



## AGENDA

### Chowchilla City Council Special Meeting

#### OPEN SESSION:

Council Chambers, Chowchilla City Hall  
130 S. Second Street, Chowchilla, CA 93610

#### CLOSED SESSION:

8135 Lakeshore  
Chowchilla, CA 93610

**July 20, 2017**

**3:30 p.m.**

Agendas for all regular City Council meetings are posted at least 72 hours prior to the meeting at the Civic Center, 130 S. Second St. Agendas for all special City Council meetings are posted 24 hours prior to the meeting. Written communications from the public for the agenda must be received by Administrative Services no less than 7 days prior to the meeting date.

Any writing or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection at the City Clerk's Counter. In addition, most documents will be posted on the city website at [www.CityofChowchilla.org](http://www.CityofChowchilla.org).

The City of Chowchilla complies with the Americans with Disabilities Act (ADA of 1990). The Council Chambers is accessible to the physically disabled. If you need special assistance, please call (559) 665-8615, ext. 102 at least 4 days prior to the meeting.

#### CALL TO ORDER

#### ROLL CALL:

Mayor: Mary Gaumnitz

Mayor Pro Tem: Dennis Haworth

Council: Waseem Ahmed, Ray Barragan, John Chavez

City staff and contract employees present at the meeting will be noted in the minutes

#### PUBLIC ADDRESS – CLOSED SESSION

This time is reserved for members of the audience to address the City Council on items listed on the closed session agenda only. It is recommended that speakers limit their comments to no more than 3 minutes each. Speakers are asked to please use the microphone and provide their name for the record. Any handouts should be provided to the City Clerk who will distribute them to the Council and appropriate staff.

#### CLOSED SESSION – 3:30 PM

This time has been set aside for the City Council to meet in a closed session to discuss matters pursuant to Government Code Section 54957 (b)(1), 54957.6, and 54956.9 (d)(2). Based on the advice of the City Attorney, discussion in open session would prejudice the position of the City in these matters. The City Attorney will provide a report, in open session, which details any reportable actions following conclusion of the closed session agenda.

- 1. Anticipated Litigation, Significant Exposure to Litigation Pursuant to Government Code Section 54956.9 (d)(2)**  
Number of Cases: 1
- 2. Public Employee Evaluation Pursuant to Government Code Section 54957(b)**  
Titles: All Employees

In the event that not all the items on the closed session agenda have been deliberated in the time provided, the City Council may continue the closed session until the end of the regularly scheduled Council Meeting.

**OPEN SESSION – 5:00 PM****PLEDGE OF ALLEGIANCE:****INVOCATION:****CLOSED SESSION REPORT:****CEREMONIAL / PRESENTATIONS – Section 1****PUBLIC ADDRESS**

This time is reserved for members of the audience to address the City Council on items of interest that are **not** on the Agenda and that are within the subject matter jurisdiction of the Council.

It is recommended that speakers limit their comments to **no more than 3 minutes** each and it is requested that no comments be made during this period on items on the Agenda. Members of the public wishing to address the Council on items on the Agenda should notify the Mayor when that Agenda item is called.

The Council is prohibited by law from taking any action on matters discussed that are not on the Agenda. No adverse conclusions should be drawn if the Council does not respond to public comment at this time.

Speakers are asked to please **use the microphone and provide their name for the record**. Prior to addressing the Council, any handouts are to be provided to City Clerk who will distribute them to the Council and the appropriate staff.

**COUNCIL AND STAFF REPORTS – Section 2****2.1 COUNCIL REPORTS**

Legislative Items  
Oral / Written Reports

**2.2 STAFF REPORTS**

Written/Oral Reports

**CONSENT CALENDAR – Section 3****PUBLIC HEARINGS – Section 4****DEFERRED BUSINESS – Section 5**

- 5.1 A City Council Resolution Approving Two Agreements with Yamabe & Horn Engineering, Inc. for On-Call City Engineering Services and Authorizing the City Administrator to Execute all Related Documents Thereto (Rogers)**

**NEW BUSINESS – Section 6****ANNOUNCEMENTS – Section 7**

JULY 21      MOVIE IN THE PARK, VETERANS MEMORIAL PARK, SUNSET  
JULY 25      CITY COUNCIL MEETING CANCELLED  
JULY 27      CHOWCHILLA REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD MEETING,  
CANCELLED  
MUSIC IN THE PARK CONCERT, VETERANS MEMORIAL PARK, 7:30PM  
JULY 28      MOVIE IN THE PARK, VETERANS MEMORIAL PARK, SUNSET  
AUG 3        MUSIC IN THE PARK CONCERT, VETERANS MEMORIAL PARK, SUNSET  
AUG 8        CITY COUNCIL MEETING, CITY HALL, 7PM

<b>ADJOURNMENT</b>
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I, Joann McClendon, CMC, City/Board Clerk, do hereby declare under penalty of perjury that the foregoing agenda was posted at the Chowchilla City Hall, 130 S Second Street, Chowchilla, CA and made available for public review on this 19th day of July 2017 at or before 3:00 p.m.

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Joann McClendon, CMC  
City Clerk



Item 5.1

CLICK HERE TO RETURN TO THE AGENDA

# REPORT TO THE CITY COUNCIL

Special Meeting of: July 20, 2017

**AGENDA SECTION:** New Business

**SUBJECT:** A Resolution Approving Two Agreements with Yamabe & Horn Engineering, Inc. for On-Call City Engineering Services and Authorizing the City Administrator to Execute all Related Documents Thereto

**PREPARED BY:** Jason Rogers, Director of Public Works

**ATTACHMENTS:** Agreements, Resolution

REVIEWED BY ADMINISTRATOR

REVIEWED BY ATTORNEY

REVIEWED BY FINANCE

**RECOMMENDATION:**

Staff recommends that the City Council execute the attached agreements for On Call Engineering Services with Yamabe & Horn Engineering, Inc. and authorize the City Administrator to execute all documents on behalf of City Council.

**BACKGROUND:**

Since 2015, the City of Chowchilla has contracted with an outside consultant for all of its Engineering Department services. These services included delivery of capital projects, development of design plans and specifications; project and construction management; construction inspection; and plan checks. The current consultant contract with Interwest Consulting Group will expire on June 30, 2017. Some existing task orders will be governed by the previous contract until they are transferred over to the new consultant by September 30, 2017. On March 28, 2017 the City Council provided input on a Request for Qualifications (RFQ) for On-Call City Engineering Services.

Because of issues related to compliance with federal and state requirements, the contracted work needs to be segregated into two contracts. The first contract would cover projects that use federal and state funds. The second contract would cover projects that use local funding.

**REASON FOR RECOMMENDATION:**

While it might be anticipated that the cost of an engineer would be the same whether he or she is in the public or private sector; recent studies from various transportation agencies have found that because of the generous benefits package provided by government, the large amount of paid time off, and a reduced work week compared to the private sector, the in-house engineer actual expected cost to the tax payer exceeds the cost of a private engineer by at least 15%. These calculations are based on conservative assumptions and the actual difference can considerably exceed 15% and with the continuously rising cost of the pension system in the state, this difference is expected to rise even more in future years.

In addition to cost, it is beneficial for the public sector to outsource engineering services for the following reasons:

1. **Decisions based on policy.** The government is not meant to perform functions that private organizations can perform equally well. Government design and construction agencies should be leaders in a public-private partnership team.
2. **Decision based on staffing capacity.** The public cannot afford to staff an agency to handle peak workloads. If the City staffed up to handle peak workloads, it is liable to pay those employees in lean times even if they have nothing to work on. If a project is outsourced, consultant employees are only paid for the time they work on the project and they leave a project once it is over.
3. **Decision based on schedule constraints.** This issue is based on capacity, expertise, and attitude and must be addressed to complete critical projects on time. Consultants have more flexibility to meet fast-track deadlines than government agencies.
4. **Decision based on lack of special expertise.** Often the City has no choice but to outsource the design if it lacks the required expertise in-house.
5. **Decision based on better management of risks.** A contract is a risk management tool that enables certain risks to be shifted to the consultant who has control over the project.
6. **Decision based on improving quality.** Since consultants compete against one another for work, they cannot submit a poor-quality work and expect to be selected again by the same agency. Past performance is a major gate-keeper in the selection of consultants.
7. **Decision based on cost effectiveness.** As stated above, a private engineer is expected to cost the taxpayer 15% less than a City employee.

Therefore, it is important that the consultant for each project be selected by a state agency or authority utilizing the Qualifications-Based Selection (QBS) process as mandated by federal and California State legislation.

The RFQ for On-Call Engineering Services was released on April 6, 2017, and the solicitation has been conducted in accordance with State and Federal regulations for Architectural and Engineering Services. These regulations require that proposers must be ranked based on qualifications only. Once the most qualified firm is identified, then negotiations on costs commence. If an agreement cannot be reached with the highest ranked firm, then negotiations commence with the second ranked firm. This process continues until an agreement can be reached with a proposer.

On May 18, 2017, the City received proposals from three firms: Akel Engineering Group, Inc., Willdan Engineering and Yamabe & Horn Engineering, Inc. The proposals were reviewed by the City Administrator, the Director of Public Works, and the Director of Finance. All reviewers ranked Yamabe & Horn as the most qualified proposer. Accordingly, negotiations with Yamabe & Horn were initiated, and staff believes that acceptable terms have been negotiated and recommends that the City Council approve the award of both contracts to Yamabe & Horn Engineering, Inc.

The scope of work identified in the RFQ includes, but is not limited to, the following:

#### **City Engineering Duties:**

- Prepare reports, investigations, studies and evaluations as, from time to time, may be required and directed by the City
- Consulting services to the City Council, Commissions, and Staff
- Represent City on Boards and Advisory Groups
- Represent City to applicants and developers of constructions projects
- Technical resource for grant and loan applications, and Utility Master Plans
- Prepare all documents necessary to obtain "Authority to Use Grant Funds"
- Technical resource for Capital Improvement projects including State and Federally funded projects and related assignments

#### **Project-Specific Duties:**

- Traffic engineering services, including preparation of traffic warrant studies, review of traffic impact studies, and recommendation of traffic control measures

- Review of plans, specifications, estimates and bid documents for a variety of public work projects. provide bid assistance and construction support throughout project construction, and assist with project closeout activities as needed to comply with applicable reporting requirements related to State or Federal funding sources
- Inspections services for a variety of private development and capital improvement projects to ensure compliance with approved plans, specifications, City standards, and other applicable local, State, and federal requirements
- Research
- Check subdivision and parcel maps for compliance with California State Subdivision Map Act requirements. Stamp and sign subdivision maps, parcel maps, lot line adjustments, and other documents as necessary, as City surveyor
- Determine locations of property lines, boundaries, easements and rights-of-way
- Construction surveys for Capital Improvement Projects
- Establish and adjust benchmarks
- Establish and document street center lines
- Traditional topographic surveys and aerial topographic surveys to determine locations and elevations of existing improvements, structures, and topographic features
- Perform research and survey work related to property divisions and mergers
- Perform research and survey work related to public and private land ownership, public and private easements, public improvements, construction, and historic information
- Perform all survey-related, and some engineering-related, computations and drawings using traditional methods and/or using computer methods currently available within the City
- Prepare and interpret deeds and descriptions
- Develop legal descriptions and plot maps
- Other engineering and survey-related tasks as necessary

The following provisions are included in the contract:

- The base term for both contracts is for a three-year period with the ability to extend an additional two years. Federally funded on-call contracts are not permitted to go beyond a five-year period, so the term of both contracts has been made the same.
- The agreements contain amended record-keeping and disclosure requirements that provide for the Contractor to retain all documents reports, memorandums, calculations, drawings and specifications, CAD and other design files, whether electronic or in hard copies; and to provide these upon request to the City during or for up to four (General) or three (Fed/State) years after the termination date of the contract.
- Yamabe & Horn will be the City's single prime contractor responsible for all engineering related work.
- All work will be executed through the task order process and will be approved by the Public Works Director.
- The Public Works Director will have approval authority over hourly rate adjustments over the life of the contract.
- The contract will have provisions to allow other consultants to perform work under separate contracts for the City without penalty (Yamabe will not have exclusive rights to the work).

On-call consultants enable the City to increase project delivery capacity and execute projects in a timely and cost-effective manner. Yamabe & Horn was deemed the most qualified applicant for the on-call engineering. Staff recommends that Council adopt the resolution authorizing the City Administrator to execute both professional service contracts (one for State and Federal funded work and the other one for all other locally funded projects).

**FISCAL IMPACT:**

All work to be performed under the proposed contract is programmed and appropriated in the current fiscal year budget. Since this will be a multiyear contract, future work will be included in future budgets. No work

will be performed in excess of budgeted authority. Staff anticipates that engineering expenses on State and Federally-funded projects are reimbursable expenses.

**ALTERNATIVES:**

Not to approve the contract with Yamabe & Horn, thereby leaving the City without engineering services.

**ACTIONS FOLLOWING APPROVAL:**

Yamabe and Horn will assume City Engineer services on July 1, 2017 and will begin working with Interwest on July 1, 2017 to begin the transition process between the two firms.

**COUNCIL RESOLUTION # -17**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHOWCHILLA, CALIFORNIA  
APPROVING TWO AGREEMENTS WITH YAMABE & HORN ENGINEERING, INC. FOR ON CALL  
CITY ENGINEERING SERVICES AND AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE  
ALL RELATED DOCUMENTS THERETO**

**WHEREAS**, on April 6, 2017 the City released a Request for Qualifications (RFQ) seeking firms or individuals to provide on-call civil engineering services; and

**WHEREAS**, on May 18, 2017, the City received three Statements of Qualification in response to the RFQ, which submission were then reviewed and rated according to their project understanding and approach and qualifications; and

**WHEREAS**, the submission from Yamabe and Horn was found to be fully qualified and responsive to the City's request; and

**WHEREAS**, funding is currently available in the FY 2017 budget and the remainder will be appropriated in FY 2018 budget.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Chowchilla does hereby resolve, find and order as follows:

1. The above recitals are true and correct.
2. The Agreements between the City and Yamabe and Horn, copies of which are on file with the City Clerk and referred to for particulars, is approved as submitted.
3. The City Administrator is authorized to execute the agreements on behalf of the City.
4. This resolution is effective immediately upon adoption.

**PASSED AND ADOPTED** by the City Council of the City of Chowchilla this 20th day of July, 2017 by the following vote to wit:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

APPROVED:

\_\_\_\_\_  
Mary Gaumnitz, Mayor

ATTEST:

\_\_\_\_\_  
Joann McClendon, CMC  
City Clerk

**AGREEMENT FOR PROFESSIONAL GENERAL ENGINEERING  
SERVICES – CITY ENGINEER**

**THIS AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES (“AGREEMENT”)** is between the CITY OF CHOWCHILLA, a California municipal corporation (“CITY”), and YAMABE AND HORN ENGINEERING, INC., a California professional corporation (“CONSULTANT”). CITY and CONSULTANT each are a “Party” and collectively, the “Parties,” to this AGREEMENT. This Agreement shall become effective upon execution by all PARTIES.

**RECITALS**

**WHEREAS**, The CITY has determined that it requires the services of a qualified engineering firm to provide certain professional and general services related to design and construction administration services for various non-Federal/State funded public projects and provide a high level of customer service to the residents, businesses and others doing business with the City. Services provided by CONSULTANT shall be on an on-call basis as requested by the CITY in writing over the term of the AGREEMENT; and,

**WHEREAS**, CONSULTANT represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees. CONSULTANT further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions of this Agreement; and,

**WHEREAS**, CITY and CONSULTANT mutually desire to enter into an Agreement through which CONSULTANT shall provide such engineering services to the City.

**NOW THEREFORE**, in consideration of mutual covenants and conditions herein contained, CITY and CONSULTANT agree as follows:

**ARTICLE I. Scope of Work.** CITY retains CONSULTANT to provide all the services, equipment and materials necessary to complete the work described in the attached Exhibit “A.”

**ARTICLE II. Standard of Performance.** 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. CONSULTANT shall at all times faithfully, competently and to the best of its ability, experience, and talent perform all services described herein. In meeting its obligations under this AGREEMENT, CONSULTANT shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of CONSULTANT under this AGREEMENT.

**ARTICLE III. City Engineer.** CITY designates CONSULTANT’S employee Jerry Jones to serve under this AGREEMENT as City Engineer of the CITY OF CHOWCHILLA, as the designated City Engineer, Mr. Jones shall be responsible for personally providing or supervising

all of CONSULTANT'S work under this AGREEMENT and otherwise functioning as the City Engineer.

**ARTICLE IV. Term.** Subject to termination under Article X of this Agreement below, the initial term if this AGREEMENT shall be for the period beginning with the effective date of the AGREEMENT and ending on June 30, 2020. Thereafter, this AGREEMENT shall continue unchanged unless and until a new Agreement is reached between the Parties, or is terminated pursuant to the provisions of Article X, below.

**ARTICLE V. Ownership, Delivery, Release, and Reproduction of Information.**

- a. Upon completion of all work under this Agreement, ownership and title to all reports, documents, plans, specifications, and estimates produced as part of this Agreement will automatically be vested in CITY; and no further agreement will be necessary to transfer ownership to CITY. CONSULTANT shall furnish CITY all necessary copies of data needed to complete the review and approval process.
- b. CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with modification, or misuse by CITY of the machine-readable information and data provided by CONSULTANT under this Agreement; further, CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with any use by CITY of the project documentation on other projects for additions to this project, or for the completion of this project by others, except only such use as may be authorized in writing by CONSULTANT.
- c. CITY shall, upon request, provide CONSULTANT with access to all information and data in its possession which is required in connection with the CONSULTING services, including, but not limited to pertinent environmental reports and supporting technical documents.
- d. CITY shall, upon request, provide CONSULTANT with access to, and make all provisions necessary to enter upon, public or private lands as required for CONSULTANT to perform work under this AGREEMENT.
- e. CONSULTANT, its officers, employees, agents, or subcontractors, shall not, without prior written authorization from the City Administrator or unless requested by the CITY OF CHOWCHILLA Attorney, voluntarily provide declarations, letters of support, testimony at depositions, responses to interrogatories or other information concerning the work performed under this AGREEMENT. A response to a subpoena or court order shall not be considered "voluntary" if CONSULTANT gives CITY prior notice of such court order or subpoena.
- f. CONSULTANT shall promptly notify City Administrator or designee if CONSULTANT, its officers, employees, agents or subcontractors are served with any summons, complaint, subpoena, notice of depositions, 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. 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 proposed responses to discovery requests to be 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.

- g. 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.

**ARTICLE VI. Subcontractors.** CONSULTANT is authorized to subcontract any specialized work, provided that the City Administrator or designee has given its written approval of each subcontractor in advance of the engagement of the subcontractor. CONSULTANT shall be responsible for payment of subcontractor and shall require subcontractor to comply with this AGREEMENT.

**ARTICLE VII. Compensation.** CITY shall pay to CONSULTANT in arrears as compensation in full for all work required by this AGREEMENT a sum which shall be based on actual services performed and costs incurred at the rates set forth for each task in the CONSULTANT'S fee schedule appearing in Exhibit "B." The CONSULTANT'S Fee Schedule shown in Exhibit "B" shall remain in effect for the first year of this AGREEMENT and may be changed annually thereafter upon approval of the City Administrator or designee and provided that at least thirty (30) days advance notice in writing of the change is provided by CONSULTANT to the CITY. Progress payments will be made as set forth below based on compensable services provided and allowable costs incurred pursuant to this AGREEMENT. CONSULTANT shall submit to CITY monthly itemized invoices for the services rendered. If the work is satisfactorily completed, CITY shall pay such invoice within thirty (30) days of its receipt. If CITY disputes any portion of any invoice, then CITY shall pay the undisputed portion within the thirty (30) day period, and at the same time advise CONSULTANT in writing of the disputed portion.

**ARTICLE VIII. Indemnification.**

When the law establishes a professional standard of care for CONSULTANT'S Services, to the fullest extent permitted by law, CONSULTANT shall indemnify, protect, defend, and hold harmless CITY and any and all of its officials, employees and agents from and against any and all losses, liabilities, damages, costs, and expenses, including legal counsel's fees and costs but only to the extent the CONSULTANT (and its Subconsultants) are responsible for such damages, liabilities and costs on a comparative basis of fault between the CONSULTANT (and its Subconsultants) and the CITY in the performance of professional services under this agreement. CONSULTANT shall not be obligated to defend or indemnify CITY for the CITY'S own negligence or for the negligence of others.

**ARTICLE IX. Insurance.** CONSULTANT shall procure the following required insurance coverage at its sole cost and expense and shall maintain in full force and effect for the period covered by this AGREEMENT such insurance against claims for injuries to persons or damages to property which may arise from or in connection with negligent acts, errors or omissions in performance of work hereunder by the CONSULTANT, its agents, representatives, employees or subcontractors.

*Minimum Scope*

Coverage shall be at least as broad:

*Errors and Omissions Insurance.* Not less than \$1,000,000 per claim and \$1,000,000 in the aggregate during the performance of this AGREEMENT. The CONSULTANT agrees to purchase and maintain claims made, errors and omissions coverage providing coverage for a minimum of two years after completion of this AGREEMENT.

*General Liability Insurance.* Insurance Service Office from number GL0002 (Ed. 1/73) or its equivalent, covering Commercial Liability and Insurance Services Office from GL 0404 or its equivalent, covering Broad Form Commercial General Liability coverage (“occurrence” from CG 0001) not less than \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the project or the general aggregate limit shall be twice the occurrence limit.

*Automobile Liability Insurance.* Insurance Service Office form number CA0001 (Ed. 1/78), or its equivalent covering Automobile Liability, code 1 “any auto” and endorsement CA 0025, or its equivalent, not less than \$1,000,000 combined single limit per accident for bodily injury and property damage.

*Worker’s Compensation and Employer’s Liability Insurance.* Worker Compensation Insurance limits as required by Labor Code of the State of California; Employers’ Liability Insurance limits of \$1,000,000.

*Deductibles and Self-Insured Retentions*

Any deductibles or self-insured retentions must be declared to and approved in writing by the CITY. At the option of the CITY, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the CITY, its officers, officials, employees and volunteers; or the CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claim administrations and defense expenses.

*Other Insurance Provisions*

- a. *General liability and automobile liability coverages.*

1. The CITY, its officers and employees are to be covered as additional insured as respects to liability arising out of activities performed by or on behalf of the CONSULTANT, products and completed operations of the CONSULTANT; premises owned, occupied or used by the CONSULTANT or automobiles owned, leased, hired or borrowed by the CONSULTANT. The coverage shall contain no special limitation of the scope of protections afforded to the CITY, its officers, officials or employees.

2. The CONSULTANT'S insurance coverage shall be primary insurance as respects the CITY, its officers, officials and employees. Any insurance or self-insurance maintained by the CITY, its officer, officials or employees shall be excess of the CONSULTANT insurance and shall not contribute with it.

3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the CITY, its officers, officials or employees.

4. The CONSULTANT'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

b. *Worker's Compensation and Employer's Liability Coverage.* The insurer shall agree to waive all rights of subrogation against the CITY, its officers, officials and employees for losses arising from work performed by the CONSULTANT for the CITY.

c. *All coverages.* Coverage shall not be suspended, voided, canceled by either Party or reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the CITY.

*Acceptability of Insurers*

a. Insurance is to be placed with insurers with a Best's rating of no less than A: VII. However, the minimum Best's rating required of the professional liability insurer is A: V.

b. Any changes in insurance required herein must be approved in writing by the CITY Attorney's Office.

**ARTICLE X. Termination of AGREEMENT.** This AGREEMENT may be terminated by mutual agreement of the Parties, or it may be terminated by the CITY upon giving thirty (30) days advance written notice of intent to terminate the contract. In the event of such termination, CONSULTANT shall be paid for work completed to the date of termination, and any such work completed shall become property of the CITY and the amount of final fee due and payable by CITY to CONSULTANT will be subject to negotiation and shall be based primarily on the estimated percentage of work completed.

**ARTICLE XI. Compliance with Federal, State and Local Laws.** CONSULTANT shall be responsible for and shall comply with all applicable laws, rules and regulation that are now in effect or may be promulgated or amended from time to time by the Government of the United States, the State of California, the County of Madera, the CITY and any other agency now authorized or which may be authorized in the future to regulate the services to be performed pursuant to this AGREEMENT. CONSULTANT represents that it currently has, and will maintain in effect all proper licensing and permits necessary to providing the described services, including, but not limited to, Mr. Jones' licensure as a California registered professional civil engineer. Where the services provided pursuant to the AGREEMENT are funded by a federal program, CONSULTANT'S performance will be subject to:

- a. Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity" as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or sub grantees).
- b. Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor Regulations (29 CFR part 3). (All contracts and sub grants or construction or repair).
- c. Compliance with Davis-Bacon Act (40 U.S.C. 276a to 276a – 7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 awarded by grantees and sub grantees required by Federal grant program legislations).
- d. Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 – 330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 and in excess of \$2500 for other contracts which involve the employment of mechanics of laborers).
- e. Compliance with the provisions of any notice of awarding agency requirements and regulations pertaining to reporting.
- f. Compliance with the provisions of any notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.
- g. Compliance with any awarding agency requirements and regulations pertaining to copyrights and rights in data.
- h. Compliance with access requirements imposed by the grantee, the sub grantee, the Federal grantor agency, the Controller General of the United Sates, or any of their duly authorized representatives to any books, documents, papers and records of the contractor

with are directly pertinent to that specific contact for the purpose of making audit, examination, excerpts and transcriptions.

i. Compliance with applicable requirements for the retention of all required records for three years after grantees or sub grantees make final payments and all other pending matters are closed.

j. Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857 (h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts and sub grants of amounts in excess of \$100,000).

k. Compliance with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L 94 – 163, 89 Stat. 871). [53 FR 8068, 8067, Mar 11, 1988 as amended at 60 FR 19639, 19642, Apr. 19, 1995]

**ARTICLE XII. CITY OF CHOWCHILLA Business License.** CONSULTANT and each of its subcontractors will obtain and maintain a valid business license from the CITY OF CHOWCHILLA during the term of this AGREEMENT.

**ARTICLE XIII. Attorney's Fees.** If either Party institutes an action or proceeding for a declaration of rights of the Parties under this AGREEMENT, for injunctive relief, or for an alleged breach or default of, or any other action arising out of, this AGREEMENT, or the transactions contemplated hereby, or if either Party is in default of its obligations hereunder, whether or not suit is filed or prosecuted to final judgement, the non-defaulting or prevailing party shall be entitled to reasonable attorney fees and to any court costs insured, in addition to any other damages or relief awarded.

**ARTICLE XIV. Law to Govern; Venue.** The law of the State of California shall govern this AGREEMENT. In the event of litigation between the Parties, venue in state trial courts shall lie exclusively in the County of Madera.

**ARTICLE XV. Amendment or Modification.** This AGREEMENT may be amended or modified only by written AGREEMENT for the Parties hereto.

**ARTICLE XVI. Savings Clause and Entirety.** If any material provision of this AGREEMENT shall for any reason to be held invalid or unenforceable, the invalidity or unenforceability shall not affect any of the remaining provisions of this AGREEMENT.

**ARTICLE XVI. Records of CONSULTANT.** Records of CONSULTANT'S direct personnel and reimbursable expenses pertaining to services under this AGREEMENT shall be kept on a generally recognized accounting basis, and shall be available for inspection by CITY or its designees at reasonable times. CONSULTANT shall keep and retain all records, including but not limited to: books, documents, papers, reports, calculations, drawings and specifications, papers,

CAD or other design files, accounting records, and other evidence pertaining to the performance of the Agreement, and also including but not limited to, the costs of administering the Agreement or documenting work or services performed under this agreement, for at least four (4) years following termination of the Agreement and shall produce all such materials to the CITY upon request, either during the term of the Agreement or following termination.

**ARTICLE XVII. Assignment.** CONSULTANT shall not assign this AGREEMENT, nor any part thereof, nor any monies due hereunder, without the prior written consent of CITY.

**ARTICLE XVIII. No Third – Party Beneficiary Rights.** The Parties agree that no provision of this AGREEMENT shall in any way inure to the benefit of any third-person or entity, including applicants for CITY developments permits, so as to constitute any such person or entity as a third-person beneficiary of this AGREEMENT or of any of its terms or otherwise give rise to any cause of action in any person or entity not a part of this AGREEMENT.

**ARTICLE XIX. Waiver.** Waiver by either Party of any term of this AGREEMENT shall not constitute a waiver of any other term. Waiver of any breach of this AGREEMENT shall not constitute a waiver of any other or subsequent breach. Acceptance by CITY of any work or services by CONSULTANT shall not constitute a waiver of any provisions of this AGREEMENT.

**ARTICLE XX. Non-discrimination, Equal Employment Opportunity and Government Ethics.** CONSULTANT will not discriminate against any employee or applicant for employment on the basis of actual or perceived race, color, national origin, ancestry, sex (including pregnancy, childbirth, related medical conditions, and breastfeeding), gender, gender identity, gender expression, sexual orientation, age, religion (including religious dress and grooming practices), physical or mental disability, medical condition, pregnancy, marital status, citizenship status, military or veteran status, genetic information, or any other basis protected by applicable federal, state, or local law. Such non-discrimination provision shall apply to, but is not limited to, the following: Employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay other forms of compensation, and selection for training, including apprenticeship.

The CITY is an equal opportunity employer and requires that all CONSULTANTS comply with policies and regulations concerning equal employment opportunity. The designated City Engineer and other personnel working on CITY projects will be required to comply with CITY policies and practices.

Prior to the commencement of work, the designated City Engineer must show evidence of having completed the two-hour AB 1234 Ethics in Public Service training as well as the AB 1825 two-hour supervisory Prevention of Sexual Harassment training. The designated City Engineer will be required to complete subsequent ethics and sexual harassment training, every two years, in the same manner as CITY'S Department heads are required to complete such training.

**ARTICLE XXI. Notices.** The CITY department responsible for administering this AGREEMENT is the Public Works Department and all written communications thereunder with the CITY shall be addressed to the Director of Public Works. All notices, statements, reports,

approvals, or requests or other communications, that are required either expressly, or by implication, to be given by either Party to the other under this AGREEMENT shall be in writing and signed for each Party by such officers as each may, from time to time, authorize in writing to so act. All such be deemed to have been received on the date of delivery if delivered personally or three (3) days after mailing if enclosed in a properly addressed and stamped envelope and deposited in the U.S. Post Office for delivery. Unless, and until formally notified otherwise, all notices shall be addressed to the Parties at their address shown below:

CITY

CONSULTANT

CITY OF CHOWCHILLA  
130 S. SECOND STREET  
CHOWCHILLA, CA. 93610

YAMABE & HORN ENGINEERING, INC.  
2985 NORTH BURL AVENUE, #101  
FRESNO, CA. 93727

**ARTICLE XXII. Agent of CITY.** In performing the services required under this AGREEMENT, CONSULTANT is acting as an agent, but not an employee of CITY, subject to the general supervision and control of its governing body and City Administrator or designee. As such, CONSULTANT shall be entitled to the same immunities and protections as any other CITY employee exercising discretion under all applicable statutes, regulations, and judicial and administrative precedent, subject to CITY'S rights of action against CONSULTANT for any professional errors or omissions of CONSULTANT. CONSULTANT shall have no right to any of the employment rights and benefits available to CITY employees. CONSULTANT shall be solely liable and responsible for providing to or on behalf of its employees all legally-required employee benefits. In addition, CONSULTANT shall be solely responsible and save CITY harmless from all matters relating to payment of the CONSULTANT'S employees, including compliance with Social Security, withholding, and all other regulations governing such matters. It is acknowledged that during the term of this Agreement CONSULTANT may be providing services to others unrelated to CITY or to this AGREEMENT.

**ARTICLE XXIII. Continuity of Personnel.** CONSULTANT shall make every reasonable effort to maintain the stability and continuity of CONSULTANT'S staff assigned to perform the services required under this AGREEMENT. CONSULTANT shall notify CITY of any changes in CONSULTANT'S staff assigned to perform the services required under this AGREEMENT, prior to any such changes.

**ARTICLE XXIV. Conflicts of Interest.** CONSULTANT covenants that neither the designated City Engineer nor any officer or principal of CONSULTANT has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of the CITY or which in any way would hinder CONSULTANT'S performance of services under this AGREEMENT. CONSULTANT further covenants that in the performance of this AGREEMENT, no person having such interest shall be employed by it as an officer, employee, agent, or subcontractor without the express written consent of the City Administrator. At all times, CONSULTANT shall avoid conflict of interest, or the appearance of any conflicts of interest, with the interest of CITY in the performance of this AGREEMENT. The designated City Engineer is a "designated

employee” under CITY’S Conflict-of-Interest Code and so shall file all required statements of economic interest.

**ARTICLE XXV. New and Entire AGREEMENT.** Upon the effective date of this AGREEMENT, all other AGREEMENTS between the Parties for the provisions of the services described herein are superseded. This AGREEMENT represents the full and entire AGREEMENT between the Parties hereto with respect to the matters covered herein.

\*\*\*\*\*

CITY OF CHOWCHILLA

YAMABE AND HORN ENGINEERING,  
INC.

By \_\_\_\_\_  
Charles Brian Haddix  
City Administrator

By \_\_\_\_\_  
Joshua Rogers, P.E.  
Vice President

Approved as to form:

\_\_\_\_\_  
David Ritchie, City Attorney

## EXHIBIT “A”

### SCOPE OF WORK

#### *General and Project Management.*

- Serves as the City’s Engineer
- Manages all aspects of civil engineering, plan checking, development conditions and capital project management for the CITY.
- Review all matters pertaining to engineering to ensure that undertakings proposed and implemented by the CITY and others are done in a manner that protects the CITY’S interest and are in keeping with CITY goals, specifications and practices as well as with local, state and federal laws.
- Assist in planning, coordinating, supervising and evaluating programs, plans, services, equipment and infrastructure.
- Develops and recommends policies and procedures for effective operation of the CITY consistent with CITY policies and relevant laws, rules and regulations and ensures Councils actions are implemented.
- Evaluates the CITY’S needs and formulates short and long-range plans to meet needs in all areas of Public Works improvements, including streets, water, and sewer, storm drainage, street lights, parks and facilities.
- Provides engineering services on projects and oversees project management for the construction of municipal Public Works projects.
- Reviews land use applications and construction plans for private developments for consistency with CITY adopted engineering specifications, CITY policies and relevant laws, rules and regulations and ensures council actions are implemented.
- Ensures that costs and fees are charged back to development projects, works with the Public Works Director to monitor charges and revenues associated with development projects.
- Makes presentations to the public, City Council and commissions.
- Be available to the public and private developers to handle matters dealing with the engineering functions of CITY government.
- Maintain, at City Hall, municipal engineering records and maps required to ensure accurate information is available to the CITY and public.
- Prepare reports, investigations, studies and evaluations as, from time to time, may be required and directed by the City Administrator or his/her designee.
- Perform other engineering related functions as directed by the City Administrator or his/her designee
- Advise the CITY as to engineering and construction financing available from other government agencies, and when so directed, prepare and initiate applications for funding
- Serve as Resident Engineer when required pursuant to Caltrans requirements.
- Assist clerical staff in management of records relating to engineering. Serve as liaison to the Public Works Director for engineering related matters. Provide public information regarding municipal engineering matters.

- Prepare capital improvement projects, improvement plans, specifications, bid documents and public improvement project management.
- Solicit proposals for capital improvement project design work.
- Review and evaluation of bid submittals.
- Provide construction observation and management during the course of CITY projects. Act as Resident Engineer. Assist with inspection, approval of payments, cost estimating, filing of notices and other related tasks.
- Coordinates activities with other departments and outside agencies to obtain various approvals and agreements such as environmental clearances, permits, land acquisitions and rights-of-way for assigned engineering projects.
- Under general direction, plans, organize and administers real property program for the acquisition and disposition of CITY owned property as it relates to engineering projects.
- Negotiates land acquisitions, disposition, easements, agreements, leases and other assorted property rights as it relates to engineering projects.
- Coordinates appraisal of residential, commercial, industrial and agriculture properties for acquisition, disposition, lease etc., as it relates to engineering projects.

*Development Review Function*

- Review proposed improvements and land developments and provide recommendations as to engineering matters to ensure conformance with CITY ordinances and State Law.
- Perform statutory functions of the City Engineer pertaining to the review and checking of lot line adjustments, parcel and tracts maps, including tentative, final and vesting maps. Ensure map conformance with State Subdivision Map Act and CITY ordinances.
- Provide a “turn around” checking time for maps and improvement plans generally not to exceed two weeks (larger, complex development projects may necessitate increased plan check time to be mutually agreed upon by Parties) for the first plan check after the application has been determined complete. The Engineer shall be responsible for notifying the applicant in writing of any final plan or final map deficiencies within (30) days, specifying those items needed to complete the application.
- Establish performance, labor and material bond amounts when required and ensure the posting of such bonds with the proper time sequence of such development control.
- Provide necessary and related functions as are the normal practice of the City Engineer in control of private development.

EXHIBIT "B"



**Yamabe & Horn Engineering, Inc.**

*CIVIL ENGINEERS • LAND SURVEYORS*

**CITY OF CHOWCHILLA FEE SCHEDULE**

**To June 30, 2018**

PRINCIPAL ENGINEER.....	\$ 165.00 per hour
DESIGNATED CITY ENGINEER.....	\$ 135.00 per hour
CIVIL ENGINEER III.....	\$ 135.00 per hour
CIVIL ENGINEER II.....	\$ 120.00 per hour
CIVIL ENGINEER I.....	\$ 115.00 per hour
ASSISTANT ENGINEER II.....	\$ 105.00 per hour
ASSISTANT ENGINEER I.....	\$ 95.00 per hour
LAND SURVEYOR II.....	\$ 125.00 per hour
LAND SURVEYOR I.....	\$ 110.00 per hour
ASSISTANT SURVEYOR.....	\$ 100.00 per hour
CONSTRUCTION MANAGER II.....	\$ 120.00 per hour
CONSTRUCTION MANAGER I.....	\$ 100.00 per hour
INSPECTOR.....	\$ 120.00 per hour
CAD DRAFTER II.....	\$ 80.00 per hour
CAD DRAFTER I.....	\$ 75.00 per hour
CLERICAL.....	\$ 55.00 per hour
2-PERSON SURVEY CREW.....	\$ 215.00 per hour
1-PERSON SURVEY CREW.....	\$ 135.00 per hour
TRAVEL.....	\$ 0.55 per mile
PRINTING & SUB-CONSULTANTS.....	\$ Cost plus 10%

**AGREEMENT FOR  
PROFESSIONAL ENGINEERING SERVICES FOR  
FEDERAL AND STATE FUNDED PROJECTS**

**ARTICLE I – INTRODUCTION**

This Agreement (“Agreement”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017 between the City of CHOWCHILLA (“CITY”) and Yamabe and Horn Engineering, Inc., a California corporation (“CONSULTANT”).

**RECITALS**

**WHEREAS**, The CITY has determined that it requires professional engineering services related to City projects to be performed and funded in whole or part with Federal and/or State funds; and,

**WHEREAS**, CONSULTANT represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees. CONSULTANT further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions of this Agreement; and,

**WHEREAS**, CITY and CONSULTANT mutually desire to enter into an Agreement through which CONSULTANT shall provide such engineering services to the City;

**NOW THEREFORE**, in consideration of mutual covenants and conditions herein contained, CITY and CONSULTANT agree as follows:

## **ARTICLE II – STATEMENT OF WORK**

### **1. CONSULTANT’S SERVICES**

A. Scope of Services. Subject to the terms and conditions set forth in this Agreement, CONSULTANT shall perform the services identified in the Scope of Services, which shall consist of services for State and Federal funded projects as included in the Request for Qualifications. The Request for Qualifications is incorporated herein by reference and attached hereto as Exhibit “A”. CITY shall have the right to request, in writing, changes in the scope of work or the services to be performed. Any changes mutually agreed upon by the parties, and any increase or decrease in compensation, shall be incorporated by written amendments to this Agreement.

B. Time for Performance. This Agreement shall go into effect on July 1, 2017, contingent upon approval by CITY, and CONSULTANT shall commence work after notification to proceed by CITY’S Contract Administrator. This Agreement shall end on June 30, 2020, unless extended by mutual agreement of the Parties.

C. Standard of Performance. CONSULTANT shall perform all work to the highest professional standards and in a manner reasonably satisfactory to CITY. CONSULTANT shall comply with all applicable federal, state, and local laws, ordinances, codes and regulations.

D. Fee Schedule. CONSULTANT shall be compensated by the CITY for performance of services under this Agreement as set forth in the Approved Fee Schedule, attached hereto as Exhibit “B” and incorporated herein by this reference.

### **2. REPRESENTATIVES**

A. City Representative / Contract Administrator. For the purpose of this Agreement, the Contract Administrator and CITY’S representative shall be the Public Works Director, (hereinafter the “City Representative”). It shall be CONSULTANT’S responsibility to assure that the City Representative is kept informed of the progress of the performance of the services, and CONSULTANT shall refer any decisions which must be made CITY to the City Representative. Unless otherwise specified therein, any approval of CITY required hereunder shall mean the approval of the City Representative.

B. Consultant Representative. For the purposes of this Agreement, Joshua Rogers is hereby designated as the principal and representative of CONSULTANT authorized to act on its behalf with respect to the services specified herein and make all decisions in connection therewith (the “Responsible Principal”). The Responsible Principal may not be changed by CONSULTANT without the prior written approval of CITY.

### **3. CONSULTANT’S PERSONNEL**

A. CONSULTANT represents that it has, or will secure at its own expense, all personnel required to perform the services required under this Agreement. All such services will be performed by CONSULTANT or under its supervision, and all personnel engaged in the work

shall possess the qualifications, permits and licenses required by applicable law to perform such services.

B. CONSULTANT shall be solely responsible for the satisfactory work performance of all personnel engaged in performing services required by this Agreement, and compliance with all reasonable performance standards established by CITY.

C. CONSULTANT may utilize the services of sub-consultants to undertake specific work tasks subject to the requirements contained in Article X – Subcontracting, of this Agreement. Fees for services provided by sub-consultants shall be compensated as set forth in Exhibit B.

D. In the event that CITY, in its sole discretion, at any time during the term of this Agreement, desires the removal of any person or persons assigned by CONSULTANT to perform services pursuant to this Agreement, CONSULTANT shall remove any such person immediately upon receiving notice from CITY of the desire of CITY for the removal of such person or persons.

E. CONSULTANT shall be responsible for payment of all employees' and sub-consultants' wages and benefits and shall comply with all requirements pertaining to employer's liability, workers' compensation, unemployment insurance, and Social Security.

F. Permits and Licenses. CONSULTANT shall obtain and maintain during the Agreement term all necessary licenses, permits and certificates required by law for the provisions of services under this Agreement, including a City of Chowchilla business license.

### **ARTICLE III – CONSULTANT'S REPORTS OR MEETINGS**

A. CONSULTANT shall submit progress reports at least once a month. The report should be sufficiently detailed for the Contract Administrator to determine, if CONSULTANT is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.

### **ARTICLE IV – TERM OF AGREEMENT**

A. This Agreement shall go into effect upon execution of this AGREEMENT by all PARTIES, contingent upon approval by CITY, and CONSULTANT shall commence work after notification to proceed by CITY'S Contract Administrator. The Agreement shall end on June 30, 2020, unless extended by mutual agreement of the parties in a writing entered into pursuant to Article XIX, below.

### **ARTICLE V – ALLOWABLE COSTS AND PAYMENTS**

A. CONSULTANT will be reimbursed for hours worked at the hourly rate specified in CONSULTANT'S Cost Proposal (Exhibit B). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. Rates will be adjusted to account for cost of living adjustments for the performance period set forth in this Agreement based upon the attached Cost Proposal.

B. In addition, CONSULTANT will be reimbursed for incurred (actual) direct costs other than salary costs that are identified in the cost proposal and in the executed Task Order.

C. Specific projects will be assigned to CONSULTANT through issuance of Task Orders. After a project to be performed under this Agreement is identified by the CITY, the CITY will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a CITY Project Coordinator. The CONSULTANT shall review and return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both the CITY and CONSULTANT.

D. Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in CONSULTANT'S Cost Proposal.

E. Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal.

F. When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.

G. CONSULTANT shall invoice the CITY on a monthly basis for progress payments for each Task Order based on services performed and actual costs incurred.

H. CONSULTANT shall not commence performance of work or services on this Agreement or any Task Order until approved by the CITY, and notification to proceed has been issued by the CITY'S Contract Administrator. No payment will be made prior to approval or for any work performed prior to approval.

I. CONSULTANT will be reimbursed, as promptly as fiscal procedures will permit upon receipt by CITY'S Contract Administrator of itemized invoice in triplicate. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than **45 calendar days** after the performance of work for which CONSULTANT is billing, or upon completion of Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number, project title and Task Order number. Credits due CITY that include any equipment purchased under the provisions of Article XI - Equipment Purchase, of this Agreement, must be reimbursed by CONSULTANT prior to the expiration of termination of this Agreement. Invoices shall be mailed to CITY'S Contact Administrator at the following address.

**City of Chowchilla**  
**Jason Rogers, Public Works Director**  
**130 S. Second Street, Chowchilla, Ca. 93610**

J. The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement.

K. Individual Task Orders shall contain provisions requiring that any amendments to that Task Order must be contained in a writing signed by all PARTIES. Notwithstanding the above, a Task Order, or amendment to a Task Order that alters the terms and conditions of this AGREEMENT must comply with the provisions contained in Article XIX, below. Any such amendment must be titled as a numbered amendment to this master Agreement for services.

L. If the CONSULTANT fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.

**ARTICLE VI – TERMINATION**

A. CITY reserves to right to terminate this Agreement upon thirty (30) calendar days written notice to CONSULTANT with reasons stated in writing.

B. CITY may terminate this Agreement with CONSULTANT should CONSULTANT fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, CITY may proceed with the work in any manner deemed proper by CITY. If CITY terminates this Agreement with CONSULTANT, CITY shall pay CONSULTANT the sum due to CONSULTANT under this Agreement prior to termination, unless the cost of completion to CITY exceeds the funds remaining in the Agreement. In which case the overage shall be deducted from any sum due CONSULTANT under this Agreement and the balance, if any, shall be paid to CONSULTANT upon demand.

**ARTICLE VII – COST PRINCIPLES AND ADMINISTRATIVE EQUIPMENT**

A. CONSULTANT agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisitions Regulations System, Chapter 1 Part 31,000 et sq., shall be used to determine the cost allowability of individual items.

B. CONSULTANT also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

C. Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 49 CFR, Part 18 and 48 CFR, Federal

Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by CONSULTANT to CITY.

#### **ARTICLE VIII – RETENTION OF RECORDS/AUDIT**

For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 250 et seq., when applicable and other matters connected with the performance of the Agreement pursuant to Government Code 8546.7; CONSULTANT, sub-consultants, and CITY shall maintain and make available for inspection all records, including but not limited to: books, documents, papers, calculations, drawings and specifications, papers, CAD or other design files, accounting records, and other evidence pertaining to the performance of the Agreement, and also including but not limited to, the costs of administering the Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three years from the date of final payment under the Agreement. The state, State Auditor, CITY, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of CONSULTANT and its certified public accountants (CPA) work papers that are pertinent to the Agreement and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

#### **ARTICLE IX – AUDIT REVIEW PROCEDURES**

A. Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by agreement between the Parties, shall be reviewed by CITY'S Chief Financial Officer.

B. Not later than 30 days after issuance of the final audit report, CONSULTANT may submit a written request for review.

C. Neither the pendency of a dispute nor its consideration by CITY will excuse CONSULTANT from full and timely performance, in accordance with the terms of this Agreement.

D. CONSULTANT and sub-consultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the Agreement, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA JCR audit work paper review it is CONSULTANT'S responsibility to ensure federal, state, or local government officials are allowed full access to the CPA'S work papers including making copies as necessary. The Agreement, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by Local Agency contract manager to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the Agreement by this reference if directed by LOCAL AGENCY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the Federal, State, or Local governments have access to CPA works papers, will

be considered a breach of the Agreement terms and good cause for termination of the Agreement and disallowance of prior reimbursed costs.

## **ARTICLE X – SUBCONTRACTING**

A. Nothing contained in this Agreement or otherwise, shall create any contractual relation between CITY and any sub-consultant(s), and no subcontract shall relieve CONSULTANT of its responsibilities and obligations hereunder. CONSULTANT agrees to be as fully responsible to CITY for the acts and omissions of its sub-consultant(s) and of persons either directly or indirectly employed by CONSULTANT. CONSULTANT'S obligation to pay its sub-consultant(s) in an independent obligation from CITY'S obligation to make payments to the CONSULTANT.

B. CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this Agreement shall be subcontracted without written authorization by CITY'S Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.

C. CONSULTANT shall pay its sub-consultants within ten (10) calendar days from receipt of each payment made to CONSULTANT by CITY.

D. All subcontractors retained by CONSULTANT, and approved by CITY, to perform any of the services provided under this Agreement shall be contractually bound to comply with all provisions of this AGREEMENT by CONSULTANT.

## **ARTICLE XI – EQUIPMENT PURCHASE**

A. Prior written authorization, by CITY'S Contract Administrator, shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or CONSULTANT services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.

B. For purchase of any item, service or consulting work not covered in CONSULTING'S Cost Proposal and exceeding \$5,000 prior authorization by CITY'S Contract Administrator; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.

C. Any equipment purchased as a result of this Agreement is subject to the following: "CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, CITY shall receive a proper refund or credit at the conclusion of the Agreement, or if the Agreement is terminated, CONSULTANT may either keep the equipment and credit CITY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established CITY procedures; and credit CITY in the amount of equal to the sales price. If CONSULTANT elects to keep the equipment, fair market value shall be determined at

CONSULTANT'S expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreed to by CITY and CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by CITY." 49 CFR, Part 18 requires a credit to Federal Funds when participating equipment with a fair market value greater than \$5,000 is credited to the project.

## **ARTICLE XII – STATE PREVAILING WAGE RATES**

A. CONSULTANT shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State and Local laws and ordinances applicable to the work.

B. Any subcontract entered into as a result of this Agreement, if for more than \$25,000 for Public Works construction or more than \$15,000 for the alteration, demolition, repair of maintenance of Public Works, shall contain all of the provisions of this Article, unless the awarding agency has an applicable labor compliance program approved by the Director of Industrial Relations.

C. When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

## **ARTICLE XIII – CONFLICT OF INTEREST**

A. CONSULTANT shall disclose any financial, business, or other relationship with CITY that may have an impact upon the outcomes of this Agreement, or any ensuing CITY construction project. CONSULTANT shall also list current clients who may have a financial interest in the outcome of this Agreement, or any ensuing CITY construction project, which will follow.

B. CONSULTANT hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this Agreement.

C. CONSULTANT hereby certifies that neither CONSULTANT, nor any firm affiliated with CONSULTANT will bid on any construction contract, or any contract to provide construction inspection for any construction project resulting from this Agreement. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.

D. Except for sub-consultants whose services are limited to providing surveying or materials testing information, no sub-consultant who has provided design services in connection with this Agreement shall be eligible to bid on any construction contract, or any contract to provide construction inspection for any construction project resulting from this Agreement.

**ARTICLE XIV – REBATES, KICKBACKS, OR OTHER UNLAWFUL CONSIDERATION**

CONSULTANT warrants that this Agreement was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any CITY employee. For breach of violation of this warranty, CITY shall have the right in its discretion; to terminate the Agreement without liability; to pay only for the value of the work actually performed; or to deduct from the Agreement price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

**ARTICLE XV – PROHIBITION OF EXPENDING LOCAL AGENCY STATE OR FEDERAL FUNDS FOR LOBBYING**

A. CONSULTANT certifies to the best of his/her knowledge and belief that:

1. No Federal, State or Local Agency appropriated funds have been paid, or will be paid by, or on behalf of, CONSULTANT to any person for influencing or attempting to influence an officer or employee of any Federal or State Agency; a Member of the State Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; CONSULTANT shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

C. CONSULTANT also agrees by signing this document that he/she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.

## **ARTICLE XVI – STATEMENT OF COMPLIANCE**

A. CONSULTANT’S signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that CONSULTANT has unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

B. During the performance of this Agreement, CONSULTANT and its sub-consultants shall unlawfully discriminate, harass, or allow harassment against any employee or application for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g. cancer), age (over 40), marital status, and denial of family care leave. CONSULTANT and sub-consultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from discrimination and harassment. CONSULTANT and sub-consultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f)), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. CONSULTANT and its sub-consultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

C. The CONSULTANT, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the CONSULTANT shall not discriminate on the basis of race, color, national origin, religion, sex, age or disability in the selection and retention of sub-consultants, including procurement of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the US DOT Regulations, including employment practices when the Agreement covers a program whose goal is employment.

## **ARTICLE XVII – DEBARMENT AND SUSPENSION CERTIFICATION**

A. CONSULTANT’S signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that CONSULTANT has complied with Title 2 CFR, Part 180, “OMB Guidelines to Agencies on Government wide Debarment and Suspension (non-procurement),” which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency, has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgement rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to CITY.

B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining CONSULTANT responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

C. Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal Highway Administration.

### **ARTICLE XVIII – FUNDING REQUIREMENTS**

A. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of funds or appropriations of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the Agreement were executed after that determination was made.

B. This Agreement is valid and enforceable only, if sufficient funds are made available to the CITY for the purpose this Agreement. In addition, this Agreement is subject to any additional restrictions, limitations, conditions or any statute enacted by the Congress State Legislature, or CITY’S governing board that may affect the provisions, terms, or funding of this Agreement in any manner.

C. It is mutually agreed that if sufficient funds are not appropriated, this Agreement may be amended to reflect any reduction in funds.

D. CITY has the option to void the Agreement under the 30-day termination clause pursuant to Article VI, or by mutual agreement to amend the Agreement to reflect any reduction of funds.

### **ARTICLE XIX – CHANGE IN TERMS**

A. This Agreement may be amended or modified only by mutual written agreement of the parties, signed by all parties.

B. CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by CITY’S Contract Administrator.

C. There shall be no change in CONSULTANT’S Project Manager or members of the project team, as listed in the approved Cost Proposal, which is a part of this Agreement without prior written approval by CITY’S Contract Administrator.

### **ARTICLE XX – DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION**

A. This Agreement is subject to 49 CFR, Part 26 entitled “Participation by Disadvantaged Business Enterprise in Department of Transportation Financial Assistance Programs.” Consultants who obtain DBE participation on this Agreement will assist Caltrans in meeting its federally mandated statewide overall DBE goal.

B. If a DBE sub-consultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE sub-consultant, of the goal is not otherwise met.

C. DBE'S and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with Federal funds. CONSULTANT or sub-consultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. CONSULTANT shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by CONSULTANT to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as CITY deems appropriate.

D. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

E. A DBE firm may be terminated only with prior written approval from CITY and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting CITY consent for the termination, CONSULTANT must meet the procedural requirements specified in 49 CFR 26.53(f).

F. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBW is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, and other relevant factors.

G. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.

H. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, of the DBE subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.

I. CONSULTANT shall maintain records of materials purchased or supplied from all subcontracts entered into the certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

J. Upon completion of the Agreement, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Sub-consultant" CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by CONSULTANT or CONSULTANT'S authorized representative and shall be furnished

to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to CONSULTANT when satisfactory “Final Report-Utilization of Disadvantage Business Enterprise (DBE), First-Tier Sub-Consultants” is submitted to the Contract Administrator.

K. If a DBE sub-consultant is decertified during the life of the Agreement, then decertified sub-consultant shall notify CONSULTANT in writing with the date of decertification. If a sub-consultant becomes a certified DBE during the life of the Agreement, the sub-consultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to CITY’S Contract Administrator within 30 days.

#### **ARTICLE XXI – CONTINGENT FEE**

CONSULTANT warrants, by execution of this Agreement that no person or selling agency has been employed, or retained, to solicit or secure this contract upon an agreement or understanding, for a commission, percentage, brokerage or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by CONSULTANT for the purpose of securing business. For breach or violation of this warranty, CITY has the right to annul this Agreement without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission percentage, brokerage, or contingent fee.

#### **ARTICLE XXII – DISPUTES**

A. Any dispute, other than audit, concerning a question of fact rising under this Agreement that is not disposed of by agreement shall be decided by a committee consisting of CITY’S Contract Administrator and (City Administrator), who may consider written or verbal information submitted by CONSULTANT.

B. No later than 30 days after completion of all work under the Agreement, CONSULTANT may request review by CITY’S Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

C. Neither the pendency of a dispute, nor its consideration by the committee will excuse CONSULTANT from full and timely performance in accordance with the terms of this Agreement.

#### **ARTICLE XXIII – INSPECTION OF WORK**

CONSULTANT and any sub-consultant shall permit CITY, the State, and the FHWA if federal participating funds are used in this Agreement; to review and inspect the project activities and files at all reasonable times during the performance period of this Agreement including review and inspection on a daily basis.

## **ARTICLE XXIV – SAFETY**

A. CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. CONSULTANT shall comply with safety instructions issued by CITY Safety Officer and other CITY representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while working on the construction project site.

B. Pursuant to the authority contained in Section 591 of the Vehicle Code, CITY has determined that such areas within the limits of the project are open to public traffic, CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14 and 15 of the Vehicle Code. CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

C. Any subcontract entered into as a result of this Agreement, shall contain all of the provisions of this Article.

D. CONSULTANT must have a Division of Occupational Safety and Health (CAL-OSHA) permit(s), as outlined in California Labor Code Sections 6500 and 6705, prior to the initiation of any practices, work, method, operation, or process related to the construction or excavation of trenches which are five feet or deeper.

## **ARTICLE XXV – INSURANCE**

A. CONSULTANT shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

B. Commercial General Liability Insurance with minimum limits of One Million Dollars (\$1,000,000) for each occurrence and in the aggregate for any personal injury, death, loss or damage.

C. Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with minimum limits of One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.

D. Workers Compensation insurance as required by the State of California.

E. Professional Liability Insurance with a minimum of Two Million Dollars (\$2,000,000) per claim.

F. CONSULTANT shall require each of its sub-consultants or sub-contractors to maintain insurance coverage that meets all of the requirements of this Agreement.

G. The policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A: VII in the latest edition of Best's Insurance Guide.

H. CONSULTANT agrees that if it does not keep the insurance required in this Agreement in full force and effect, CITY may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, CITY may take out the necessary insurance and pay, at CONSULTANT'S expense, the premium thereon.

I. Prior to commencement of work under this Agreement, CONSULTANT shall file with CITY'S Risk Manager a certificate or certificates of insurance showing that the insurance policies are in effect and satisfy the required amounts and specifications required pursuant to this Agreement.

J. CONSULTANT shall provide proof that policies of insurance expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverage.

K. The general liability and automobile policies of insurance shall contain an endorsement naming CITY, its elected officials, officers, agents, employees, attorneys, servants, volunteers, successors and assigns as additional insureds. All of the policies shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty (30) days' prior written notice to CITY. CONSULTANT agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.

L. The insurance provided by CONSULTANT shall be primary to any other coverage available to CITY. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or volunteers, shall be excess of CONSULTANT'S insurance and shall not contribute with it.

M. All insurance coverage provided pursuant to this Agreement shall not prohibit CONSULTANT and CONSULTANT'S employees, agents, subcontractors or volunteers from waiving the right of subrogation prior to a loss. CONSULTANT hereby waives all right to subrogation against CITY.

N. Any deductibles or self-insured retentions must be approved by CITY. At the option of CITY, CONSULTANT shall either reduce or eliminate the deductibles or self-insured retentions with respect to CITY, or CONSULTANT shall procure a bond guaranteeing payment of losses and expenses.

O. If CONSULTANT is a Limited Liability Company, general liability coverage must be amended so that the Limited Liability Company and its managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.

P. Procurement of insurance by CONSULTANT shall not be construed as a limitation of CONSULTANT'S liability or as full performance of CONSULTANT'S duties to indemnify, hold harmless and defend under Article XXXIII of this Agreement.

## **ARTICLE XXVI – OWNERSHIP OF DATA**

A. Upon completion of all work under this Agreement, ownership and title to all reports, documents, plans, specifications, and estimates produced as part of this Agreement will automatically be vested in CITY; and no further agreement will be necessary to transfer ownership to CITY. CONSULTANT shall furnish CITY all necessary copies of data needed to complete the review and approval process.

B. It is understood and agreed that all calculations, drawings and specifications, whether in hard copy or machine-readable form, are intended for one-time use in the construction of the project for which this Agreement has been entered into.

C. CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with modification, or misuse by CITY of the machine-readable information and data provided by CONSULTANT under this Agreement; further, CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with any use by CITY of the project documentation on other projects for additions to this project, or for the completion of this project by others, except only such use as many be authorized in writing by CONSULTANT.

D. Applicable patent rights provisions regarding rights to inventions shall be included in the contract as appropriate (48 CFR 27, Subpart 27.3 – Patent Rights under Government Contracts for federal-aid contracts).

E. CITY may permit copyrighting reports or other Agreement products. If copyrights are permitted; the Federal Highway Administration shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish or otherwise use; and to authorize others to use, the work for government purposes.

## **ARTICLE XXVII – CLAIMS FILED BY CITY'S CONSTRUCTION CONTRACTOR**

A. If claims are filed CITY'S construction relating to work performed by CONSULTANT'S personnel, and additional information or assistance from CONSULTANT'S personnel is required in order to evaluate or defend against such claims; CONSULTANT agrees to make its personnel available for consultation with CITY'S construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

B. CONSULTANT'S personnel that CITY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from CITY. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for CONSULTANT'S personnel service under this Agreement.

C. Services of CONSULTANT'S personnel in connection with CITY'S construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve to construction claims.

#### **ARTICLE XXVIII – CONFIDENTIALITY OF DATA**

A. All financial, statistical, personal, technical, or other data and information relative to CITY'S operations, which are designated confidential by CITY and made available to CONSULTANT in order to carry out this Agreement, shall be protected by CONSULTANT from unauthorized use and disclosure.

B. Permission to disclose information on one occasion, or public hearing held by CITY relating to the Agreement, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.

C. CONSULTANT shall not comment publicly to the press or any other media regarding the Agreement or CITY'S actions on the same, except to CITY'S staff, CONSULTANT'S own personnel involved in the performance of this Agreement, at public hearings or in response to questions from a Legislative committee.

D. CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this Agreement without prior review of the contents thereof by CITY, and receipt of CITY'S written permission.

E. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Article.

F. All information related to the construction estimate is confidential, and shall not be disclosed by CONSULTANT to any entity other than CITY.

#### **ARTICLE XXIX – NATIONAL LABOR RELATIONS BOARD CERTIFICATION**

In accordance with Public Contract Code Section 10296, CONSULTANT hereby states under penalty of perjury that nor more than one final un-appealable finding of contempt of court by a Federal Court has been issued against CONSULTANT within the immediately preceding two-year period, because of CONSULTANT'S failure to comply with an order of a Federal Court that orders CONSULTANT to comply with an order of the National Labor Relations Board.

#### **ARTICLE XXX – EVALUATION OF CONSULTANT**

CONSULTANT'S performance will be evaluated by CITY on an annual basis. A copy of the evaluation will be sent to CONSULTANT for comments. The evaluation together with the comments shall be retained as part of the contract record.

## **ARTICLE XXXI – RETENTION OF FUNDS**

A. Any subcontract entered into as a result of this Agreement shall contain one of the provisions of this section

B. No retainage will be withheld by the Agency from progress payments due the prime CONSULTANT. Retainage by the prime CONSULTANT or sub-consultant is prohibited, and no retainage will be held by the prime CONSULTANT from progress due sub-consultants. Any violation of this provision shall subject the violating prime CONSULTANT or sub-consultants to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime CONSULTANT or sub-consultant in the event of a dispute involving late payment or nonpayment by the prime CONSULTANT or deficient sub-consultant performance, or noncompliance by a sub-consultant. This provision applies to both DBE and non-DBE prime CONSULTANTS and sub-consultants.

C. No retainage will be held by the Agency from progress payments due the prime CONSULTANT. Any retainage held by the prime CONSULTANT or sub-consultants from progress payment due sub-consultants shall be promptly paid in full to sub-consultants within 30 days after the sub-consultant's work is satisfactorily completed. Federal law (49 CFR 26.29) requires that any delay or postponement of payment over the 30 days may take place only for good cause and with the Agency's prior written approval. Any violation of this provision shall subject the violating prime CONSULTANT or sub-consultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime CONSULTANT or sub-consultant in the event of a dispute involving late payment or nonpayment by the prime CONSULTANT, deficient sub-consultant performance, or noncompliance by a sub-consultant. This provision applies to both DBE and non-DBE prime CONSULTANT and sub-consultants.

D. The Agency shall hold retainage from the prime CONSULTANT and shall make prompt and regular incremental acceptances of portions, as determined by the Agency, of the contract work and pay retainage to the prime CONSULTANT based on these acceptances. The prime CONSULTANT or sub-consultant, shall return all monies withheld in retention from a sub-consultant within thirty (30) days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Federal Law (49 CFR 26.29) requires that any delay or postponement of payment over thirty (30) days may take place only for good cause with the Agency's prior written approval. Any violation of this provisions shall subject the violating prime CONSULTANT or sub-consultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime CONSULTANT or sub-consultant in the event a dispute involving late payment or nonpayment by the prime CONSULTANT, deficient sub-consultant performance, or noncompliance by a sub-consultant. This provision applies to both DBE and Non-DBE prime CONSULTANT and sub-consultants.

## **ARTICLE XXXII – INDEPENDENT CONTRACTOR**

CONSULTANT will act hereunder as an independent contractor. This Agreement shall not and is not intended to constitute CONSULTANT as an agent, servant, or employee of CITY and shall not and is not intended to create the relationship of partnership, joint venture or association between CITY and CONSULTANT.

## **ARTICLE XXXIII – INDEMNIFICATION**

A. To the full extent permitted by law, CONSULTANT shall indemnify, hold harmless and defend CITY, its elected officials, officers, agents, employees, attorneys, servants, volunteers, successors and assigns from and against any and all claims, demands, causes of action, liability, losses, costs or expense for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent or otherwise wrongful acts, errors or omissions of CONSULTANT or any of its officers, employees, servants, agents, subcontractors, volunteers or any other person or entity involved by, for with or on behalf of CONSULTANT in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of CITY'S choice.

The parties understand and agree that the duty of CONSULTANT to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code.

B. CONSULTANT'S obligations under this or any other provision of this Agreement will not be limited by the provisions of any workers compensation act or similar act. CONSULTANT expressly waives its statutory immunity under such statutes or laws as to CITY, its officers, agents, employees and volunteers.

C. CONSULTANT agrees to obtain executed indemnity agreements with provisions identical to those in this Section from each and every subcontractor or any other person or entity involved by, or, with it on behalf of CONSULTANT in the performance of this Agreement. In the event CONSULTANT fails to obtain such indemnity obligations for the benefit of CITY, CONSULTANT agrees to be fully responsible and indemnify, hold harmless and defend CITY, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged, intentional, reckless, negligent or otherwise wrongful acts, errors or omissions of CONSULTANT or any of its officers, employees, servants, agents, subcontractors, volunteers or any other person or entity involved by, for, with or on behalf of CONSULTANT in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of CITY'S choice.

D. CITY does not, and shall not, waive any rights that it may possess against CONSULTANT because of the acceptance by CITY, or the deposit with CITY, of any insurance policy or certificate requires pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss cost or expense. CONSULTANT agrees

that CONSULTANT'S covenant under this Section shall survive the termination of this Agreement.

E. CONSULTANT agrees to pay all required taxes on amounts paid to CONSULTANT under this Agreement, and to indemnify and hold CITY harmless from any and all taxes, assessments, penalties, and interest asserted against CITY by reason of the independent contractor relationship created by this Agreement. CONSULTANT shall fully comply with the Workers' Compensation laws regarding CONSULTANT and CONSULTANT'S employees. CONSULTANT further agrees to indemnify and hold compensation laws. CITY shall have the right to offset against the amount of any fees due to CONSULTANT under this Agreement any amount due to CITY from CONSULTANT as a result of CONSULTANT'S failure to promptly pay to CITY any reimbursement or indemnification arising under this Section.

**ARTICLE XXXIV – MUTUAL COOPERATION**

A. CITY shall provide CONSULTANT with all pertinent data, documents and other requested information as is reasonable available for the proper performance of CONSULTANT'S services.

B. In the event any claim or action is brought against CITY relating to CONSULTANT'S performance in connection with this Agreement, CONSULTANT shall render any reasonable assistance that CITY may require.

**ARTICLE XXXV – FORCE MAJEURE**

CONSULTANT shall not be liable for any failure to perform if CONSULTANT presents acceptable evidence, in CITY'S sole judgement that such failure was due to causes beyond the control, and without the fault or negligence of CONSULTANT.

**ARTICLE XXXVI – NOTICES**

Any notices, bills, invoices, or reports requires by this Agreement shall be deemed received on: (a) the say of delivery if delivered by hand or overnight courier service during CONSULTANT'S and CITY'S regular business hours; or (b) on the third business day following deposit in the United States mail, postage prepaid, to the addresses heretofore below, or to such other addresses as the parties may, from time to time designate in writing.

**IF TO CITY**

Attn: Public Works Director  
  
130 S. Second Street  
  
Chowchilla, Ca. 93610

**IF TO CONSULTANT**

Attn: Joshua Rogers  

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2985 N. Burl Avenue, Ste. 101  

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Fresno, CA 93727  

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Phone:(559) 244-3123  

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## **ARTICLE XXXVII – PROHIBITION AGAINST ASSIGNMENT**

CONSULTANT shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without CITY’S prior written consent, and any attempt to do so shall be void and of no effect. CITY shall not be obligated or liable under this Agreement to any party other than CONSULTANT.

## **ARTICLE XXXVIII – ATTORNEY’S FEES**

In the event that CITY or CONSULTANT commences any legal action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to recover its costs of suit, including reasonable attorney’s fees.

## **ARTICLE XXXIX – ENTIRE AGREEMENT**

All documents reference as exhibits in this Agreement are hereby incorporated in this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and provisions of any document incorporated by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between CITY and CONSULTANT with respect to the subject matter herein. No other prior oral or written Agreements are binding on the parties. Any modification of this Agreement will be effective only if it is in writing and executed by CITY and CONSULTANT.

## **ARTICLE XXXX – GOVERNING LAW; JURISDICTION**

This Agreement shall be governed by and construed in accordance with the laws of the State of California. In the event of litigation between the parties, venue is State trial courts shall lie exclusively in Madera County. In the event of litigation in a United States District Court, exclusive venue shall lie in the Eastern District of California.

## **ARTICLE XXXXI – SEVERABILITY**

Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect.

## **ARTICLE XXXXII – CAPTIONS**

The captions used in this Agreement are solely for reference and the convenience of the parties. The captions are not a part of the Agreement, in no way bind, limit or describe the scope or intent of any provision, and shall have no effect upon the construction or interpretation of any provision herein.

**ARTICLE XXXXIII – EXECUTION**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute on and the same instrument.

**TO EFFECTUATE THIS AGREEMENT**, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date first written above,

CITY OF CHOWCHILLA

CONSULTANT:

\_\_\_\_\_  
Brian Haddix  
City Administrator

By: \_\_\_\_\_  
Joshua Rogers

ATTEST:

\_\_\_\_\_  
Joann McClendon, CMC, City Clerk

By: \_\_\_\_\_  
Brandon Broussard

APPROVED AS TO FORM:

\_\_\_\_\_  
David Ritchie, City Attorney