda Reich, City Manager

ATTEST:

Natalie Gonzaga, City Clerk

Date

**Project Name/No.: ST173 & ST241 - Geotechnical Services for Street Rehab FY23-24 & Right of Way ADA Improvements** **Contract No.: _____**

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

**AGREEMENT FOR SERVICES**
**BETWEEN THE CITY OF CHINO AND**
**LEIGHTON CONSULTING, INC.**

THIS AGREEMENT FOR SERVICES (herein "Agreement") is made and entered into this 21st day of May, 2024 ("Effective Date") by and between the City of Chino, a California municipal corporation ("City") and **Leighton Consulting, Inc.**, 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 **Fifty-Four Thousand Two Hundred Twenty-Three Dollars and Zero Cents Dollars ($54,223)** (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 (1) year 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, PE, 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 and Zero Cents ($0.00) 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:**
**LEIGHTON CONSULTING, INC.:**

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"

## SCOPE OF WORK

Our scope of services during construction will be to provide third party geotechnical observation and testing services in accordance with the City of Chino Quality Assurance Program and Standard Specifications for Public Works Construction ("Green Book"). Our services will consist of the following:

**Attending a Pre-Construction Meetings:** If requested, we will attend a pre-construction meeting (either in-person or via phone conference) with representatives of the contractor and construction management to establish site access restrictions, points of contact, protocol for scheduling our services, and distribution lists for test results.

**Mix Design Reviews**: If requested, we will review Hot Mix Asphalt (HMA) and Portland Cement Concrete (PCC) mix design submittals and present a letter documenting our review in accordance with project specifications and/or City protocol.

**Geotechnical Observation and Testing:** We will provide part-time geotechnical observation and testing for subgrade preparation. Field (in-situ) dry density and moisture content measurements using the nuclear moisture and density gauge will be performed in general accordance with ASTM D6938.

**Pavement Density Observation and Testing:** We will test relative compaction of aggregate base and asphaltic concrete during pavement construction using the nuclear moisture and density gauge in general accordance with ASTM D6938.

**Fresh Concrete Field Sampling and Testing:** We will provide field technicians that have been certified by American Concrete Institute (ACI) for fresh concrete sampling and field testing on site. Our field technician will sample fresh concrete (ASTM C172) and perform slump tests (ASTM C143). Concrete compressive strength cylinders will also be molded in accordance with ASTM C31, by our representative, at a sampling frequency in accordance with the project manual. After initial field curing, we will transport hardened concrete cylinders from the site to our materials laboratory. We have assumed that PCC for flatwork/sidewalk will not require sampling and testing just the requested street gutters per IRFB.

**Geotechnical/Materials Laboratory Testing:** We will perform geotechnical laboratory testing of samples from onsite and imported soil/aggregate in accordance with the City of Chino's QAP. Our laboratory tests will likely include the following:

**Asphalt:** Aggregate gradation, asphalt binder content, theoretical maximum density, stabilometer (S-value).

**Aggregate Base:** Sieve analyses, R-Value, sand equivalent, percentage wear, optimum moisture and maximum density compaction curves (ASTM D1557).

**Subgrade:** Optimum moisture and maximum density compaction curves (ASTM D1557), sand equivalent, gradation.

Budgeted laboratory tests based on estimated material quantities and test frequencies are presented in the attached fee breakdowns.

We will coordinate our field personnel and provide administrative support services. We will also provide professional geotechnical observations and materials testing management, supervision and internal quality control. *Daily Field Reports* (DFRs) written by our technicians in the field will be reviewed and prepared for distribution. Laboratory test results will also be reviewed and distributed. Concerns encountered in the field and noted on DFRs, and any material tested and found not to conform to project specifications, will be brought to the attention of your project superintendent or designated representative.

# 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"

| Project | Total Fee |
|---|---|
| **ST173 – Transportation Right of Way ADA Improvements** | **$19,296.00** |
| **ST241 – Street Rehabilitation FY 2023-2024** | **$34,927.00** |
| **GRAND TOTAL:** | **$54,223.00** |

## 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 Project Manager(s). Consultant will coordinate with City and Project staff to ensure timely completion of services and adherence to approved task schedules.

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

# MEMORANDUM
# CITY OF CHINO
# PUBLIC WORKS DEPARTMENT

**CITY COUNCIL MEETING DATE: MAY 21, 2024**

**TO:** **LINDA REICH, CITY MANAGER**

**FROM:** **HYE JIN LEE, PE, DIRECTOR OF PUBLIC WORKS**

## SUBJECT

Kimball Avenue Median Improvements Project.

## RECOMMENDATION

Approve the 1) establishment of a new CIP project entitled "Kimball Avenue Median Improvement Project", G7241 with a total project budget of $319,323.40; 2) appropriate $319,323.40 to the Transportation Fund (320), with a corresponding increase in grant revenue from the County of San Bernardino American Plan Rescue Act (ARPA) Funds and $4,999.40 backfill from the General Fund (100) reserves; 3) approve a Cooperative Agreement between the City of Chino and San Bernardino County to establish reimbursement obligations for the Kimball Avenue Median Improvements Project G7241 for $314,324; 4) award a Construction Contract for $250,399.40 to Metrocell Construction Inc., Ontario, CA for the Kimball Avenue Median Improvements Project and authorize up to $25,040 (10% of the contract amount) for construction contingencies for a total amount not to exceed $275,439.40; 5) approve a Professional Service Agreement with AESCO, Inc., Huntington Beach, CA for Geotechnical Engineering Services for the Kimball Avenue Median Improvements Project for $13,184; 6) authorize expenditures of up to $15,700.00 for construction management services, $10,000 for design services and $5,000 for overtime inspection costs; and 7) authorize the City Manager to execute all necessary documents on behalf of the City.

## FISCAL IMPACT

Appropriate $319,323.40, G7241 to the Transportation Fund (320) and a General Fund backfill of $4,999.40 and grant revenue of $314,324, from the County of San Bernardino Federal ARPA funds, which will be reimbursed to the City upon completion of the project.

| Funding Sources | Appropriation |
|---|---|
| San Bernardino County ARPA Funds | $314,324.00 |
| General Fund | $4,999.40 |
| **Total Project Budget** | **$319,323.40** |

## CITY OF CHINO MISSION / VISION / VALUES / STRATEGIC ISSUES

The recommendation detailed above further the City's values and strategic issues that serve as key pillars on which identified priorities, goals, and action plans are built, by fostering:

- Positive City Image
- Responsible Long-Range Planning
- Public Service Excellence through Internal and External Partnerships

| | |
|---|---|
| Revenue: 3207100-59500-G7241 | Expenditure: 3207100 – 48003 \|40010\| 48004 \| 48005 \| 48007 \| 48009 \|G7241 |
| Transfer In: 3201000-50000 | Transfer Out: 1001000-40001 |

## BACKGROUND

The representatives for the property owners and association for the commercial center located at the southeast corner of Euclid Avenue and Kimball Avenue have approached the City of Chino regarding means to enhance access to their business site. With the recent completion of the In-N-Out distribution center, a master-planned raised median has been constructed along Kimball Avenue, which prevents any left turn movements into the property from Kimball Avenue westbound traffic. The business center owner has represented to the City that the lack of access from westbound traffic has negatively impacted the businesses in the center. This item was brought forth for discussion at the City Council Infrastructure Streets Committee meeting held on June 12, 2023. The Committee supported the investigation of creating a left turn pocket within the median, with construction being completed at the expense of the property owners either directly or indirectly through reimbursement with the City. Staff was advised to provide the representatives with an estimated cost for this improvement for owners to determine the feasibility of implementation.

The City prepared a conceptual design for the left turn pocket and obtained three quotes from qualified contractors. The City provided these estimates to the property owner representatives wherein they could decide on how to finance the project. The representatives explored cost-sharing options with the City and ultimately reached out to the San Bernardino County Board of Supervisors' office to seek other funding opportunities. The City also submitted a letter of support for consideration of funding the left turn pocket to County Supervisor Curt Hagman's office. The addition of a left turn pocket will facilitate customer access to these businesses, improve the traffic flow, and enhance traffic safety for patrons accessing the shopping center.

The County Board of Supervisor's Office has also requested a second turn pocket along Kimball Avenue into the Chino airport hangar which is owned by San Bernardino County. Through a collaborative effort, Supervisor Curt Hagman requested the use of San Bernardino County's American Rescue Plan Act (ARPA) allocation to fund median improvements on Kimball Avenue. The funding request is for $314,324 for the design and construction of the two left turn pockets. To facilitate this request, the County will need to enter into an ARPA sub-recipient agreement with the City of Chino.

## ISSUES/ANALYSIS

The City utilized one of its current on-call engineering firms, Transtech Engineers, Inc., Chino, CA to complete the final design of the two left turn pockets. On March 8, 2024, staff published a formal Notice Inviting Bids via the City's Planet Bids website and in the local publication on March 9 and March 16, 2024, for "Kimball Avenue Median Improvements Project". On March 28, 2024, at 10:00 a.m., two (2) bids were received and opened, with the following results:

| Company Name | City | Bid Amount |
|---|---|---|
| Metrocell Construction Inc. | Ontario, CA | $250,399.40 |
| HZs Engineering DBA HZS Construction | Orange, CA | $460,925.00 |

The lowest, responsible, responsive bid was submitted by Metrocell Construction Inc., Ontario, CA, as shown in the table above for $250,399.40. Staff subsequently reviewed the contractor's licensing, bonding, references, and list of subcontractors submitted for the project, and found all bid submittal documentation to be in order.

On March 28, 2024, staff published an informal Request for Proposals via email to three (3) pre-qualified Geotechnical Engineering firms from the approved on-call list. On April 4, 2024, at 10:00 a.m., two (2) proposals were received and one (1) opted not to participate. Staff reviewed both proposals and determined AESCO Inc., Huntington Beach, CA as the lowest apparent responsible proposal.

City Staff determined that Z&K Consultants Inc. ("Z&K") is the best qualified firm to manage the construction services due to their previous work on the Kimball Avenue Improvements Project (ST232) which is currently under construction in the same area. Z&K also provides competitive hourly rates compared to other consultants with similar qualifications. The City will utilize the existing on-call consultant agreement with Z&K.

The following table includes the projected expenditures for the new CIP project G7241.

| **Kimball Ave Turn Pocket West– Commercial Center** | **Vendor** | **Totals** |
|---|---|---|
| Subtotal Construction | Metrocell Construction Inc., Ontario, CA | $129,075.00 |
| **Kimball Ave Turn Pocket East – Airport Hangar** | | |
| Subtotal Construction | Metrocell Construction Inc., Ontario, CA | $121,325.40 |
| Design | Transtech Engineers Inc., Chino, CA | $10,000 |
| Materials Testing and Special Inspection | AESCO, Inc., Huntington Beach, CA | $13,184.00 |
| Construction Management | Z & K Consultants Inc., Riverside, CA | $15,700.00 |
| Construction Contingencies (10%) | As allowable per the Public Contract Code | $25,040.00 |
| Inspection Services | City Staff | $5,000 |
| **Total Estimated Expenditures** | | **$319,323.40** |

*Note: (1) Note that, as in all the City's public works contracts, the contract itself provides the Director of Public Works authority to issue change orders of up to 10% of the original contract amount. When the Council approves the contract, it approves this authority. Ten percent is generally considered within the normal range of changed conditions on a public works construction project and, by providing change order authority upfront, Council helps to reduce the possibility of delay on a construction project.*

Staff recommends the following as summarized above:

1) Establish a new CIP project entitled "Kimball Avenue Median Improvements Project" G7241;
2) appropriate $319,323.40 to the new CIP project- $314,324 of ARPA grant funds and $4,999.40 of General Fund reserves;
3) approve a Cooperative Agreement between the City of Chino and San Bernardino County to establish reimbursement obligations for the Kimball Avenue Median Improvements Project for $314,324;
4) award a Construction Contract in the amount of $250,399.40 to Metrocell Construction

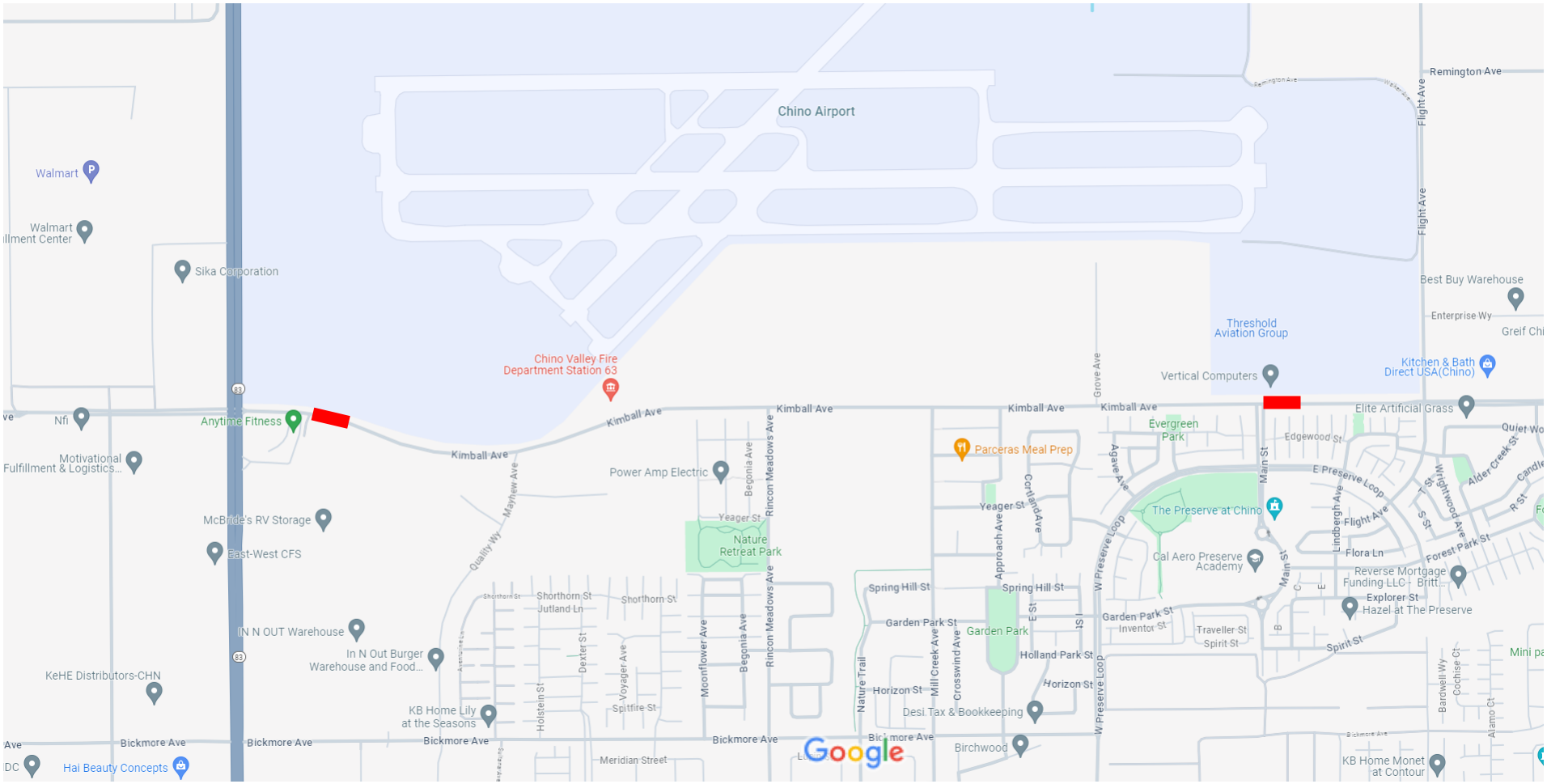
Inc., Ontario, CA for the Kimball Avenue Median Improvements Project and authorize up to $25,040 (10% of the contract amount) for construction contingencies for a total amount not to exceed $275,439.40;

5) approve a Professional Service Agreement with AESCO, Inc., Huntington Beach, CA for Geotechnical Engineering Services for the Kimball Avenue Median Improvements Project for $13,184.
6) authorize expenditures of up to $15,700 for construction management services with Z&K Consultants Inc., Riverside, CA using an existing on-call agreement, $5,000 for overtime inspection costs, and $10,000 for design services from Transtech Eng, Inc; and
7) authorize the City Manager to execute all necessary documents on behalf of the City.

This project is exempt from the California Environmental Quality Act (CEQA) according to Section 15301(c) of the CEQA Guidelines - Existing Facilities, which includes the operation, repair, and maintenance of highways, streets, sidewalks, gutters, bicycle and pedestrian trails, and other similar facilities.

Attachments: Exhibit A – Location Map
Exhibit B – Agreement Between San Bernardino County and City of Chino
Exhibit C – Construction Agreement – Metrocell Construction, Inc.
Exhibit D – PSA – AESCO, Inc.

# Project No. TBD - Kimball Ave Median Improvements




Map data ©2024 Google 500 ft

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY

**Contract Number**

**SAP Number**
ARPA21-PRJC-048-CHI

# County Administrative Office

| | |
|---|---|
| **Department Contract Representative** | Matthew Erickson, County Chief Financial Officer |
| **Telephone Number** | (909) 387-5423 |
| **Contractor** | City of Chino<br>UEI No. RGVNGHJR3NV5 |
| **Contractor Representative** | Rob Burns, Finance Director |
| **Telephone Number** | 909-334-3341 |
| **Contract Term** | October 17, 2023 through December 31, 2026 |
| **Original Contract Amount** | Based on actual project costs not to exceed $ 314,324 |
| **Amendment Amount** | |
| **Total Contract Amount** | Based on actual project costs not to exceed $314,324 |
| **Cost Center** | 110-094-1078 |
| **Internal Order (If Applicable)** | |

## CONTRACT BETWEEN SAN BERNARDINO COUNTY AND CITY OF CHINO RELATED TO THE AMERICAN RESCUE PLAN ACT AND THE CORONAVIRUS LOCAL FISCAL RECOVERY FUND

**WHEREAS,** on March 4, 2020, the State of California declared a state of emergency as a result of the Coronavirus Disease 2019 (COVID-19) outbreak and on March 13, 2020, by Proclamation 9994, the President declared a national emergency concerning the COVID-19 pandemic. The COVID-19 pandemic continues to cause significant risk to the public health and safety of the United States; and

**WHEREAS,** on March 11, 2021, the American Rescue Plan Act (ARPA) was signed into law by the President and the law is intended to combat the COVID-19 pandemic, including the public health and economic impacts; and

**WHEREAS,** pursuant to Section 9901 of the ARPA, San Bernardino County (County) received a disbursement from the United States Department of the Treasury of money associated with the Coronavirus Local Fiscal Recovery Fund (CLFRF) for Local Governments under Section 603(a) [see 42 U.S.C. Section 803]; and

**WHEREAS,** the County agreed to comply with the United States Department of the Treasury Coronavirus State Fiscal Recovery Fund Award Terms and Conditions (Terms and Conditions),

including Assurance of Compliance with Title VI of the Civil Rights Act of 1964 (Assurance of Compliance with Civil Rights Requirements), identified in the United States Department of the Treasury and San Bernardino County Agreement (OMB Approved No. 1505-0271) (United States Department of the Treasury Agreement), which is on file with the County and incorporated herein by this reference; and

**WHEREAS,** the Assistance Listing Number (ALN)/Federal Assistance Identification Number (FAIN) for the ARPA CLFRF is 21.027/SLFRP0154 respectively; and

**WHEREAS,** the ARPA provides that payments from the CLFRF may be used for the following: i) to respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality; ii) to respond to workers performing essential work during the COVID–19 public health emergency by providing premium pay to eligible workers that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work; iii) for the provision of government services to the extent of the reduction in revenue due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency; or iv) to make necessary investments in water, sewer, or broadband infrastructure; and

**WHEREAS,** funding provided under ARPA CLFRF must be obligated by December 31, 2024 and expended by December 31, 2026; and

**WHEREAS,** the County desires to transfer and City of Chino (Contractor) desires to accept a transfer from ARPA CLFRF in the not-to-exceed amount of $ 314,324 for expenditures identified in Exhibit “A” related to the Chino Kimball Avenue Median Improvements Project.

**NOW, THEREFORE,** in consideration of the above, the County and Contractor agree as follows:

1. **THE ARPA CLFRF**
   - **A.** This Contract applies to the following ARPA CLFRF transfers:
     The transfer by the County of an amount not to exceed $314,324 to Contractor on a reimbursement basis for expenditures identified in Exhibit “A”. Exhibit “A” is attached hereto and incorporated herein by this reference. County acknowledges and agrees that Contractor will be administering the transfer of funds for the expenditures identified in Exhibit “A” by separate contracts. Contractor shall provide the County quarterly reports of actual cash expenditures to date under this Contract, and estimated cash expenditures through December 31st of each year. County, through its Chief Executive Officer (CEO), in the CEO’s sole discretion, reserves the right to reduce the transfer amount identified in this Contract with fifteen (15) days advance written notice provided to Contractor. The reduction would be based: A) on Contractor’s estimated cash expenditures through December 31st of each year; B) a later determination by the United States Department of the Treasury, or County, that the costs identified in this Contract are ineligible for ARPA CLFRF; or C) a determination by CEO the funds should be utilized in a different manner.

   - **B.** Contractor certifies that the use of funds that will be submitted for reimbursement from the CLFRF under Paragraph 1.A. and Exhibit “A” of this Contract will be used only to cover those costs that: i) are related to government operations eligible uses; and ii) were incurred during the period that begins October 17, 2023 and will end December 31, 2024. For purposes of this Contract and pursuant to federal guidance, expended or obligated costs are costs incurred by Contractor during the time period referenced above that are allowable for reimbursement. Any cost obligated by Contractor as of December 31, 2024, must be

expended by December 31, 2026, to meet the eligible costs timeframe as defined by the United States Department of the Treasury.

**C.** Contractor agrees that the funds provided pursuant to this Contract cannot be used: i) as a revenue replacement for lower than expected tax or other revenue collections; ii) for expenditures for which Contractor has received any other emergency COVID-19 supplemental funding (whether federal, state, or private in nature) for that same expense; or iii) as a deposit into any pension fund.

**D.** Contractor shall prepare and submit to County an invoice for reimbursement of eligible funding expenses identified in Paragraph 1.A., above. Invoices may be submitted to County as frequently as monthly. Invoices will be reviewed and approved for compliance with terms of this Contract. County shall reimburse to Contractor the amount of approved invoices submitted within sixty (60) days of receipt. If an invoice is rejected, or revisions are requested, Contractor will work with County to submit the required revisions.

**E.** Both County and Contractor agree to comply with any and all ARPA CLFRF requirements, including but are not limited to the terms included in this Contract, as well as any and all applicable County, Contractor, State, and Federal laws, regulations, policies and procedures pertaining to the funding described in this Contract. County and Contractor shall comply with Title 2 Code of Federal Regulations (C.F.R.) Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), including, but not limited to, Title 2 C.F.R. Section 200.303 (internal control), Title 2 C.F.R. Sections 200.331 through 200.333 (subrecipient monitoring and management), and Title 2 C.F.R. Part 200 Subpart F (audit requirements), as these sections currently exist or may be amended. The use of funds must also adhere to official federal guidance issued or to be issued on what constitutes an eligible expenditure. Any funds expended by Contractor or its subcontractor(s) in any manner that does not adhere to official federal guidance shall be returned to the County. Contractor agrees to comply with all official guidance regarding the ARPA CLFRF. County and Contractor also agree that as additional federal guidance becomes available, an amendment to this Contract may become necessary. If an amendment is required, Contractor agrees to promptly execute the Contract amendment.

**F.** Contractor shall retain documentation of all uses of the funds, including but not limited to invoices and/or sales receipts in a manner consistent with Title 2 C.F.R. Section 200.334 (retention requirements for records). Such documentation shall be produced to County upon request and may be subject to audit. Unless otherwise provided by Federal or State law (whichever is the most restrictive), Contractor shall maintain all documentation connected with its performance under this Contract for a minimum of five (5) years from the date of the last payment made by County or until audit resolution is achieved, whichever is later, and to make all such supporting information available for inspection and audit by representatives of the County, the State or the United States Government during normal business hours at Contractor. Copies will be made and furnished by Contractor upon written request by County.

**G.** Contractor shall establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) to support Contractor's requests for reimbursement which segregate and accumulate costs of Contractor and produce monthly reports which clearly identify reimbursable costs, matching fund costs (if applicable), and other allowable expenditures by Contractor. Contractor shall provide a monthly report of expenditures under this Contract no later than the 20th day of the following month.

**H.** Contractor shall cooperate in having an audit completed by County, at County's option and expense. Any audit required by ARPA CLFRF and its regulation and United States Treasury guidance will be completed by Contractor at Contractor's expense.

**I.** Contractor shall repay to County any reimbursement for ARPA CLFRF funding that is determined by subsequent audit to be unallowable under the ARPA CLFRF within the time period required by the ARPA CLFRF, but no later than one hundred twenty (120) days of Contractor receiving notice of audit findings, which time shall include an opportunity for Contractor to respond to and/or resolve the findings. Should the findings not be otherwise resolved and Contractor fail to reimburse moneys due County within one hundred twenty (120) days of audit findings, or within such other period as may be agreed between both parties or required by the ARPA CLFRF, County reserves the right to withhold future payments due Contractor from any source under County's control.

**J.** Contractor shall accept all payments from County via electronic funds transfer (EFT) directly deposited into the Contractor's designated checking or other bank account. Contractor shall promptly comply with directions and accurately complete forms provided by County required to process EFT payments.

**K.** County is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on Contractor or on any taxes levied on employee wages. The County shall only pay for any State or local sales or use taxes on the services rendered or equipment and/or parts supplied to the County pursuant to the Contract.

**L.** Funds made available under this Contract shall not supplant any federal, state or any governmental funds intended for services of the same nature as this Contract. Contractor shall not claim reimbursement or payment from County for, or apply sums received from County with respect to that portion of its obligations that have been paid by another source of revenue. Contractor agrees that it will not use funds received pursuant to this Contract, either directly or indirectly, as a contribution or compensation for purposes of obtaining funds from another revenue source without prior written approval of the County.

**M.** **County shall only reimburse costs incurred through the dates identified in Exhibit "A".** Contractor requirements in Sections 1, 2 and 5 of this Contract shall survive the termination of this Contract. The costs to be reimbursed under this Contract do not include Research and Development as defined in Title 2 Code of Federal Regulations (C.F.R.) Section 200.1, nor do they include indirect costs.

## 2. AMERICAN RESCUE PLAN ACT REQUIREMENTS

**A.** This Contract may be funded in whole or in part with funds provided by the American Rescue Plan Act - Coronavirus Local Fiscal Recovery Fund (ARPA), *Federal Award Identification Number (FAIN): SLFRP0154 and Assistance Listing Number (formerly known as a CFDA number): 21.027*, and therefore Contractor agrees to comply with any and all ARPA requirements in addition to any and all applicable County, State, and Federal laws, regulations, policies, and procedures pertaining to the funding of this Contract. The use of the funds must also adhere to official federal guidance issued or to be issued on what constitutes a necessary expenditure. Any funds expended by Contractor or its subcontractor(s) in any manner that does not adhere to the ARPA requirements shall be returned or repaid to the County. Any funds paid to Contractor: i) in excess of the amount to which Contractor is finally determined to be authorized to retain; ii) that are determined to

have been misused; or iii) that are determined to be subject to a repayment obligation pursuant to section 603(e) of the Act and have not been repaid, shall constitute a debt to the federal government. Contractor agrees to comply with the requirements of section 603 of the Act, regulations adopted by Treasury pursuant to the Act, and guidance issued by Treasury regarding the foregoing. Contractor shall provide for such compliance in any agreements with subcontractor(s).

**B.** Contractor agrees to comply with all applicable federal laws and regulations, including but not limited to all laws and regulations identified in Section 2 of the Contract.

**C.** In accordance with Title 2 C.F.R. Section 200.322, the non-Federal Contractor should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. For purposes of this section: “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

**D.** In accordance with Title 2 C.F.R. Section 200.471, costs incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, cloud servers are allowable except for the following circumstances: Obligating or expending covered telecommunications and video surveillance services or equipment or services (as described in 2 C.F.R. Section 200.216) to: 1) Procure or obtain, extend or renew a contract to procure or obtain; 2) Enter into a contract (or extend or renew a contract) to procure; or 3) Obtain the equipment, services, or systems, as described in Title 2 C.F.R. Section 200.216 that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities) and: (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities); (ii) Telecommunications or video surveillance services provided by such entities or using such equipment; and (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country. In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

**E.** A non-Federal Contractor that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at Title 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**F.** Byrd Anti-Lobbying Amendment (31 U.S.C. Section 1352) - Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by Title 31 U.S.C. Section 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

**G.** Clean Air Act (42 U.S.C. Sections 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. Sections 1251-1389), as amended - Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. Sections 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. Sections1251-1389).

**H.** Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under Title 37 C.F.R. Section 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the Title 33 U.S.C. Sections 1251-1387 recipient or subrecipient must comply with the requirements of Title 37 C.F.R. Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

**I.** Contract Work Hours and Safety Standards Act (40 U.S.C. Sections 3701-3708). Where applicable, all contracts awarded by the non-Federal Contractor in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with Title 40 U.S.C. Sections 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Under Title 40 U.S.C. Section 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of Title 40 U.S.C. Section 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to health or safety.

These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

**J.** Davis-Bacon Act, as amended (40 U.S.C. Sections 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. Sections 3141-3148) as supplemented by Department of Labor regulations (29 C.F.R. Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal contractor must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal Contractor must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. Section 874 and 40 U.S.C. Section 3145), as supplemented by Department of Labor regulations (29 C.F.R. Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal contractor must report all suspected or reported violations to the Federal awarding agency.

i. The Contractor and all Subcontractors and Sub-subcontractors are required to pay their employees and workers a wage not less than the minimum wage for the work classification as specified in both the Federal and California wage decisions. See Exhibit "B" for additional information regarding California Prevailing Wage Rate Requirements and the applicable general prevailing wage determinations which are on file with the County and are available to any interested party on request. The higher of the two applicable wage determinations, either California prevailing wage or Davis-Bacon Federal prevailing wage, will be enforced for all applicable work/services under this Contract.

**K.** Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by Title 41 U.S.C. Section 1908, must address administrative, contractual, or legal remedies in instances where Contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

**L.** All contracts in excess of $10,000 must address termination for cause and for convenience by the non-Federal Contractor including the manner by which it will be effected and the basis for settlement.

**M.** Equal Employment Opportunity. Except as otherwise provided under Title 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in Title 41 C.F.R. Section 60-1.3 must include the equal opportunity clause provided under Title 41 C.F.R. Section 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended

by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 C.F.R. part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.” The identified clause is below and Contractor shall comply with the clause and all legal requirements and include the equal opportunity clause in each of its nonexempt subcontracts.

i. The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at Title 41 C.F.R. Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

   During the performance of this contract, the contractor agrees as follows:

   (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

   (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

   (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

   (4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government

contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

**N.** Data Collection Requirements – Contractor agrees to collect pre-post data per County, and United States Treasury guidelines and timeline, for project tracking and monitoring and various reporting purposes. Data including, but not limited to: Required Project Demographic Distribution Data; Required Performance Indicators and Programmatic Data; Required Expenditure Report Data; and Required Program Evaluation Data. Contractor agrees to track and monitor data in a quantifiable and reportable database - retrievable collective data that needs to be available to County, State or Federal governments upon request.

**O.** Data Submission Requirements - Contractor agrees to furnish data to the County upon request, per County, and United States Treasury guidelines and timeline, for project tracking and monitoring and various reporting purposes. Data including, but not limited to: Required Project Demographic Distribution Data; Required Performance Indicators and Programmatic Data; Required Expenditure Report Data; Required Program Evaluation Data. Contractor agrees to track and monitor data in a quantifiable and reportable database - retrievable collective data that needs to be available at request.

**P.** Project Progress Reporting - Contractor agrees to provide project timeline and progress updates to the County upon request, per County, and United States Treasury guidelines and timeline. Contractor agrees to routine and impromptu program and project evaluation by the County.

**Q.** Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Title 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply.

**R.** Universal Identifier and System for Award Management (SAM), Title 2 C.F.R. Part 25.

**S.** Reporting Subaward and Executive Compensation Information, Title 2 C.F.R. Part 170.

**T.** OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (nonprocurement), title 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to Title 2 C.F.R. Part 180 and Treasury's implementing regulation at Title 31 C.F.R. Part 19. Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see 2 CFR Section 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award

Management (SAM), in accordance with the OMB guidelines at Title 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

**U.** Recipient Integrity and Performance Matters, pursuant to which the award terms set forth in Title 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.

**V.** Government Requirements for Drug-Free Workplace, Title 31 C.F.R. Part 20.

**W.** New Restrictions on Lobbying, Title 31 C.F.R. Part 21.

**X.** Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. Sections 4601-4655) and implementing regulations.

**Y.** Applicable Federal environmental laws and regulations.

**Z.** Statutes and regulations prohibiting discrimination include, without limitation, the following:

i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. Sections 2000d et seq.) and Treasury's implementing regulations at Title 31 C.F.R. Part 22, which prohibits discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance.

ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. Sections 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability.

iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Section 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance.

iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. Sections 6101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. Sections 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

**AA.** Contractor understands that making false statements or claims in connection with the ARPA funded activities is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.

**BB.** Any publications produced with ARPA funds must display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number SLFRP0154 awarded to San Bernardino County by the United States Department of Treasury."

**CC.** Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Contractor is being encouraged to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented, or personally owned vehicles.

**DD.** Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Contractor is being encouraged to adopt and enforce policies that ban text messaging while driving and establishing workplace safety policies to decrease accidents caused by distracted drivers.

**EE.** As a recipient of federal financial assistance, the Civil Rights Restoration Act of 1987 applies, and Contractor and all subrecipients assures that it:

i. Ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal funds, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. Sections 2000d et seq.), as implemented by the Department of the Treasury Title VI regulations at Title 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda and/or guidance documents.

ii. Acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Contractor understands that denying a person access to its programs, services, and activities, because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Contractor shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure LEP persons have meaningful access to its programs, services, and activities. Contractor understands and agrees that meaningful access may entail provide language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication.

iii. Agrees to consider the need for language services for LEP persons during development of applicable budgets and when conducting programs, services, and activities.

iv. Agrees to maintain a complaint log of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome.

**FF.** The Contractor must include the following language in every contract or agreement subject to Title VI and its regulations:

"The sub-grantee, contractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or nation origin (42 U.S.C. Section 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. Sections 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement."

**GG.** Contractor shall cooperate in any enforcement or compliance review activities by the County and/or the Department of the Treasury. Contractor shall comply with information requests, on-site compliance reviews, and reporting requirements.

**HH.** Contractor shall maintain records and financial documents sufficient to evidence compliance with section 603(c), regulations adopted by Treasury implementing those sections, and guidance issued by Treasury regarding the foregoing.

**II.** County has the right of access to records (electronic or otherwise) of Contractor in order to conduct audits or other investigations.

**JJ.** Contractor shall maintain records for a period of five (5) years after the completion of the contract or a period of five (5) years after the last reporting date the County is obligated with the Department of the United States Treasury, whichever is later.

**KK.** Contractor must disclose in writing any potential conflict of interest in accordance with Title 2 C.F.R. Section 200.112.

**LL.** In accordance with Title 41 U.S.C. Section 4712, subrecipient or Contractor may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.

The list of persons and entities referenced in the paragraph above includes the following: (i) A member of Congress or a representative of a committee of Congress; (ii) An Inspector General; (iii) The Government Accountability Office; (iv) A Treasury employee responsible for contract or grant oversight or management; (v) An authorized official of the Department of Justice or other law enforcement agency; (vi) A court or grand jury; or (vii) A management official or other employee of recipient, subrecipient, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct. Subrecipient or Contractor shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

**MM.** County and Contractor acknowledge that if additional federal guidance is issued, an amendment to this Contract may be necessary. In the event any of the terms in this Section 2 conflict with any other terms in the Contract, the terms in this Section 2 shall control.

## 3. GENERAL CONTRACT REQUIREMENTS

### A. Recitals

The recitals set forth above are true and correct and incorporated herein by this reference.

### B. Contract Amendments

Contractor agrees any alterations, variations, modifications, or waivers of the provisions of the Contract, shall be valid only when reduced to writing, executed and attached to the original Contract and approved by the person(s) authorized to do so on behalf of Contractor and County.

**C. Contract Assignability**

Without the prior written consent of the County, the Contract is not assignable by Contractor either in whole or in part.

**D. Contract Exclusivity**

This is not an exclusive Contract. The County reserves the right to enter into a contract with other contractors for the same or similar services. The County does not guarantee or represent that the Contractor will be permitted to perform any minimum amount of work, or receive compensation other than on a per order basis, under the terms of this Contract.

**E. Attorney's Fees and Costs**

If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a party hereto and payable under Indemnification and Insurance Requirements.

**F. Background Checks for Contractor Personnel**

Contractor shall ensure that its personnel (a) are authorized to work in the jurisdiction in which they are assigned to perform services; (d) do not use legal or illegal substances in any manner which will impact their ability to provide services; and (c) are not otherwise disqualified from performing the services under applicable law. If requested by the County and not in violation of applicable law, Contractor shall conduct a background check, at Contractor's sole expense, on all its personnel providing services. If requested by the County, Contractor shall provide the results of the background check of each individual to the County. Such background check shall be in the form generally used by Contractor in its initial hiring of employees or contracting for contractors or, as applicable, during the employment-screening process but must, at a minimum, have been performed within the preceding 12-month period. Contractor personnel who do not meet the County's hiring criteria, in County's sole discretion, shall not be assigned to work on County property or services, and County shall have the right, at its sole option, to refuse access to any Contract personnel to any County facility.

**G. Change of Address**

Contractor shall notify the County in writing, of any change in mailing address within ten (10) business days of the change.

**H. Choice of Law**

This Contract shall be governed by and construed according to the laws of the State of California.

**I. Confidentiality**

Contractor shall protect from unauthorized use or disclosure names and other identifying information concerning persons receiving services pursuant to this Contract, except for statistical information not identifying any participant. Contractor shall not use or disclose any identifying information for any other purpose other than carrying out the Contractor's obligations under this Contract, except as may be otherwise required by law. This provision will remain in force even after the termination of the Contract.

**J. Primary Point of Contact**

Contractor will designate an individual to serve as the primary point of contact for the Contract. Contractor or designee must respond to County inquiries within two (2) business

days. Contractor shall not change the primary contact without written acknowledgement to the County. Contractor will also designate a back-up point of contact in the event the primary contact is not available.

**K. Rule of Construction**

The parties agree that this Contract and all agreements or documents incorporated herein shall not be subject to the rule of construction that a written agreement is construed against the party preparing or drafting that agreement.

**L. County Representative**

The Chief Executive Officer or his/her designee shall represent the County in all matters pertaining to the services to be rendered under this Contract, including termination and assignment of this Contract, and shall be the final authority in all matters pertaining to the services/scope of Work by Contractor. If this contract was initially approved by the San Bernardino County Board of Supervisors, then the Board of Supervisors must approve all amendments to this Contract.

**M. Damage to County Property**

Contractor shall repair, or cause to be repaired, at its own cost, all damages to County vehicles, facilities, buildings or grounds caused by the willful or negligent acts of Contractor or its employees or agents. Such repairs shall be made immediately after Contractor becomes aware of such damage, but in no event later than thirty (30) days after the occurrence.

If the Contractor fails to make timely repairs, the County may make any necessary repairs. The Contractor, as determined by the County, shall repay all costs incurred by the County for such repairs, by cash payment upon demand, or County may deduct such costs from any amounts due to the Contractor from the County, as determined at the County's sole discretion.

**N. Debarment and Suspension**

Contractor certifies that neither it nor its principals or subcontracts is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. (See the following United States General Services Administration's System for Award Management website https://www.sam.gov). Contractor further certifies that if it or any of its subcontractors are business entities that must be registered with the California Secretary of State, they are registered and in good standing with the Secretary of State. An subcontracts funded by this Contract shall be with vendors that meet this certification and registration requirement.

**O. Drug and Alcohol Free Workplace**

In recognition of individual rights to work in a safe, healthful and productive work place, as a material condition of this Contract, the Contractor agrees that the Contractor and the Contractor's employees, while performing service for the County, on County property, or while using County equipment:

i. Shall not be in any way impaired because of being under the influence of alcohol or an illegal or controlled substance.

ii. Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal or controlled substance.

iii. Shall not sell, offer, or provide alcohol or an illegal or controlled substance to another person, except where Contractor or Contractor's employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.

The Contractor shall inform all employees that are performing service for the County on County property, or using County equipment, of the County's objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for the County.

The County may terminate for default or breach of this Contract and any other Contract the Contractor has with the County, if the Contractor or Contractor's employees are determined by the County not to be in compliance with above.

**P. Duration of Terms**

This Contract, and all of its terms and conditions, shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties, provided no such assignment is in violation of the provisions of this Contract.

**Q. Discrimination**

During the term of the Contract, Contractor shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. Contractor shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VI and Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

**R. Improper Influence**

Contractor shall make all reasonable efforts to ensure that no County officer or employee, whose position in the County enables him/her to influence any award of the Contract or any competing offer, shall have any direct or indirect financial interest resulting from the award of the Contract or shall have any relationship to the Contractor or officer or employee of the Contractor.

**S. Improper Consideration**

Contractor shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the County in an attempt to secure favorable treatment regarding this Contract.

The County, by written notice, may immediately terminate this Contract if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of the County with respect to the proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process once a contract has been awarded.

Contractor shall immediately report any attempt by a County officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Contractor.

The report shall be made to the supervisor or manager charged with supervision of the employee or the County Administrative Office. In the event of a termination under this provision, the County is entitled to pursue any available legal remedies.

**T. Informal Dispute Resolution**

In the event the County determines that service is unsatisfactory, or in the event of any other dispute, claim, question or disagreement arising from or relating to this Contract or breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

**U. Legality and Severability**

The parties' actions under the Contract shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. The provisions of this Contract are specifically made severable. If a provision of the Contract is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.

**V. Licenses, Permits and/or Certifications**

Contractor shall ensure that it has all necessary licenses, permits and/or certifications required by the laws of Federal, State, County, and municipal laws, ordinances, rules and regulations. The Contractor shall maintain these licenses, permits and/or certifications in effect for the duration of this Contract. Contractor will notify County immediately of loss or suspension of any such licenses, permits and/or certifications. Failure to maintain a required license, permit and/or certification may result in immediate termination of this Contract.

**W. Material Misstatement/Misrepresentation**

If during the course of the administration of this Contract, the County determines that Contractor has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the County, this Contract may be immediately terminated. If this Contract is terminated according to this provision, the County is entitled to pursue any available legal remedies.

**X. Mutual Covenants**

The parties to this Contract mutually covenant to perform all of their obligations hereunder, to exercise all discretion and rights granted hereunder, and to give all consents in a reasonable manner consistent with the standards of "good faith" and "fair dealing".

**Y. Nondisclosure**

Contractor shall hold as confidential and use reasonable care to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, confidential information that is either: (1) provided by the County to Contractor or an agent of Contractor or otherwise made available to Contractor or Contractor's agent in connection with this Contract; or, (2) acquired, obtained, or learned by Contractor or an agent of Contractor in the performance of this Contract. For purposes of this provision, confidential information means any data, files, software, information or materials in oral, electronic, tangible or intangible form and however stored, compiled or memorialize and includes, but is not limited to, technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data.

**Z. Notice of Delays**

Except as otherwise provided herein, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this contract, that party shall, within twenty-four (24) hours, give notice thereof, including all relevant information with respect thereto, to the other party.

**AA. Ownership of Documents**

All documents, data, products, graphics, computer programs and reports prepared by Contractor pursuant to the Contract shall be considered property of the County upon payment for services (and products, if applicable). All such items shall be delivered to County at the completion of work under the Contract. Unless otherwise directed by County, Contractor may retain copies of such items.

**BB. Air, Water Pollution Control, Safety and Health**

Contractor shall comply with all air pollution control, water pollution, safety and health ordinances and statutes, which apply to the work performed pursuant to this Contract.

**CC. Records**

Contractor shall maintain all records and books pertaining to the delivery of services under this Contract and demonstrate accountability for contract performance. All records shall be complete and current and comply with all Contract requirements. Failure to maintain acceptable records shall be considered grounds for withholding of payments for invoices submitted and/or termination of the Contract.

All records relating to the Contractor's personnel, consultants, subcontractors, services/scope of Work and expenses pertaining to this Contract shall be kept in a generally acceptable accounting format. Records should include primary source documents. Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles and must account for all funds, tangible assets, revenue and expenditures. Fiscal records must comply with the appropriate Office of Management and Budget (OMB) Circulars, which state the administrative requirements, cost principles and other standards for accountancy.

**DD. Relationship of the Parties**

Nothing contained in this Contract shall be construed as creating a joint venture, partnership, or employment arrangement between the Parties hereto, nor shall either Party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the other Party hereto.

**EE. Release of Information**

No news releases, advertisements, public announcements or photographs arising out of the Contract or Contractor's relationship with County may be made or used without prior written approval of the County.

**FF. Representation of the County**

In the performance of this Contract, Contractor, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of the San Bernardino County.

**GG. Strict Performance**

Failure by a party to insist upon the strict performance of any of the provisions of this Contract by the other party, or the failure by a party to exercise its rights upon the default of

the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Contract thereafter.

**HH. Subcontracting**

Contractor shall obtain County's written consent, which County may withhold in its sole discretion, before entering into Contracts with or otherwise engaging any subcontractors who may supply any part of the services to County. At County's request, Contractor shall provide information regarding the subcontractor's qualifications and a listing of a subcontractor's key personnel including, if requested by the County, resumes of proposed subcontractor personnel. Contractor shall remain directly responsible to County for its subcontractors and shall indemnify County for the actions or omissions of its subcontractors under the terms and conditions specified in Section 5. All approved subcontractors shall be subject to the provisions of this Contract applicable to Contractor Personnel.

For any subcontractor, Contractor shall:

i. Be responsible for subcontractor compliance with the Contract and the subcontract terms and conditions; and
ii. Ensure that the subcontractor follows County's reporting formats and procedures as specified by County.
iii. Include in the subcontractor's subcontract substantially similar terms as are provided in this Contract.

Upon expiration or termination of this Contract for any reason, County will have the right to enter into direct Contracts with any of the Subcontractors. Contractor agrees that its arrangements with Subcontractors will not prohibit or restrict such Subcontractors from entering into direct Contracts with County.

**II. Subpoena**

In the event that a subpoena or other legal process commenced by a third party in any way concerning the goods or services provided under this Contract is served upon Contractor or County, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and County further agree to cooperate with the other party in any lawful effort by such other party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonably required and at the expense of the party to whom the legal process is directed, except as otherwise provided herein in connection with defense obligations by Contractor for County.

**JJ. Termination for Convenience**

The County reserves the right to terminate the Contract, for any reason, with a thirty (30) day written notice of termination. The County's Chief Executive Officer is authorized to terminate this Contract. Such termination may include all or part of the services described herein. Upon such termination, payment will be made to the Contractor for services rendered and expenses reasonably incurred prior to the effective date of termination. Upon receipt of termination notice Contractor shall promptly discontinue services unless the notice directs otherwise. Contractor shall deliver promptly to County and transfer title (if necessary) all completed work, and work in progress, including drafts, documents, plans, forms, data, products, graphics, computer programs and reports.

**KK. Time of the Essence**

Time is of the essence in performance of this Contract and of each of its provisions.

**LL. Venue**

The parties acknowledge and agree that this Contract was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue of any action or claim brought by any party to this Contract will be the Superior Court of California, San Bernardino County, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County, San Bernardino District.

**MM. Conflict of Interest**

Contractor shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and the County. Contractor shall make a reasonable effort to prevent employees, Contractor, or members of governing bodies from using their positions for purposes that are, or give the appearance of being motivated by a desire for private gain for themselves or others such as those with whom they have family business, or other ties. Officers, employees, and agents of cities, counties, districts, and other local agencies are subject to applicable conflict of interest codes and state law. In the event the County determines a conflict of interest situation exists, any increase in costs, associated with the conflict of interest situation, may be disallowed by the County and such conflict may constitute grounds for termination of the Contract. This provision shall not be construed to prohibit employment of persons with whom Contractor's officers, employees, or agents have family, business, or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant.

**NN. Copyright**

County shall have a royalty-free, non-exclusive and irrevocable license to publish, disclose, copy, translate, and otherwise use, copyright or patent, now and hereafter, all reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and any other materials or properties developed under this Contract including those covered by copyright, and reserves the right to authorize others to use or reproduce such material. All such materials developed under the terms of this Contract shall acknowledge the San Bernardino County as the funding agency and Contractor as the creator of the publication. No such materials, or properties produced in whole or in part under this Contract shall be subject to private use, copyright or patent right by Contractor in the United States or in any other country without the express written consent of County. Copies of all educational and training materials, curricula, audio/visual aids, printer material, and periodicals, assembled pursuant to this Contract must be filed with the County prior to publication.

**OO. Iran Contracting Act**

IRAN CONTRACTING ACT OF 2010, Public Contract Code Sections 2200 et seq. (Applicable for all Contracts of one million dollars ($1,000,000) or more). In accordance with Public Contract Code Section 2204(a), the Contractor certifies that at the time the Contract is signed, the Contractor signing the Contract is not identified on a list created pursuant to subdivision (b) of Public Contract Code Section 2203 as a person (as defined in Public Contract Code Section 2202(e)) engaging in investment activities in Iran described in subdivision (a) of Public Contract Code Section 2202.5, or as a person described in subdivision (b) of Public Contract Code Section 2202.5, as applicable.

Contractors are cautioned that making a false certification may subject the Contractor to civil penalties, termination of existing contract, and ineligibility to bid on a contract for a period of three (3) years in accordance with Public Contract Code Section 2205.

**PP. California Consumer Privacy Act**

To the extent applicable, if Contractor is a business that collects the personal information of a consumer(s) in performing services pursuant to this Contract, Contractor must comply with the provisions of the California Consumer Privacy Act (CCPA). (Cal. Civil Code Sections 1798.100, et seq.). For purposes of this provision, "business," "consumer," and "personal information" shall have the same meanings as set forth at Civil Code Section 1798.140. Contractor must contact the County immediately upon receipt of any request by a consumer submitted pursuant to the CCPA that requires any action on the part of the County, including but not limited to, providing a list of disclosures or deleting personal information. Contractor must not sell, market or otherwise disclose personal information of a consumer provided by the County unless specifically authorized pursuant to terms of this Contract. Contractor must immediately provide to the County any notice provided by a consumer to Contractor pursuant to Civil Code Section 1798.150(b) alleging a violation of the CCPA, that involves personal information received or maintained pursuant to this Contract. Contractor must immediately notify the County if it receives a notice of violation from the California Attorney General pursuant to Civil Code Section 1798.155(b).

**QQ. Prevailing Wage Laws**

By its execution of this Contract, Contractor certifies that it is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq. as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Section 1720 of the California Labor Code states in part: "For purposes of this paragraph, 'construction' includes work performed during the design, site assessment, feasibility study, and other preconstruction phases of construction including, but not limited to, inspection and land surveying work…" If the services/scope of Work are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is $1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the services available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the project site. Contractor will also adhere to any other applicable requirements, including but not limited to, those regarding the employment of apprentices, travel and subsistence pay, retention and inspection of payroll records, workers compensation and forfeiture of penalties prescribed in the Labor Code for violations. Contractor shall defend, indemnify and hold the County, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with Prevailing Wage Laws. See Exhibit "B", which is attached and incorporated by reference, for additional information regarding Prevailing Wage Laws. Contractor shall comply with all applicable terms and conditions in Exhibit "B". The applicable general prevailing wage determinations are on file with the County and are available to any interested party on request. Contractor shall post a copy of the applicable prevailing wage determinations at the job site.

## 4. TERM OF CONTRACT

This Contract is effective as of the date last signed by authorized representatives of any party (Effective Date), requires all incurred obligations by December 31, 2024, and expires on December 31, 2026, but may be terminated earlier in accordance with the provisions of this Contract.

## 5. INDEMNIFICATION AND INSURANCE REQUIREMENTS

### A. Indemnification

The Contractor agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless the County and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising out of this Contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the County on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnities. The Contractor indemnification obligation applies to the County's "active" as well as "passive" negligence but does not apply to the County's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

### B. Insurance

Contractor and County are authorized self-insured public entities for purposes of Professional Liability, General Liability, Automobile Liability, Worker's Compensation and Property Damage and warrant that through their respective programs of self-insurance, they have adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions or obligations of this Contract.

**i.** Insurance Review – Insurance requirements are subject to periodic review by the County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the County. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the County, inflation, or any other item reasonably related to the County's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Contract. Contractor agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of the County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the County.

## 6. RIGHT TO MONITOR AND AUDIT

**A.** The County, State and Federal government shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have absolute right to monitor the performance of Contractor in the delivery of services provided under this Contract. Contractor shall give full cooperation, in

any auditing or monitoring conducted. Contractor shall cooperate with the County in the implementation, monitoring, and evaluation of this Contract and comply with any and all reporting requirements established by the County.

**B.** All records pertaining to services delivered and all fiscal, statistical and management books and records shall be available for examination and audit by County representatives for a period of three years after final payment under this Contract or until all pending County, State and Federal audits are completed, whichever is later.

## 7. CORRECTION OF PERFORMANCE DEFICIENCIES

**A.** Failure by Contractor to comply with any of the provisions, covenants, requirements or conditions of this Contract shall be a material breach of this Contract.

**B.** In the event of a non-cured breach, County may, at its sole discretion and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:

i. Afford Contractor thereafter a time period within which to cure the breach, which period shall be established at the sole discretion of County; and/or

ii. Discontinue reimbursement to Contractor for and during the period in which Contractor is in breach, which reimbursement shall not be entitled to later recovery; and/or

iii. Withhold funds pending duration of the breach; and/or

iv. Offset against any monies billed by Contractor but yet unpaid by County those monies disallowed pursuant to Item "B" of this paragraph; and/or

v. Terminate this Contract immediately and be relieved of the payment of any consideration to Contractor. In the event of such termination, the County may proceed with the work in any manner deemed proper by the County. The cost to the County shall be deducted from any sum due to the Contractor under this Contract and the balance, if any, shall be paid by the Contractor upon demand.

## 8. NOTICES

All written notices provided for in this Contract or which either party desires to give to the other shall be deemed fully given, when made in writing and either served personally, or by facsimile, or deposited in the United States mail, postage prepaid, and addressed to the other party as follows:

*San Bernardino County*
*County Administrative Office – 4th Floor*
*385 N. Arrowhead Avenue*
*San Bernardino, CA 92415*

*City of Chino*
*Public Works Department*
*13220 Central Avenue*
*Chino, CA 91710*

Notice shall be deemed communicated two (2) County working days from the time of mailing if mailed as provided in this paragraph.

## 9. ENTIRE AGREEMENT

This Contract, including all Exhibits and other attachments, which are attached hereto and incorporated by reference, and other documents incorporated herein, represents the final, complete and exclusive agreement between the parties hereto. Any prior agreement, promises, negotiations or representations relating to the subject matter of this Contract not expressly set forth herein are of no force or effect. This Contract is executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. Each party has carefully read this Contract and signs the same of its own free will.

## 10. CONTRACT EXECUTION

This Contract may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Contract. The parties shall be entitled to sign and transmit an electronic signature of this Contract (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Contract upon request.

**IN WITNESS WHEREOF,** the San Bernardino County and the City of Chino have each caused this Contract to be subscribed by its respective duly authorized officers, on its behalf.

SAN BERNARDINO COUNTY

► _____
Luther Snoke, Chief Executive Officer

Dated: _____

CITY OF CHINO
*(Print or type name of corporation, company, contractor, etc.)*

By _____
*(Authorized signature - sign in blue ink)*

Name Linda Reich
(*Print or type name of person signing contract)*

Title City Manager
*(Print or Type)*

Dated: _____

Address 13220 Central Ave
Chino CA. 91710

**FOR COUNTY USE ONLY**

| Approved as to Legal Form | Reviewed for Contract Compliance | Reviewed/Approved by Department |
|---|---|---|
| ► _____ | ► _____ | ► _____ |
| County Counsel | | |
| Date _____ | Date _____ | Date _____ |

**EXHIBIT A**

## SCOPE OF EXPENDITURES

[SEPARATELY ATTACHED]

## EXHIBIT B

## PREVAILING WAGE REQUIREMENTS

**A. All or a portion of the Scope of Work in the Contract requires the payment of prevailing wages and compliance with the following requirements**:

**1. Determination of Prevailing Rates**:
Pursuant to Labor Code sections 1770, et seq., the County has obtained from the Director of the Department of Industrial Relations (DIR) pursuant to the California Labor Code, the general prevailing rates of per diem wages and the prevailing rates for holiday and overtime work in the locality in which the Scope of Work is to be performed. Copies of said rates are on file with the County, will be made available for inspection during regular business hours, may be included elsewhere in the specifications for the Scope of Work, and are also available online at www.dir.ca.gov. The wage rate for any classification not listed, but which may be required to execute the Scope of Work, shall be commensurate and in accord with specified rates for similar or comparable classifications for those performing similar or comparable duties. In accordance with Labor Code section 1773.2, the Contractor shall post, at appropriate and conspicuous locations on the job site, a schedule showing all applicable prevailing wage rates and shall comply with the requirements of Labor Code sections 1773, et seq.

**2. Payment of Prevailing Rates**
Each worker of the Contractor, or any subcontractor, engaged in the Scope of Work, shall be paid not less than the general prevailing wage rate, regardless of any contractual relationship which may be alleged to exist between the Contractor or any subcontractor, and such worker.

**3. Prevailing Rate Penalty**
The Contractor shall, as a penalty, forfeit two hundred dollars ($200.00) to the County for each calendar day or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of the DIR for such work or craft in which such worker is employed by the Contractor or by any subcontractor in connection with the Scope of Work. Pursuant to California Labor Code section 1775, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day, or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by the Contractor.

**4. Ineligible Contractors**:
Pursuant to the provisions of Labor Code section 1777.1, the Labor Commissioner publishes and distributes a list of contractors ineligible to perform work as a contractor or subcontractor on a public works project. This list of debarred contractors is available from the DIR website at http://www.dir.ca.gov/Public-Works/PublicWorks.html. Any contract entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract, and any public money that may have been paid to a debarred subcontractor by a contractor on the project shall be returned to the County. The Contractor shall be responsible for the payment of wages to workers as a debarred subcontractor who has been allowed to work on the Scope of Work.

**5. Payroll Records:**

a. Pursuant to California Labor Code section 1776, the Contractor and each subcontractor, shall keep accurate certified payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by them in connection with the Scope of Work. The payroll records enumerated herein shall be verified by a written declaration made under penalty of perjury that the information contained in the payroll record is true and correct and that the Contractor or subcontractor has complied with the requirements of the California Labor Code sections 1771, 1811, and 1815 for any Scope of Work performed by his or her employees. The payroll records shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:

   i. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his/her authorized representative on request;

   ii. A certified copy of all payroll records shall be made available for inspection or furnished upon request to the County, the Division of Labor Standards Enforcement of the DIR;

   iii. A certified copy of payroll records shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the County or the Division of Labor Standards Enforcement. If the requested payroll records have not been previously provided to the County or the Division of Labor Standards Enforcement, the requesting party shall, prior to being provided the records, reimburse the cost of preparation by the Contractor, subcontractor and the entity through which the request was made; the public shall not be given access to such records at the principal office of the Contractor;

   iv. The Contractor shall file a certified copy of the payroll records with the entity that requested such records within ten (10) days after receipt of a written request; and

   v. Copies provided to the public, by the County or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor or any subcontractor, performing a part of the Scope of Work shall not be marked or obliterated. The Contractor shall inform the County of the location of payroll records, including the street address, city and county and shall, within five (5) working days, provide a notice of a change of location and address.

b. The Contractor shall have ten (10) days from receipt of the written notice specifying in what respects the Contractor must comply with the above requirements. In the event Contractor does not comply with the requirements of this section within the ten (10) day period, the Contractor shall, as a penalty to the County, forfeit one-hundred dollars ($100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, such penalty shall be withheld from any portion of the payments then due or to become due to the Contractor.

**6. Limits on Hours of Work**:

Pursuant to California Labor Code section 1810, eight (8) hours of labor shall constitute a legal day's work. Pursuant to California Labor Code section 1811, the time of service of any worker employed at any time by the Contractor or by a subcontractor, upon the Scope of Work or upon any part of the Scope of Work, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as

provided for under Labor Code section 1815. Notwithstanding the foregoing provisions, work performed by employees of Contractor or any subcontractor, in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1½) times the basic rate of pay.

**7. Penalty for Excess Hours:**

The Contractor shall pay to the County a penalty of twenty-five dollars ($25.00) for each worker employed on the Scope of Work by the Contractor or any subcontractor, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week, in violation of the provisions of the California Labor Code, unless compensation to the worker so employed by the Contractor is not less than one and one-half (1½) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

**8. Senate Bill 854 (Chapter 28, Statutes of 2014) and Senate Bill 96 (Chapter 28, Statutes of 2017) Requirements:**

a. Contractor shall comply with Senate Bill 854 and Senate Bill 96. The requirements include, but are not limited to, the following:
   i. No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the DIR pursuant to Labor Code section 1725.5, with limited exceptions from this requirements for bid purposes only as allowed under Labor Code section 1771.1(a).
   ii. No contractor or subcontractor may be awarded a contract for public work or perform work on a public works project unless registered with the DIR pursuant to Labor Code section 1725.5.
   iii. This project is subject to compliance monitoring and enforcement by the DIR.
   iv. As required by the DIR, Contractor is required to post job site notices, as prescribed by regulation, regarding compliance monitoring and enforcement by the DIR.
   v. Contractors and all subcontractors must submit certified payroll records online to the Labor Commissioner for all public works projects.
      1) The certified payroll must be submitted at least monthly to the Labor Commissioner.
      2) The County reserves the right to require Contractor and all subcontractors to submit certified payroll records more frequently than monthly to the Labor Commissioner.
      3) The certified payroll records must be in a format prescribed by the Labor Commissioner.
   vi. Registration with the DIR and the submission of certified payroll records to the Labor Commissioner are not required if the public works project is $25,000 or less when the project is for construction, alteration, demolition, installation or repair work, or if the public works project is $15,000 or less when the project is for maintenance work.

b. Labor Code section 1725.5 states the following:
   "A contractor shall be registered pursuant to this section to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public work contract that is subject to the requirements of this chapter. For the purposes of this section, "contractor" includes a subcontractor as defined by Section 1722.1.

(a) To qualify for registration under this section, a contractor shall do all of the following:

(1) (A) Register with the Department of Industrial Relations in the manner prescribed by the department and pay an initial nonrefundable application fee of four hundred dollars ($400) to qualify for registration under this section and an annual renewal fee on or before July 1 of each year thereafter. The annual renewal fee shall be in a uniform amount set by the Director of Industrial Relations, and the initial registration and renewal fees may be adjusted no more than annually by the director to support the costs specified in Section 1771.3.

(B) Beginning June 1, 2019, a contractor may register or renew according to this subdivision in annual increments up to three years from the date of registration. Contractors who wish to do so will be required to prepay the applicable nonrefundable application or renewal fees to qualify for the number of years for which they wish to preregister.

(2) Provide evidence, disclosures, or releases as are necessary to establish all of the following:

(A) Workers' compensation coverage that meets the requirements of Division 4 (commencing with Section 3200) and includes sufficient coverage for any worker whom the contractor employs to perform work that is subject to prevailing wage requirements other than a contractor who is separately registered under this section. Coverage may be evidenced by a current and valid certificate of workers' compensation insurance or certification of self-insurance required under Section 7125 of the Business and Professions Code.

(B) If applicable, the contractor is licensed in accordance with Chapter 9 (commencing with Section 7000) of the Business and Professions Code.

(C) The contractor does not have any delinquent liability to an employee or the state for any assessment of back wages or related damages, interest, fines, or penalties pursuant to any final judgment, order, or determination by a court or any federal, state, or local administrative agency, including a confirmed arbitration award. However, for purposes of this paragraph, the contractor shall not be disqualified for any judgment, order, or determination that is under appeal, provided that the contractor has secured the payment of any amount eventually found due through a bond or other appropriate means.

(D) The contractor is not currently debarred under Section 1777.1 or under any other federal or state law providing for the debarment of contractors from public works.

(E) The contractor has not bid on a public works contract, been listed in a bid proposal, or engaged in the performance of a contract for public works without being lawfully registered in accordance with this section, within the preceding 12 months or since the effective date of the requirements set forth in subdivision (e), whichever is earlier. If a contractor is found to be in violation of the requirements of this paragraph, the period of disqualification shall be waived if both of the following are true:

(i) The contractor has not previously been found to be in violation of the requirements of this paragraph within the preceding 12 months.

(ii) The contractor pays an additional nonrefundable penalty registration fee of two thousand dollars ($2,000).

(b) Fees received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.

(c) A contractor who fails to pay the renewal fee required under paragraph (1) of subdivision (a) on or before the expiration of any prior period of registration shall be prohibited from bidding on or engaging in the performance of any contract for public work until once again registered pursuant to this section. If the failure to pay the renewal fee was inadvertent, the contractor may renew its registration retroactively by paying an additional nonrefundable penalty renewal fee equal to the amount of the renewal fee within 90 days of the due date of the renewal fee.

(d) If, after a body awarding a contract accepts the contractor's bid or awards the contract, the work covered by the bid or contract is determined to be a public work to which Section 1771 applies, either as the result of a determination by the director pursuant to Section 1773.5 or a court decision, the requirements of this section shall not apply, subject to the following requirements:

(1) The body that awarded the contract failed, in the bid specification or in the contract documents, to identify as a public work that portion of the work that the determination or decision subsequently classifies as a public work.

(2) Within 20 days following service of notice on the awarding body of a determination by the Director of Industrial Relations pursuant to Section 1773.5 or a decision by a court that the contract was for public work as defined in this chapter, the contractor and any subcontractors are registered under this section or are replaced by a contractor or subcontractors who are registered under this section.

(3) The requirements of this section shall apply prospectively only to any subsequent bid, bid proposal, contract, or work performed after the awarding body is served with notice of the determination or decision referred to in paragraph (2).

(e) The requirements of this section shall apply to any bid proposal submitted on or after March 1, 2015, to any contract for public work, as defined in this chapter, executed on or after April 1, 2015, and to any work performed under a contract for public work on or after January 1, 2018, regardless of when the contract for public work was executed.

(f) This section does not apply to work performed on a public works project of twenty-five thousand dollars ($25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars ($15,000) or less when the project is for maintenance work."

c. Labor Code section 1771.1 states the following:
"(a) A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by

Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

(b) Notice of the requirement described in subdivision (a) shall be included in all bid invitations and public works contracts, and a bid shall not be accepted nor any contract or subcontract entered into without proof of the contractor or subcontractor's current registration to perform public work pursuant to Section 1725.5.

(c) An inadvertent error in listing a subcontractor who is not registered pursuant to Section 1725.5 in a bid proposal shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive, provided that any of the following apply:

(1) The subcontractor is registered prior to the bid opening.

(2) Within 24 hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.

(3) The subcontractor is replaced by another registered subcontractor pursuant to Section 4107 of the Public Contract Code.

(d) Failure by a subcontractor to be registered to perform public work as required by subdivision (a) shall be grounds under Section 4107 of the Public Contract Code for the contractor, with the consent of the awarding authority, to substitute a subcontractor who is registered to perform public work pursuant to Section 1725.5 in place of the unregistered subcontractor.

(e) The department shall maintain on its Internet Web site a list of contractors who are currently registered to perform public work pursuant to Section 1725.5.

(f) A contract entered into with any contractor or subcontractor in violation of subdivision (a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of Section 1725.5 or this section.

(g) If the Labor Commissioner or his or her designee determines that a contractor or subcontractor engaged in the performance of any public work contract without having been registered in accordance with this section, the contractor or subcontractor shall forfeit, as a civil penalty to the state, one hundred dollars ($100) for each day of work performed in violation of the registration requirement, not to exceed an aggregate penalty of eight thousand dollars ($8,000) in addition to any penalty registration fee assessed pursuant to clause (ii) of subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.

(h)(1) In addition to, or in lieu of, any other penalty or sanction authorized pursuant to this chapter, a higher tiered public works contractor or subcontractor who is found to have entered into a subcontract with an unregistered lower tier subcontractor to perform any public work in violation of the requirements of Section 1725.5 or this section shall be subject to forfeiture, as a civil penalty to the state, of one hundred dollars ($100) for each day the unregistered lower tier subcontractor performs work in violation of the

registration requirement, not to exceed an aggregate penalty of ten thousand dollars ($10,000).

(2) The Labor Commissioner shall use the same standards specified in subparagraph (A) of paragraph (2) of subdivision (a) of Section 1775 when determining the severity of the violation and what penalty to assess, and may waive the penalty for a first time violation that was unintentional and did not hinder the Labor Commissioner's ability to monitor and enforce compliance with the requirements of this chapter.

(3) A higher tiered public works contractor or subcontractor shall not be liable for penalties assessed pursuant to paragraph (1) if the lower tier subcontractor's performance is in violation of the requirements of Section 1725.5 due to the revocation of a previously approved registration.

(4) A subcontractor shall not be liable for any penalties assessed against a higher tiered public works contractor or subcontractor pursuant to paragraph (1). A higher tiered public works contractor or subcontractor may not require a lower tiered subcontractor to indemnity or otherwise be liable for any penalties pursuant to paragraph (1).

(i) The Labor Commissioner or his or her designee shall issue a civil wage and penalty assessment, in accordance with the provisions of Section 1741, upon determination of penalties pursuant to subdivision (g) and subparagraph (B) of paragraph (1) of subdivision (h). Review of a civil wage and penalty assessment issued under this subdivision may be requested in accordance with the provisions of Section 1742. The regulations of the Director of Industrial Relations, which govern proceedings for review of civil wage and penalty assessments and the withholding of contract payments under Article 1 (commencing with Section 1720) and Article 2 (commencing with Section 1770), shall apply.

(j)(1) Where a contractor or subcontractor engages in the performance of any public work contract without having been registered in violation of the requirements of Section 1725.5 or this section, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractor or the unregistered subcontractor on all public works until the unregistered contractor or unregistered subcontractor is registered. The stop order shall not apply to work by registered contractors or subcontractors on the public work.

(2) A stop order may be personally served upon the contractor or subcontractor by either of the following methods:

(A) Manual delivery of the order to the contractor or subcontractor personally.

(B) Leaving signed copies of the order with the person who is apparently in charge at the site of the public work and by thereafter mailing copies of the order by first class mail, postage prepaid to the contractor or subcontractor at one of the following:

(i) The address of the contractor or subcontractor on file with either the Secretary of State or the Contractors' State License Board.

(ii) If the contractor or subcontractor has no address on file with the Secretary of State or the Contractors' State License Board, the address of the site of the public work.

(3) The stop order shall be effective immediately upon service and shall be subject to appeal by the party contracting with the unregistered contractor or subcontractor, by the unregistered contractor or subcontractor, or both. The appeal, hearing, and any further review of the hearing decision shall be governed by the procedures, time limits, and other requirements specified in subdivision (a) of Section 238.1.

(4) Any employee of an unregistered contractor or subcontractor who is affected by a work stoppage ordered by the commissioner pursuant to this subdivision shall be paid at his or her regular hourly prevailing wage rate by that employer for any hours the employee would have worked but for the work stoppage, not to exceed 10 days.

(k) Failure of a contractor or subcontractor, owner, director, officer, or managing agent of the contractor or subcontractor to observe a stop order issued and served upon him or her pursuant to subdivision (j) is guilty of a misdemeanor punishable by imprisonment in county jail not exceeding 60 days or by a fine not exceeding ten thousand dollars ($10,000), or both.

(l) This section shall apply to any bid proposal submitted on or after March 1, 2015, and any contract for public work entered into on or after April 1, 2015. This section shall also apply to the performance of any public work, as defined in this chapter, on or after January 1, 2018, regardless of when the contract for public work was entered.

(m) Penalties received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.

(n) This section shall not apply to work performed on a public works project of twenty-five thousand dollars ($25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars ($15,000) or less when the project is for maintenance work."

d. Labor Code section 1771.4 states the following:
"(a) All of the following are applicable to all public works projects that are otherwise subject to the requirements of this chapter:

(1) The call for bids and contract documents shall specify that the project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

(2) The awarding body shall post or require the prime contractor to post job site notices, as prescribed by regulation.

(3) Each contractor and subcontractor shall furnish the records specified in Section 1776 directly to the Labor Commissioner, in the following manner:

(A) At least monthly or more frequently if specified in the contract with the awarding body.

(B) In a format prescribed by the Labor Commissioner.

(4) If the contractor or subcontractor is not registered pursuant to Section 1725.5 and is performing work on a project for which registration is not required because of subdivision (f) of Section 1725.5, the unregistered contractor or subcontractor is not

required to furnish the records specified in Section 1776 directly to the Labor Commissioner but shall retain the records specified in Section 1776 for at least three years after completion of the work.

(5) The department shall undertake those activities it deems necessary to monitor and enforce compliance with prevailing wage requirements.

(b) The Labor Commissioner may exempt a public works project from compliance with all or part of the requirements of subdivision (a) if either of the following occurs:

(1) The awarding body has enforced an approved labor compliance program, as defined in Section 1771.5, on all public works projects under its authority, except those deemed exempt pursuant to subdivision (a) of Section 1771.5, continuously since December 31, 2011.

(2) The awarding body has entered into a collective bargaining agreement that binds all contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.

(c) The requirements of paragraph (1) of subdivision (a) shall only apply to contracts for public works projects awarded on or after January 1, 2015.

(d) The requirements of paragraph (3) of subdivision (a) shall apply to all contracts for public work, whether new or ongoing, on or after January 1, 2016."

**B. STATE PUBLIC WORKS APPRENTICESHIP REQUIREMENTS**

**1. State Public Works Apprenticeship Requirements:**

a. The Contractor is responsible for compliance with Labor Code section 1777.5 and the California Code of Regulations, title 8, sections 230 – 230.2 <u>for all apprenticeable occupations</u> (denoted with "#" symbol next to craft name in DIR Prevailing Wage Determination), whether employed by the Contractor, subcontractor, vendor or consultant. Included in these requirements is (1) the Contractor's requirement to provide notification (i.e. DAS-140) to the appropriate apprenticeship committees; (2) pay training fund contributions for each apprenticeable hour employed on the Contract; and (3) utilize apprentices in a minimum ratio of not less than one apprentice hour for each five journeyman hours by completion of Contract work (unless an exception is granted in accordance with Labor Code section 1777.5) or request for the dispatch of apprentices.

b. Any apprentices employed to perform any of the Scope of Work shall be paid the standard wage to apprentices under the regulations of the craft or trade for which such apprentice is employed, and such individual shall be employed only for the work of the craft or trade to which such individual is registered. Only apprentices, as defined in California Labor Code section 3077, who are in training under apprenticeship standards and written apprenticeship agreements under California Labor Code sections 3070 et seq. are eligible to be employed for the Scope of Work. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which such apprentice is training.

**2. Compliance with <u>California Labor Code section 1777.5</u> requires all public works contractors to:**

a. Submit Contract Award Information (DAS-140):

i. Although there are a few exemptions (identified below), all Contractors, regardless of union affiliation, must submit contract award information when performing on a California public works project.
ii. The DAS-140 is a notification "announcement" of the Contractor's participation on a public works project—*it is not a request for the dispatch of an apprentice.*
iii. Contractors shall submit the contract award information (you may use form DAS 140) within 10 days of the execution of the prime contract or subcontract, but in no event later than the first day in which the Contractor has workers employed on the public work.
iv. Contractors who are already approved to train apprentices (i.e. check "Box 1" on the DAS-140) shall only be required to submit the form to their approved program.
v. Contractors who are NOT approved to train apprentices (i.e. those that check either "Box 2" or "Box 3" on the DAS-140) shall submit the DAS-140 TO EACH of the apprenticeship program sponsors in the area of your public works project. For a listing of apprenticeship programs see http://www.dir.ca.gov/Databases/das/pwaddrstart.asp.

b. Employ Registered Apprentices
i. Labor Code section 1777.5 requires that a contractor performing work in an "apprenticeable" craft must employ one (1) hour of apprentice work for every five (5) hours performed by a journeyman. This ratio shall be met prior to the Contractor's completion of work on the project. "Apprenticeable" crafts are denoted with a pound symbol "#" in front of the craft name on the prevailing wage determination.
ii. All Contractors who do not fall within an exemption category (see below) must request for dispatch of an apprentice from an apprenticeship program (for each apprenticeable craft or trade) by giving the program actual notice of at least 72 hours (business days only) before the date on which apprentices are required.
iii. Contractors may use the "DAS-142" form for making a request for the dispatch of an apprentice.
iv. Contractors who are participating in an approved apprenticeship training program and who did not receive sufficient number of apprentices from their initial request must request dispatch of apprentices from ALL OTHER apprenticeship committees in the project area in order to fulfill this requirement.
v. Contractor should maintain and submit proof (when requested) of its DAS-142 submittal to the apprenticeship committees (e.g. fax transmittal confirmation). A Contractor has met its requirement to employ apprentices only after it has successfully made a dispatch request to all apprenticeship programs in the project area.
vi. Only "registered" apprentices may be paid the prevailing apprentice rates and must, at all times work under the supervision of a Journeyman (Cal. Code Regs., tit 8, § 230.1).

c. Make Training Fund Contributions
i. Contractors performing in apprenticeable crafts on public works projects, must make training fund contributions in the amount established in the prevailing wage rate publication for journeymen and apprentices.
ii. Contractors may use the "CAC-2" form for submittal of their training fund contributions.
iii. Contractors who do not submit their training fund contributions to an approved apprenticeship training program must submit their contributions to the California Apprenticeship Council (CAC), PO Box 420603, San Francisco, CA 94142-0603.

iv. Training fund contributions to the CAC are due and payable on the 15th day of the month for work performed during the preceding month.
v. The "training" contribution amount identified on the prevailing wage determination shall not be paid to the worker, unless the worker falls within one of the exemption categories listed below.

**3. Exemptions to Apprenticeship Requirements:**

a. The following are exempt from having to comply with California apprenticeship requirements. These types of contractors do not need to submit a DAS-140, DAS-142, make training fund contributions, or utilize apprentices:
   i. When the Contractor holds a sole proprietor license ("Owner-Operator") and no workers were employed by the Contractor. In other words, the contractor performed the entire work from start to finish and worked alone.
   ii. Contractors performing in non-apprenticeable crafts. "Apprenticeable" crafts are denoted with a pound symbol "#" in front of the craft name on the prevailing wage determination.
   iii. When the Contractor has a direct contract with the Public Agency that is under $30,000.
   iv. When the project is 100% federally-funded and the funding of the project does not contain any city, county, and/or state monies (unless the project is administered by a state agency in which case the apprenticeship requirements apply).
   v. When the project is a private project not covered by the definition of public works as found in Labor Code section 1720.

**4. Exemption from Apprenticeship Rations:**

a. The Joint Apprenticeship Committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the Contractor from the 1-to-5 ratio set forth in this Section when it finds that any one of the following conditions are met:
   i. Unemployment for the previous three-month period in such area exceeds an average of fifteen percent (15%); or
   ii. The number of apprentices in training in such area exceeds a ratio of 1-to-5 in relation to journeymen; or
   iii. The Apprenticeable Craft or Trade is replacing at least one-thirtieth (1/30) of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis; or
   iv. If assignment of an apprentice to any work performed under the Contract Documents would create a condition which would jeopardize such apprentice's life or the life, safety or property of fellow employees or the public at large, or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.
b. When such exemptions from the 1-to-5 ratio between apprentices and journeymen are granted to an organization which represents contractors in a specific trade on a local or statewide basis, the member contractors will not be required to submit individual applications for approval to local Joint Apprenticeship Committees, provided they are already covered by the local apprenticeship standards.

**5. Contractor's Compliance:**

a. The responsibility of compliance with this Section for all Apprenticeable Trades or Crafts is solely and exclusively that of the Contractor. All decisions of the Joint Apprenticeship Committee(s) under this Section are subject to the provisions of California Labor Code section 3081 and penalties are pursuant to Labor Code section 1777.7 and the determination of the Labor Commissioner.

## EXHIBIT A – SCOPE OF EXPENDITURES

## APPLIES TO AGREEMENT ARPA21-PRJC-048-CHI BETWEEN SAN BERNARDINO COUNTY AND CITY OF CHINO RELATED TO THE CORONAVIRUS LOCAL FISCAL RECOVERY FUND FOR LOCAL GOVERNMENTS

1. The following is the mutually agreed upon scope of expenditures to be funded by the American Rescue Plan Act of 2021 (ARPA) Coronavirus Local Fiscal Recovery Fund (CLFRF) received by San Bernardino County:

   *Kimball Ave Turn Pocket West: Create a left turn pocket on westbound Kimball Avenue before Euclid Avenue. Remove existing concrete curb and median and replacing it with a new turn pocket will facilitate access to the businesses on the southeast corner of Kimball and Euclid. This will facilitate customer access to these businesses, improve flow of traffic through this busy intersection and make it safer for residents and patrons to enter the shopping center.*

   *Kimball Ave Turn Pocket East: Create a left turn pocket on eastbound Kimball Avenue before Flight Avenue. Remove existing curb and median and replace with a new turn pocket, and relocate a drive approach to facilitate access to the aviation hangar on San Bernardino County Airport property.*

2. Not-to-exceed amount of expenditures described in 1, above, obligated during the period of **October 17, 2023** and **December 31, 2024** and expended on or before December 31, 2026 is $ 314,324.

3. The following is the list of projected expenditures that will be funded by the CLFRF for the scope identified in 1, above:

| **Kimball Ave Turn Pocket East** | **Projected Expenditures*** |
|---|---|
| 1. Mobilization | $13,625.00 |
| 2. Traffic Control | $10,000.00 |
| 3. Excavation Safety Measures | $4,000.00 |
| 4. Replace Monuments | $3,000.00 |
| 5. Construct Commercial Driveway | $13,000.00 |
| 6. Remove and dispose existing driveway, curb and gutter | $9,000.00 |
| 7. Remove and dispose existing landscaping and irrigation system | $10,000.00 |
| 8. Construct PCC Pavement/mowstrip median | $8,000.00 |
| 9. Construct 5” AC over 9” AB | $28,800.00 |
| 10. Construct 8” Curb and Gutter | $14,000.00 |
| 11. Install/Relocate Signage and Striping, Median Nose Treatment | $7,900.00 |
| **Subtotal Turn Pocket East** | $121,325.00 |
| | |
| **Kimball Ave Turn Pocket West** | |
| 1. Mobilization | $13,625.00 |
| 2.Traffic Control | $10,000.00 |
| 3. Excavation Safety Measures | $4,000.00 |

| | |
|---|---|
| 4. Replace Monuments | $3,000.00 |
| 5. Sawcut, Remove, and Dispose existing curb | $12,600.00 |
| 6. Construct PCC median curb | $24,200.00 |
| 7. Construct 5” AC over 9” AB | $36,000.00 |
| 8. Provide Irrigation Sleeves | $20,000.00 |
| 9. Install Signage and Striping, Median Nose Treatment | $5,650.00 |
| **Subtotal Turn Pocket West** | $129,075.00 |
| | |
| **Subtotal Construction** | $250,400.00 |
| **Construction Contingencies (10%)** | $25,040.00 |
| **Design** | $ 10,000.00 |
| **Materials Testing and Special Inspection** | $13,184.00 |
| **Construction Management** | $15,700.00 |
| **Total Expenditures** | **$314,324.00** |

*Note: Projected expenditures may differ from the actual costs but a total amount of expenditure shall not exceed the amount as specified in Section 2, above.

4. The Contractor is responsible for ensuring that any procurement using CLFRF funds, or payments under procurement contracts using such funds are consistent with the procurement standards set forth in the Uniform Guidance at Title 2 C.F.R. Sections 200.317 - 200.327, as applicable. The Uniform Guidance establishes in Title 2 C.F.R. Section 200.319 that all procurement transactions for property or services must be conducted in a manner providing full and open competition, consistent with standards outlined in Title 2 C.F.R. Section 200.320. If the full and open procurement is not applicable, provide a reason for its exemption:

*Confirm – No exemption identified*

Contract No.: _____
Approved: _____

# AGREEMENT

## KIMBALL AVENUE MEDIAN IMPROVEMENTS

**THIS AGREEMENT** is made and entered into this 21st day of May, 2024 by and between THE CITY OF CHINO, a municipal corporation, hereinafter called "**City**", and **Metrocell Construction**, hereinafter called "**Contractor**".

**WITNESSETH**, that the parties hereto mutually agree as follows:

**ARTICLE I**: For and in consideration of the payments and agreements hereinafter mentioned to be made and performed by City, Contractor agrees to perform and complete all of the work for the project entitled "KIMBALL AVENUE MEDIAN IMPROVEMENTS" in a good and workmanlike manner in accordance with all plans and specifications therefor, to furnish at Contractor's sole cost and expense all tools, equipment, labor, and materials necessary therefor, except such materials and equipment as are expressly stipulated to be furnished by City, and to do everything required by the Contract Documents.

**ARTICLE II**: Contractor shall be responsible for furnishing all labor, materials, equipment, tools, and services, furnishing and removing all plants, temporary structures, tools, and equipment, and doing everything required by this Agreement and by the Contract Documents. Contractor shall also be responsible for all losses and damages arising out of the performance of the Work, from the action of the elements, or from any unforeseen difficulties that may arise during the prosecution of the Work until its acceptance by City; for all risks of every description associated with the Work; and for all expenses resulting from the suspension or discontinuance of the Work. City shall pay Contractor, and Contractor shall receive, for completing the Work in accordance with the requirements of the Contract Documents and in full compensation therefor, the price named in the Bid Proposal. Subject to any additions or deductions that may be made by change order or amendment, and any penalties or damages that may be assessed against Contractor, Contractor shall receive a total contract amount of **Two Hundred Fifty Thousand Three Hundred Ninety-Nine Dollars and Forty Cents ($250,399.40)** for completion of the contract work.

**ARTICLE III**: The City hereby employs said Contractor to perform the work according to the terms of this Agreement for the above-mentioned price(s), and agrees to pay the same at the time, in the manner, and upon the conditions stipulated in the Contract Documents; and the said parties for themselves, their heirs, executors, administrators, successors and assignees, do hereby agree to the full performance of the covenants herein contained.

**ARTICLE IV**: Contractor shall begin work within five (5) calendar days after receiving a Notice to Proceed from the City and the work shall be completed within Forty-Five (45) working days from the date on which the work was started. If the work is not completed within said time period, liquidated damages shall apply.

**ARTICLE V**: The Notice Inviting Bids, the Summary of Work, the Instructions to Bidders, the Bid Documents, the Required Post-Bid Documents, the General Provisions, the Special Provisions, the Technical Specifications, and all other drawing, plans, or specifications for the Work

(collectively, "**Contract Documents**") are hereby incorporated into and made part of this Agreement.

**ARTICLE VI**: Contractor shall indemnify, defend with legal counsel approved by City, and hold harmless City, its officers, officials, employees and volunteers from and against all liability, loss, damage, expense, cost (including without limitation reasonable legal counsel fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with Contractor's negligence, recklessness or willful misconduct in the performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the sole or active negligence or willful misconduct of the City. In instances where City is shown to have been actively negligent and where City's active negligence accounts for only a percentage of the liability involved, the obligation of Contractor will be for that entire portion or percentage of liability not attributable to the active negligence of City. Should conflict of interest principles preclude a single legal counsel from representing both City and Contractor, or should City otherwise find Contractor's legal counsel unacceptable, then Contractor shall reimburse the City its costs of defense, including without limitation reasonable attorneys' fees, expert fees and all other costs and fees of litigation. The Contractor shall promptly pay any final judgment rendered against the City (and its officers, officials, employees and volunteers) with respect to claims determined by a trier of fact to have been the result of the Contractor's negligent, reckless or wrongful performance. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.

**ARTICLE VII**: No officer or employee of the City shall have any financial interest in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which affects his financial interest or the financial interest of any corporation, partnership or association in which he is interested, in violation of any State statute or regulation. Similarly, Contractor 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.

**ARTICLE VIII**: 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.

**ARTICLE IX**: 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 Contractor 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.

**ARTICLE X**: No officer or employee of the City shall be personally liable to the Contractor, 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 Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

**ARTICLE XI**: 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.

**ARTICLE XII**: In the course of its work under this Agreement, the Contractor, its agents and employees shall be bound by and comply with all applicable federal, state and local laws and requirements.

**ARTICLE XIII**: 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) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

[SIGNATURES ON FOLLOWING PAGE]

**IN WITNESS WHEREOF**, the parties hereto have caused this contract to be executed on the day and year first above written.

**Approved as to Form:**

Fred Galante, City Attorney

**Approved as to Content:**

Hye Jin Lee, PE, Director of Public Works

**METROCELL CONSTRUCTION**

Dated:

By:

*(Signature)*

Name:

*(Please Type or Print Name)*

Title:

*(Please Type or Print Title)*

CITY OF CHINO

Dated:

Linda Reich, City Manager

ATTEST:

Natalie Gonzaga, City Clerk

Date

**Project Name/No.: Geotechnical Engineering Svcs for Kimball Avenue Median Improvements** **Contract No.: _____**

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

**AGREEMENT FOR SERVICES**
**BETWEEN THE CITY OF CHINO AND**
**AESCO, INC.**

THIS AGREEMENT FOR SERVICES (herein "Agreement") is made and entered into this 21st day of May, 2024 ("Effective Date") by and between the CITY OF CHINO, a California municipal corporation ("City") and **AESCO, Inc.**, a California Corporation (herein "Consultant").

NOW, THEREFORE, the parties hereto agree as follows:

## 1. SERVICES OF CONSULTANT

**1.1 Scope of Services.** In compliance with all of the terms and conditions of this Agreement, the Consultant shall perform the work or services set forth in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by reference. 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. Consultant warrants that it has the experience and ability to perform all work and services required hereunder and that it shall diligently perform such work and services in a professional and satisfactory manner.

**1.2 Compliance With Law.** All work and services rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental agency of competent jurisdiction.

**1.3 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.

**1.4 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 the Agreement.

**1.5 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.

**1.6 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.

## 2. COMPENSATION

**2.1 Contract Sum.** For the services rendered pursuant to this Agreement, Consultant shall be compensated in accordance with the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference, but not exceeding the maximum contract amount of **Thirteen Thousand One Hundred Eighty-Four Dollars and Zero Cents ($13,184.00)** ("Contract Sum").

**2.2 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.

**2.3 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.

**2.4 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.

## 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 thirty (30) 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 (1) year terms at the option of the City if the City is satisfied with the quality of services performed by Consultant under this Agreement.

## 4. COORDINATION OF WORK

**4.1 Representative of Consultant.** _____ is hereby designated as being the representative of Consultant authorized to act on its behalf with respect to the work and services specified herein and make all decisions in connection therewith. All personnel of Consultant and any authorized agents shall be under the exclusive direction of the representative of Consultant. 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, and shall keep City informed of any changes.

**4.2 Project Manager. Michele Hindersinn, PE, Principal Engineer**, or any other person as may be designated by the City Manager, is hereby designated as being the representative the City authorized to act in its behalf with respect to the work and services specified herein and to make all decisions in connection therewith ("Project Manager").

**4.3 Prohibition Against Subcontracting or Assignment.** Consultant shall not contract with any entity to perform in whole or in part the work or services required hereunder without the express written approval of the City. Neither this Agreement nor any interest herein may be assigned or transferred, voluntarily or by operation of law, without the prior written approval of City. Any such prohibited assignment or transfer shall be void.

**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. Consultant shall perform all services required herein as an independent contractor of City 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, or that it is a member of a joint enterprise with City.

## 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, 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, except claims or liabilities occurring as a result of City's sole negligence or willful acts or omissions. Notwithstanding the above, a design professional's 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.

## 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 and shall keep such records for a period of three years following completion of the services hereunder. 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.

**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 or as the Project Manager shall require.

**6.3 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 the City without prior written authorization from the Project Manager.

(b) Consultant 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 the City notice of such court order or subpoena.

(c) If Consultant provides any information or work product in violation of this Agreement, then the 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 the City should Consultant 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 thereunder. The 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 the City and to provide the City with the opportunity to review any response to discovery requests provided by Consultant.

**6.4 Ownership of Documents.** All studies, surveys, data, notes, computer files, reports, records, drawings, specifications, maps, designs, photographs, documents and other materials (the "documents and materials") prepared by Consultant in the performance of this Agreement shall be the property of the City and shall be delivered to the 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 the City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. 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.

## 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. 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, 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. If Consultant does not cure the default, the City may take necessary steps to terminate this Agreement under this Article.

**7.3 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 any legal action under this Agreement.

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.

**7.4 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 and Zero Cents ($0.00) 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.

**7.5 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. 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, but not exceeding the compensation provided therefore in the Schedule of Compensation Exhibit "C". 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.

**7.6 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.

## 8. MISCELLANEOUS

**8.1 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 ensure 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

**8.2 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.

**8.3 Notice.** 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.

**8.4 Integration; Amendment.** 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. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

**8.5 Severability.** In the event that part of 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 portions 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.

**8.6 Waiver.** No delay or omission in the exercise of any right or remedy by non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. 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.

**8.7 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 any be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees, whether or not the matter proceeds to judgment.

**8.8 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.

**8.9 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.

**8.10 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 _____

**8.11 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) the 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 CONTENT:**

_____

Hye Jin Lee, PE, Director of Public Works

**CONSULTANT:**
**AESCO, INC.:**

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"

## SCOPE OF WORK

- Geotechnical Engineering Services are to include, but are not limited to, the following:
- Geotechnical Observation
- Laboratory Testing; typical but not limited to
    - 2 subgrade samples to get max density for trench and street pavement base
    - 1 Base Material sample to determine quality and max density
    - 1 AC material sample to determine quality and max density
    - 1 set of concrete cylinder tests for the street gutters for quality and strength
    - **45 half days (180 hours)** of field material compaction testing to verify subgrade/base/AC testing. Days of testing to be set by CM based on scheduled construction activities to get representative sample of the job's quality of work
- Report Development (e.g. Trench Compaction Report, Materials Testing Final Report, etc.)
- Field Services
- Daily Inspection Reports
- Report to City's Construction Manager/Inspector

# 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 2.2.**

**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"**

| PROJECT | TOTAL FEE |
|---|---|
| **Kimball Median Improvements** | **$13,184.00** |
| **Grand Total:** | **$13,184.00** |

## 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 Project Manager(s). 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.**

# MEMORANDUM
# CITY OF CHINO
# DEVELOPMENT SERVICES DEPARTMENT

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**CITY COUNCIL MEETING DATE: MAY 21, 2024**

**TO:** **MAYOR AND CITY COUNCIL MEMBERS, CITY OF CHINO**

**FROM:** **WARREN MORELION, AICP, DIRECTOR OF DEVELOPMENT SERVICES**

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## SUBJECT

Ordinance 2024-008 Adding Chapter 12.24, "Limitation on Use of City Property", to the Chino Municipal Code.

## RECOMMENDATION

Approve the introduction of Ordinance No. 2024-008, to be read by number and title only and waive further reading of the Ordinance, adding Chapter 12.24, “Limitation on Use of City Property”, to the Chino Municipal Code, to permit the City to establish limits on access to City owned or controlled properties, to be established via Resolution.

## FISCAL IMPACT

There is no fiscal impact.

## CITY OF CHINO MISSION / VISION / VALUES / STRATEGIC ISSUES

The recommendation detailed above further the City’s values and strategic issues that serve as key pillars on which identified priorities, goals, and action plans are built, by fostering:

- Positive City Image

## BACKGROUND

Government Code section 37359 allows the legislative body of a city to withdraw or place limits on public access to any property owned or controlled by the city. Pursuant to this authority, the City Council may limit the access or use of City property via the area of property that may be accessed, the time that it may be accessed, or by any other reasonable manner deemed necessary by the City. Any person thereafter using the property without permission or in a manner other than that prescribed would be considered a trespasser and may be subject to criminal trespass law and/or punishment as proscribed under the Chino Municipal Code.

The proposed Ordinance, if adopted, would allow the City to limit access to City owned or controlled property by resolution, such as the area around City Hall. This Ordinance would not limit or restrict any person from access or use who has a private right and/or City approval to access or use the City property outside of business hours. Violations of the Ordinance would be able to be enforced through state civil and criminal laws governing trespass and any manner prescribed for violations of the Chino Municipal Code.

## ISSUES/ANALYSIS

City staff is recommending the City Council introduce by first reading the proposed Ordinance attached as Exhibit A, which would allow the City to limit access to City owned or controlled properties. In particular, City staff and the Chino Police Department seek to be able to close certain City-owned properties located in downtown Chino overnight.

The Ordinance would permit the City to establish limits on access to City owned or controlled properties via resolution, which provides the City additional flexibility in establishing and amending these limits. The proposed Resolution is attached as Exhibit B and would be brought before the City Council for consideration if the proposed Ordinance is passed. As currently drafted, the proposed Resolution would prohibit public access on the City Hall Complex Property, the Old Fire Station (vacant lot) and Family Services Building Property, the Carolyn Owens Community Center Property, the Chino Branch Library Property, the Chino Senior Center Property, the Seventh Street Theater Property, the downtown Chaffey College Building Property, the Chino Community Building Property, the IT Center Property, the Old Schoolhouse Museum Property, and various City-owned parking lots between the hours of 10:00 p.m. and 6:00 a.m., seven days a week. If a public meeting or City-authorized event located at these properties ends after 10:00 p.m. through approval of a City Rental Facility Permit, the property would be allowed to remain open to those persons authorized to attend the event listed in the Rental Facility Permit for 30 minutes after the conclusion of the event. These proposed limits to public access would not apply to the sidewalks bordering the properties, to allow for free travel in the downtown area.

This Ordinance will place the same hours of operations on the above-listed properties that currently exist for all City parks. The Police Department will use this Ordinance, as they use the current Municipal Codes, to deter vandalism, burglary, drug use, and other crimes that commonly occur on public property during nighttime hours. The Ordinance will enhance the safety of the surrounding neighborhoods and City property by providing Police Officers probable cause to investigate and detain individuals loitering on public property at night. This type of Ordinance has proven successful in deterring crime in the City's parks and will have the same positive impacts for the parcels that may be designated by Resolution authorized by the Ordinance.

**ENVIRONMENTAL IMPACT**

The proposed Ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that it will not have a significant effect or physical change to the environment.

Attachments: Exhibit A – Ordinance 2024-008
Exhibit B – Draft Resolution Closing City Property During Certain Hours

**ORDINANCE NO. 2024-008**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHINO, CALIFORNIA, ADDING CHAPTER 12.24 (LIMITATION ON USE OF CITY PROPERTY) TO THE CHINO MUNICIPAL CODE**

**WHEREAS**, Government Code Section 37359 provides: "the legislative body having control of any property owned or controlled by the city may at any time withdraw the property from the personal access and use of members of the public, or limit the access or use in area or time or in any other reasonable manner deemed necessary. Any person thereafter using the property without permission or in a manner other than that prescribed is a trespasser. This section does not limit or restrict any person from access or use who has a private right in the property"; and

**WHEREAS**, in accordance with Government Code Section 37359, the City wishes to adopt regulations limiting the personal access and use of City property by members of the public; and

**WHEREAS,** the City desires to adopt such regulations in order to enhance the safety of City property and neighborhoods surrounding City property by providing Police Officers probable cause to investigate and detain individuals loitering on public property at night; and

**WHEREAS**, in addition to enforcing limitations on the personal access and use of City property by members of the public through trespass laws, the City also wishes to adopt enforcement mechanisms on such use of or access to City property through administrative remedies and nuisance abatement.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CHINO DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1.** The City Council finds that the above recitals are true and correct and are incorporated herein by this reference.

**SECTION 2.** Chapter 12.24 is hereby added to the Chino Municipal Code and shall read as follows:

Chapter 12.24 LIMITATIONS ON USE OF CITY PROPERTY

12.24.010 Limitations Established by City Council.

Pursuant to Government Code Section 37359, and any successor provision of state law, the City Council may, by resolution, withdraw any property owned or controlled by the City from the personal access and use of members of the public, or limit such access or use to specific areas or times or in any other reasonable manner deemed necessary by the City Council. Any person who accesses or uses property owned or controlled by the City in a manner prohibited by a resolution adopted by the City Council under this Section is a trespasser under state law and shall also be in violation of this Chapter.

12.24.020 Exception.

Limitations on access to and use of property imposed pursuant to this Chapter shall not apply to any person who has a private right to enter upon and use the property, including but not limited to, a right granted by a lease or license agreement with the City or a valid permit issued by the City, or who has otherwise been duly authorized by the City in writing to enter upon or use the property.

12.24.030 Violations.

Violations of this Chapter may be enforced through state criminal and civil laws governing trespass and may also be punished in any manner prescribed for violations of this municipal code in Title 1 or in any other manner provided by law. Such enforcement mechanisms shall be cumulative and one enforcement mechanism shall not be exclusive of any other enforcement mechanism unless such exclusion is required by law.

**SECTION 3.** Effective Date. This Ordinance shall be in full force and effect thirty (30) days after its second reading and adoption.

**SECTION 4.** Certification. The City Clerk of the City of Chino shall certify to the passage and adoption of this Ordinance and shall cause the same to be published in the *Chino Champion*, a newspaper of general circulation, within said City in accordance with the provisions of the Government Code.

PASSED, APPROVED, AND ADOPTED THIS 4TH DAY OF JUNE 2024.

By: _____
EUNICE M. ULLOA, MAYOR

ATTEST:

By: _____
NATALIE GONZAGA, CITY CLERK

STATE OF CALIFORNIA )
COUNTY OF SAN BERNARDINO ) §
CITY OF CHINO )

I, Natalie Gonzaga, City Clerk of the City of Chino do hereby certify that the foregoing Ordinance of the City of Chino was duly adopted by said City Council at a regular meeting held on the 4th day of June 2024 by the following vote:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

By: _____
NATALIE GONZAGA, CITY CLERK

**RESOLUTION NO. 2024-xxx**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHINO, CALIFORNIA, APPROVING THE CLOSURE OF SPECIFIED CITY PROPERTY AND CITY CONTROLLED PROPERTY DURING CERTAIN HOURS**

WHEREAS, Chino Municipal Code Section 12.24.010 provides as follows: "Pursuant to Government Code Section 37359, and any successor provision of State law, the City Council may, by resolution, withdraw any property owned or controlled by the City from the personal access and use of members of the public, or limit such access or use to specific areas or times or in any other reasonable manner deemed necessary by the City Council. Any person who accesses or uses property owned or controlled by the City in a manner prohibited by a resolution adopted by the City Council under this Section is a trespasser under State law and shall also be in violation of this Chapter;" and

WHEREAS, Chino City Hall is located at 13220 Central Avenue in the City of Chino, on a property comprised of three parcels designated by Assessor Parcel Numbers 1020-284-22, 1020-272-15, and 1020-272-15, all of which are owned by the City of Chino ("City Hall Property Complex"). The City Hall Property Complex is comprised of the block bounded by D Street to the north, Central Avenue to the east, Chino Avenue to the south, and 6th Street to the west; and

WHEREAS, former Fire Station 1, which is a currently vacant lot and the Family Services Building are owned by the City and located at 13201 Central Avenue in the City of Chino on a property comprised of one parcel designated by Assessor Parcel Number 1020-274-11 ("Old Fire Station & Family Services Property"). The Old Fire Station & Family Services Property is abutted by the Carolyn Owens Community Center to the north, 9th Street to the east, Central Avenue to the west, and Chino Central Park to the south. The City Hall Property Complex is located West of the Old Fire Station & Family Services Property, across Central Avenue; and

WHEREAS, the Carolyn Owens Community Center is located at 13201 Central Avenue in the City of Chino, on a property comprised of five parcels designated by Assessor Parcel Numbers 1020-274-02, 1020-274-03, 1020-274-09, 1020-274-08, and 1020-274-10, which are owned by the City of Chino ("Carolyn Owens Community Center"). The Carolyn Owens Community Center is abutted by a private business to the north, 9th Street to the east, Central Avenue to the west, and the Old Fire Station Property to the south. The City Hall Property Complex is located west of the Carolyn Owens Community Center, across Central Avenue; and

WHEREAS, the Chino Branch Library is located at 13180 Central Avenue in the City of Chino, on a property comprised of six parcels designated by Assessor Parcel Numbers 1020-271-06, 1020-271-05, 1020-271-04, 1020-271-03, 1020-271-02, and 1020-271-01, which are owned by the City of Chino ("Chino Branch Library"). The Chino Branch Library is abutted by the Chino Senior Center to the north, Central Avenue to the east, 7th Street to the west, and D Street to the south. The City Hall Property Complex is located south of the Chino Branch Library, across D Street; and

WHEREAS, the Chino Senior Center is located at 13170 Central Avenue in the City of Chino, on a property comprised of six parcels designated by Assessor Parcel Numbers 1020-271-07, 1020-271-22, 1020-271-08, 1020-271-21, 1020-271-09, and 1020-271-20, which are owned by the City of Chino ("Chino Senior Center"). The Chino Senior Center is abutted by Chaffey College and the Seventh Street Community Theater to the north, Central Avenue to the east, 7th Street to the west,

DRAFT

and the Chino Branch Library to the south. The City Hall Property Complex is located south of the Chino Senior Center, across D Street; and

WHEREAS, the Seventh Street Community Theater is located at 13123 7th Street in the City of Chino, on a property comprised of four parcels designated by Assessor Parcel Numbers 1020-271-10, 1020-271-11, 1020-271-12, and 1020-271-23, which are owned by the City of Chino ("Seventh Street Theater"). The Seventh Street Theater is abutted by C Street to the north, the Chaffey College Building to the east, 7th Street to the west, and the Chino Senior Center and Chino Branch Library to the south; and

WHEREAS, the Chaffey College Downtown Chino Building is located at 13106 Central Avenue in the City of Chino, on a property comprised of four parcels designated by Assessor Parcel Numbers 1020-271-19, 1020-271-18, 1020-271-24, and 1020-271-15, which are owned by the City of Chino ("Chaffey College Building"). The Chaffey College Building is abutted by C Street to the north, Central Avenue to the east, the Seventh Street Theater to the west, and the Chino Senior Center and Chino Branch Library to the south; and

WHEREAS, the Chino Community Building is located on a property comprised of three parcels designated by Assessor Parcel Number 1020-054-01, 1020-054-14, and 1020-054-15, which is owned by the City of Chino ("Chino Community Building"). The Chino Community Building is abutted by B Street to the north, 11th Street to the east, 10th Street to the west, and an alley to the south; and

WHEREAS, the IT Center Building is located at 13170 7th Street in the City of Chino on a property comprised of one parcel designated by Assessor Parcel Number 1020-283-29 ("IT Center Building"). The IT Center Building is abutted by the Chino Valley Chamber of Commerce Building to the north, 7th Street to the east, a commercial building to the south, and Aguiar Square to the west; and

WHEREAS, the Old Schoolhouse Museum Building is located at 5493 B Street in the City of Chino on a property comprised of one parcel designated by Assessor Parcel Number 1020-062-25 ("Old Schoolhouse Museum Building"). The Old Schoolhouse Museum Building is abutted by B Street to the north, residential homes to the east and south, and 11th Street to the west; and

WHEREAS, the City of Chino owns and operates six parking lots in downtown Chino adjacent to the City Hall Property Complex, the Chaffey College Building, and the Seventh Street Theater, further detailed below and individually referred to in this Resolution as the Transit Depot Parking Lot, the 5th Street Parking Lot, the 6th and D Street Parking Lot, the 7th and C Street Parking Lot, the Central Avenue and C Street Parking Lot, and the 9th and C Street Parking Lot. These City-owned and operated parking lots are collectively referred to in this Resolution as the "Downtown Parking Lots"; and

WHEREAS, the 5th Street Parking Lot is located on a property comprised of two parcels designated by Assessor Parcel Numbers 1020-282-09 and 1020-282-10, which are owned by the City of Chino ("5th Street Parking Lot").The 5th Street Parking Lot is abutted by a private business to the north, the 6th and D Street Parking Lot and Transit Depot Parking Lot to the east, 5th Street to the west, and a private business to the south; and

WHEREAS, the Transit Depot Parking Lot is located on a property comprised of three parcels designated by Assessor Parcel Numbers 1020-282-06, 1020-282-05, and 1020-282-04, which are owned by the City of Chino ("Transit Depot Parking Lot").The Transit Depot Parking Lot is abutted by the 6th and D Street Parking Lot to the north, 6th Street to the east, the 5th Street Parking Lot to the west, and a private business to the south; and

WHEREAS, the 6th and D Street Parking Lot is located on a property comprised of two parcels designated by Assessor Parcel Numbers 1020-282-02 and 1020-282-01, which are owned by the City of Chino ("6th and D Street Parking Lot").The 6th and D Street Parking Lot is abutted by D Street to the north, 6th Street to the east, a private business to the west, and the Transit Depot Parking Lot to the south; and

WHEREAS, the 7th and C Street Parking Lot is located on a property comprised of two parcels designated by Assessor Parcel Numbers 1020-034-12 and 1020-034-11, which are owned by the City of Chino ("7th and C Street Parking Lot").The 7th and C Street Parking Lot is abutted by private property to the north, 7th Street to the east, private property to the west, and C Street to the south; and

WHEREAS, the Central Avenue and C Street Parking Lot is located on a property comprised of one parcel designated by Assessor Parcel Number 1020-273-10, which is owned by the City of Chino ("Central Avenue and C Street Parking Lot").The Central Avenue and C Street Parking Lot is abutted by C Street to the north, the 9th and C Street Parking Lot to the east, Central Avenue to the west, and a private business to the south; and

WHEREAS, the 9th and C Street Parking Lot is located on a property comprised of one parcel designated by Assessor Parcel Number 1020-271-11, which is owned by the City of Chino ("9th and C Street Parking Lot").The 9th and C Street Parking Lot is abutted by C Street to the north, 9th Street to the east, the Central Avenue and C Street Parking Lot to the west, and a private business to the south; and

WHEREAS, the City Council wishes to ensure that the City Hall Property Complex, the Old Fire Station Property, the Carolyn Owens Community Center, the Chino Branch Library, the Chino Senior Center, the Seventh Street Theater, the Chaffey College Building, the Chino Community Building, and the Downtown Parking Lots are only used for authorized purposes.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CHINO, CALIFORNIA, HEREBY RESOLVES AS FOLLOWS:

**SECTION 1.** The above recitals are true and are incorporated herein.

**SECTION 2.** The City Hall Property Complex, the Old Fire Station Property, the Carolyn Owens Community Center, the Chino Branch Library, the Chino Senior Center, the Seventh Street Theater, the Chaffey College Building, the Chino Community Building, IT Center Building, Old Schoolhouse Museum Building, and the Downtown Parking Lots, as defined in the recitals and depicted in Exhibit A, are closed to all members of the public between the hours of 10:00 p.m. and 6:00 a.m., seven days a week. Notwithstanding the previous sentence, if a City-authorized event located at the City Hall Property Complex, the Old Fire Station Property, the Carolyn Owens Community Center, the Chino Branch Library, the Chino Senior Center, the Seventh Street Theater, the Chaffey College

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Building, the Chino Community Building, or the Downtown Parking Lots ends after 9:30 pm, then the property or properties where the public meeting or City-authorized event is held shall remain open to the public for 30 minutes after the time that the event ends. Additionally, if a City-authorized event through approval of a City Rental Facility Permit takes place at these properties, which ends after 10:00 p.m., the property would be allowed to remain open to those persons authorized to attend the event listed in the Rental Facility Permit for 30 minutes after the conclusion of the event.

**SECTION 3.** This resolution does not apply to the sidewalks adjacent to D Street, C Street, B Street, Pioneer Street, Central Avenue, Chino Avenue, 5th Street, 6th Street, 7th Street, 9th Street, 10th Street, and 11th Street.

**SECTION 4.** This resolution does not change the business hours during which buildings located on the City Hall Property Complex, the Old Fire Station Property, the Carolyn Owens Community Center, the Chino Branch Library, the Chino Senior Center, the Seventh Street Theater, the Chaffey College Building, the Chino Community Building, and the Downtown Parking Lots are open to the public.

**SECTION 5.** This Resolution shall be effective on the effective date of Ordinance No. 2024-008.

APPROVED AND ADOPTED THIS 4TH DAY OF JUNE 2024.

_____
EUNICE M. ULLOA, MAYOR

ATTEST:

_____
NATALIE GONZAGA, CITY CLERK

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State of California )
County of San Bernardino ) ss.
City of Chino )

I, Natalie Gonzaga, City Clerk of the City of Chino, do hereby certify that the forgoing Resolution was duly adopted by the City Council at a regular meeting held on the 4th day of June 2024, by the following votes:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

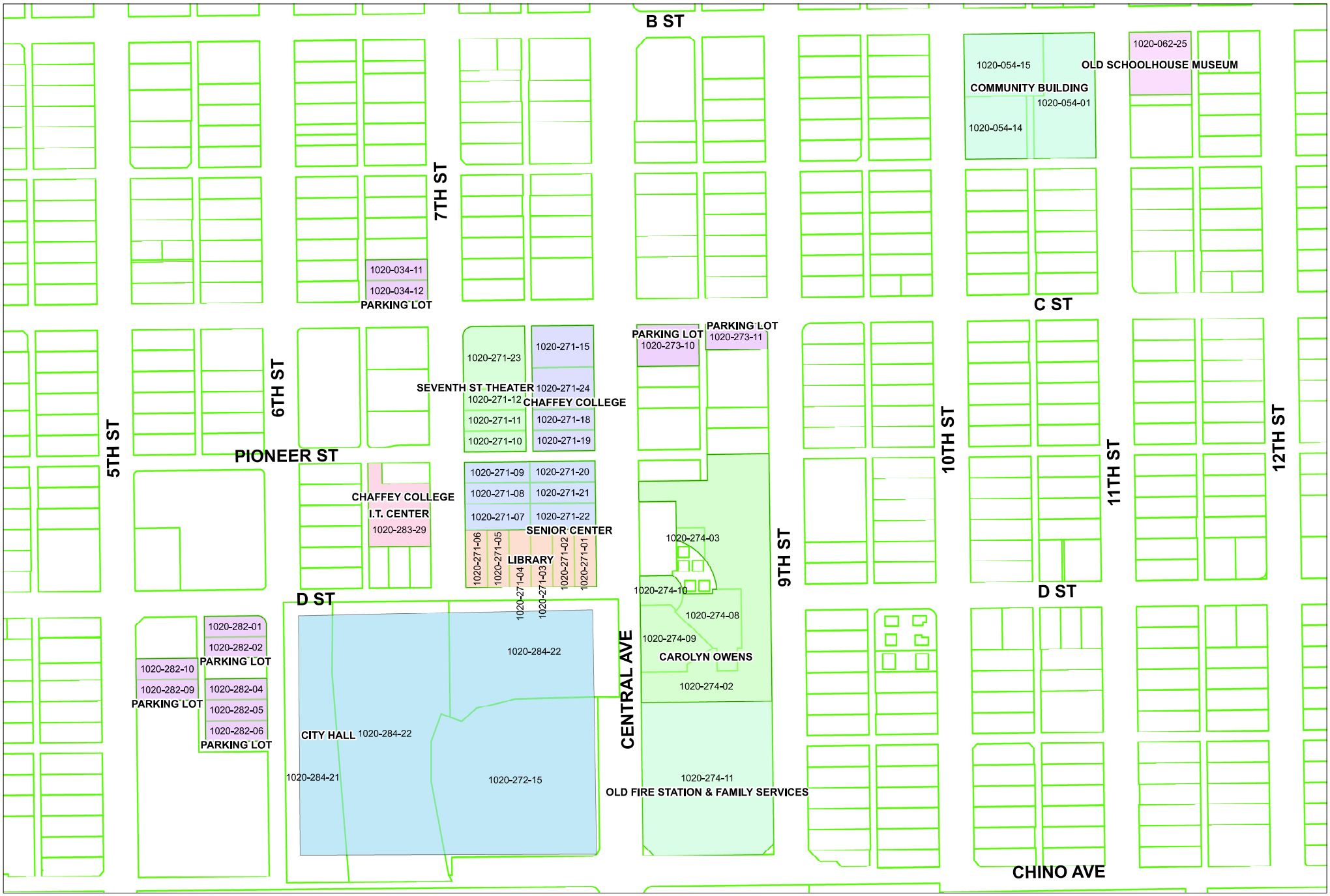
ABSENT: COUNCIL MEMBERS:

_____
NATALIE GONZAGA, CITY CLERK

Attachment: Exhibit "A" – Map depicting Downtown City-Owned Properties

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# DOWNTOWN CITY-OWNED PROPERTIES




N

**LEGEND**

**DOWNTOWN CITY OWNED PROPERTY**

- CAROLYN OWENS
- CHAFFEY COLLEGE
- CITY HALL
- COMMUNITY BUILDING
- I.T. CENTER
- LIBRARY
- OLD FIRE STATION & FAMILY SERVICES
- OLD SCHOOLHOUSE MUSEUM
- PARKING LOTS
- SENIOR CENTER
- SEVENTH ST THEATER

# MEMORANDUM
# CITY OF CHINO
# ADMINISTRATION DEPARTMENT

**CITY COUNCIL MEETING DATE: MAY 21, 2024**

**TO:** **MAYOR AND CITY COUNCIL MEMBERS, CITY OF CHINO**

**FROM:** **LINDA REICH, CITY MANAGER**

## SUBJECT

Resolution Amending the City's Classification and Salary Schedule.

## RECOMMENDATION

Adopt Resolution No. 2024-24 amending the Classification and Salary Schedule to add the following positions and appropriate funds in the FY 2024-25 Mid-Term Budget: One (1) Sergeant; one (1) Corporal; two (2) Police Officer; one (1) Principal Engineer; two (2) Associate Engineer; one (1) Information Technology Analyst (GIS); one (1) Assistant Parks and Capital Projects Manager; one (1) Facilities Maintenance Technician; one (1) Human Resources and Risk Management Analyst; and one (1) Management Analyst (Administration/Economic Development).

## FISCAL IMPACT

Funding the proposed positions for FY 2024-25 requires an appropriation from the following funds: General Fund 100: $717,620; Transportation Fund 320: $126,702; Park Development Fund 340: $28,363; Enterprise Funds 520/530/540: $384,858; Internal Service Funds 610/630/640/650/660: $1,402,919. The total of all funds for the additional appropriation is $2,660,462.

## CITY OF CHINO MISSION / VISION / VALUES / STRATEGIC ISSUES

The recommendation detailed above further the City’s values and strategic issues that serve as key pillars on which identified priorities, goals, and action plans are built, by fostering:

- Positive City Image
- Superior Customer Service
- Responsible Long-Range Planning
- Public Service Excellence through Internal and External Partnerships

| | |
|---|---|
| Revenue: | Expenditure: VARIOUS DETAIL ACCOUNTS IN THE FINANCE DEPARTMENT |
| Transfer In: | Transfer Out: |

## BACKGROUND

On March 5, 2024, Chino's voters passed the City of Chino Public Safety, Roads, and Essential Services Protection Measure approving additional local funding to maintain critical City services. Over 60% of voters approved Measure V, enacting a local sales tax of 1% which is anticipated to generate approximately $28 million annually in locally controlled funds.

Community leaders, the Mayor, City Council Members, and City staff participated in numerous public education meetings to inform residents about the need for, and benefits of, the new revenue generated by Measure V. The purpose of the proposed Resolution is to expedite the fulfillment of the promises made to our community that Measure V funds will have an immediate and positive impact on priorities such as public safety, streets, sidewalks, parks, recreation, community beautification, and economic development.

## ISSUES/ANALYSIS

Resolution No. 2024-024 will add 12 positions to the City's workforce to provide immediate assistance in implementing commitments associated with the passing of the ballot measure. The following positions are recommended for approval outside of the typical budget process because they will work toward expediting improvements to 1) public safety; 2) infrastructure construction, maintenance, and repairs; 3) parks, recreation, and community beautification and 4) economic development.

### Police Department

*Sergeant and Police School Resource Officer (SRO)*

The Chino Police Department has seen an increase in student related threats, the presence of dangerous narcotics on campus, and the complexity of juvenile related investigations at the junior high school level. The addition of a Sergeant and a School Resource Officer will allow the City and Chino Valley Unified School District to expand the existing, extremely successful SRO Program to the City's junior high schools by assigning an SRO to the junior high schools and designating a Police Sergeant to oversee the entire SRO program for the District. There are currently two junior high schools, one year-round K-8 school, with another year-round K-8 school opening in the 2024/25 school year. Including these campuses will increase the SRO Program ranks to 5 SRO Officers over 7 schools. The proposed Sergeant position will also be responsible for coordinating all special events necessitating Police involvement. Annually, the Police Department reviews more than 115 special events, a number expected to rise. The cost of salaries and benefits for these two positions will be shared with Chino Valley Unified School District.

*Corporal and Police Officer*

Over the last several years retail theft, from petty theft to organized retail theft crews, has grown exponentially and poses a significant threat to communities and businesses alike. Chino experienced an increase of 53% in shoplifting cases in 2023. The Chino Police Department has temporarily assigned a Detective and Quality of Life Officers to combat retail theft during the last two holiday shopping seasons. The results have been extraordinary, and the positive feedback from the community and business owners has been overwhelming. Adding a dedicated Retail Theft Detail comprised of a Corporal and Police Officer will help the Department combat a top crime concern for the community throughout the year and the holiday shopping season.

**Public Works Department**

*Principal Engineer, 2 Associate Engineers, and Information Technology Analyst (GIS)*

Infrastructure improvement is a key component of the quality of life for Chino residents and the revenue generated by Measure V will assist in addressing approximately $260 million in unfunded infrastructure and neighborhood improvement projects. The City's Capital Improvement Program (CIP) Division currently has over 90 active projects and operates with only 3 full-time City staff members. The Public Works Department relies heavily on consultants for project management and construction management services to execute the City's CIP projects and, on average, the City spends an estimated $2 million annually for Public Works/Engineering consultants. Bringing this work in-house and adding the requested Principal Engineer, 2 Associate Engineers, and Information Technology (GIS) Analyst positions will reduce costs, enhance quality assurance, and ensure the long-term retention and utilization of institutional knowledge. Employing internal staff also engenders advantages such as long-term commitment to the organization's goals, flexibility in adjusting to changing priorities and project needs, and direct supervision and control, allowing for better oversight and management of projects and resources.

**Community Services, Parks and Recreation Department**

*Assistant Parks and Capital Projects Manager and Facilities Maintenance Technician*

The Measure V education effort indicated that as much as $46 million in revenue generated by the sales tax measure within the next 5 years could fund maintenance, lighting and safety improvements, and park CIP projects such as restrooms, playgrounds, ballfields, and court maintenance. To ensure proper maintenance and services for parks, recreation, and community beautification efforts, as well as to address a tremendous backlog of deferred maintenance at City facilities, staff is recommending the addition of an Assistant Parks and Capital Projects Manager and a Facilities Maintenance Technician. The vacant position of Projects Manager is proposed to be replaced by the Assistant Parks and Capital Projects Manager to better reflect the level of work, project oversight, and required supervision of staff.

**Human Resources/ Risk Management Department**

*Human Resources and Risk Management Analyst*

This position will assist in addressing the City's ongoing recruitment needs. With the new positions recommended in the proposed Resolution, additional positions requested with future budget adjustments, and the continuous recruitment efforts to fill City positions, the Human Resources/Risk Management Department must keep up with the demand to fill positions at a rate to support organizational staffing needs. The addition of the proposed Human Resources/Risk Management Analyst will allow staff to continue to operate in an organized, fast-paced manner.

**Administration Department**

*Management Analyst (Economic Development)*

Our business partners play a vital role in Chino's economy by creating jobs, supporting the community, and contributing to the City's economic growth. The proposed Management Analyst position in Economic Development will further the City's objectives to stimulate economic growth, attract new commercial, industrial, and retail businesses, and support our local business partners. This position will focus on business attraction efforts, including marketing and support retention and workforce development efforts.

Attachment: Resolution 2024-024

**RESOLUTION NO. 2024-024**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHINO, CALIFORNIA, AMENDING CERTAIN PORTIONS OF RESOLUTION NOS. 2023-051, 2023-053, 2023-060, 2023-061, AND 2023-073 OF THE CITY'S CLASSIFICATION AND SALARY SCHEDULE**

**WHEREAS,** the City Council of the City of Chino has the authority to create and maintain position classifications; and

**WHEREAS,** greater flexibility is desired to meet changing business conditions and serve budgetary staffing and general organizational needs; and

**WHEREAS,** the need to add twelve new full-time positions has been identified; and

**WHEREAS,** the need to eliminate an existing full-time position has been identified; and

**WHEREAS,** the need to establish the salary range for the new classification of Assistant Parks and Capital Projects Manager has been identified; and

**NOW, THEREFORE, BE IT RESOLVED** as follows:

1. That Resolution Nos. 2023-051, 2023-053, 2023-060, 2023-061, and 2023-073 of the City's Classification and Salary Schedule are revised to establish the following changes to the salary schedule:

**Add:**
- One (1) Full-time Sergeant (CPMA)
- One (1) Full-time Corporal (CPOA)
- Two (2) Full-time Police Officers (CPOA)
- One (1) Full-time Principal Engineer (Unrepresented Management)
- Two (2) Full-time Associate Engineers (Unrepresented Management)
- One (1) Full-time Information Technology Analyst (GIS) (Unrepresented Management)
- One (1) Full-time Assistant Parks & Capital Projects Manager (Unrepresented Management)
- One (1) Full-time Facilities Maintenance Technician (AFSCME)
- One (1) Full-time Human Resources and Risk Management Analyst (Unrepresented Management)
- One (1) Full-time Management Analyst (Unrepresented Management)

**Remove:**
- One (1) Full-Time Projects Manager (Unrepresented Management)

**Non-Sworn Management Classification (monthly salary amounts)**

| | Base | 22.5% | Maximum |
|---|---|---|---|
| Assistant Parks and Capital Projects Manager | $8,936 | $10,947 | $11,818 |

2. Except as so modified, Resolution Nos. 2023-051, 2023-053, 2023-060, 2023-061, and 2023-073 of the City's Classification and Salary Schedule shall remain unmodified and in full force and effect.

APPROVED AND ADOPTED THIS 21st day of May, 2024.

_____
EUNICE M. ULLOA, MAYOR

ATTEST:

_____
NATALIE GONZAGA, CITY CLERK
CITY OF CHINO

STATE OF CALIFORNIA )
COUNTY OF SAN BERNARDINO )ss.
CITY OF CHINO )

I, NATALIE GONZAGA, City Clerk of the City of Chino, do hereby certify that the foregoing Resolution was duly adopted by the City Council of the City of Chino at a regular meeting held on the 21st day of May 2024 by the following votes:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
NATALIE GONZAGA, CITY CLERK

# MEMORANDUM
# CITY OF CHINO
# ADMINISTRATION DEPARTMENT

**CITY COUNCIL MEETING DATE: MAY 21, 2024**

**TO:** **MAYOR AND CITY COUNCIL MEMBERS, CITY OF CHINO**

**FROM:** **COUNCIL MEMBER CURTIS BURTON**

## SUBJECT

Community Support Fund – Council Member Burton.

## RECOMMENDATION

Approve a community support fund contribution of $375 to Chaffey College Foundation.

## FISCAL IMPACT

Sufficient funds have been included in the Fiscal Year 2023-24 Operating Budget.

## CITY OF CHINO MISSION / VISION / VALUES / STRATEGIC ISSUES

The recommendation detailed above further the City's values and strategic issues that serve as key pillars on which identified priorities, goals, and action plans are built, by fostering:

- Positive City Image
- Superior Customer Service
- Exemplary Leadership
- Public Service Excellence through Internal and External Partnerships

| | |
|---|---|
| Revenue: | Expenditure: 1002000 43300 N2034 |
| Transfer In: | Transfer Out: |

## BACKGROUND

The City of Chino is fortunate to have multiple non-profits and community groups dedicated to serving the public and preserving Chino's unique history. To assist in their ongoing efforts, the City Council from time to time authorizes expenditures from the City's community support fund. These expenditures serve a valid public purpose by helping to continue the outstanding services that these organizations provide to our community.

## ISSUES/ANALYSIS

To continue this tradition, Council Member Burton recommends that the City Council approve the following contribution:

- $375 contribution to the Chaffey College Foundation will support the Chaffey College Golf Tournament Fundraiser. This foundation provides vital assistance for the students and local community served by the Chaffey Community College District.

By approving this contribution, Chaffey College Foundation will be better equipped to provide services to the Chino community. Therefore, as proposed by Council Member Burton, staff recommends that the City Council approve the community support contribution to Chaffey College Foundation.