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**Professional Services Agreement**  
**CHEN RYAN ASSOCIATES, INC.**

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**AGREEMENT FOR PROFESSIONAL SERVICES**

***ACTIVE TRANSPORTATION PLAN / REGIONAL COMMUTER BASED ACCESS PLAN***

This Agreement for Professional Services (the "Agreement") is made and entered into as of July 10, 2018, by and between the City of Lake Elsinore, a municipal corporation ("City") and Chen Ryan Associates, Inc. a California Corporation ("Consultant").

**RECITALS**

A. The City recognizes the need for a comprehensive Active Transportation Plan / Regional Commuter Based Access Plan (ATP) that would prioritize bikeway and pedestrian improvements based on criteria such as: regional and local connectivity, safe routes to school, ten-minute neighborhoods, recreation amenities, and recommendations for smart infill growth with accompanying ATP improvements.

B. The City has been awarded a CALTRANS Sustainable Communities Planning Grant for the preparation of such ATP.

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

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

**AGREEMENT**

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

2. Time of Performance.

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

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

c. Term.

Unless earlier terminated as provided elsewhere in this Agreement, this Agreement shall continue in full force and effect beginning July 10, 2018 and expire February 28, 2020.

3. Compensation. Compensation to be paid to Consultant shall be in accordance with the fees set forth in Consultants' Proposal (Exhibit A), which is attached hereto and incorporated herein by reference. In no event shall Consultant's compensation exceed one hundred eighty-eight thousand three hundred dollars (\$188,300) without additional written authorization from the City. Notwithstanding any provision of Consultant's Proposal to the contrary, out of pocket expenses shall be reimbursed at cost without an inflator or administrative charge. Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment. All invoices shall include the following: full project name "Active Transportation Plan / Regional Commuter Based Access Plan" and project number "74A0976."

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

5. Reserved.

6. Suspension or Termination.

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

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

7. Ownership of Work Product and Rights.

1) Ownership of Work Product: The City shall own all United States and international copyrights in the Work Product. As such, all Work Product shall contain, in a conspicuous place, a copyright designation consisting of a "c" in a circle followed by the four-digit year in which the Work Product was produced, followed by the words "California Department of Transportation." For example, a Work Product created in the year 2012 would contain the copyright designation © 2012 California City of Transportation.

2) Vesting of Copyright Rights: Contractor, its employees or any of Contractor's Subcontractor's employees agrees to perpetually assign, and upon creation of each Work Product automatically assigns, to the City, its successors and assigns, ownership of all United States and international copyrights in each and every Work Product, insofar as any such Work Product, by operation of law, may not be considered work made for hire by the Contractor's Subcontractor from the City. From time to time upon the City's request, the Contractor's Subcontractor and/or its employees, shall confirm such assignments by execution and delivery of such assignments, confirmations or assignment, or other written instruments as the City may request. The City, its successors and assigns, shall have the right to obtain and hold in its or their own name(s) all copyright registrations and other evidence of rights that may be available for Work Product. Contractor hereby agrees to waive all moral rights relating to identification of authorship restriction or limitation on use, or subsequent modifications of the Work.

8. Ownership of Data.

1) Upon completion of all work under this Agreement, all intellectual property rights, ownership and title to all reports, documents, plans, specifications, and estimates, produced as part of this Agreement will automatically be vested in CALTRANS and no further agreement will be necessary to transfer ownership to CALTRANS. The Consultant shall furnish CALTRANS all necessary copies of data needed to complete the review and approval process.

2) 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.

3) The Consultant is not liable for claims, liabilities or losses arising out of, or connected with, the modification or misuse by CALTRANS of the machine readable information and data provided by the Consultant under this Agreement; further, the Consultant is not liable for claims, liabilities or losses arising out of, or connected with, any use by CALTRANS of the project documentation on other projects, for additions to this project, or for the completion of this project by others, excepting only such use as may be authorized, in writing, by the Consultant.

9. Consultant's Books and Records.

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

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

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

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

10. Independent Consultant. It is understood that Consultant, in the performance of the work and services agreed to be performed, shall act as and be an independent Consultant and shall not act as an agent or employee of the City.

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

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

12. Interests of Consultant. Consultant (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this Agreement or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Consultant's services hereunder. Consultant further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this Agreement.

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

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

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

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

14. Compliance with Laws. Consultant shall use the standard of care in its profession to comply with all applicable federal, state and local laws, codes, ordinances and regulations.

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

16. Indemnity. Consultant shall indemnify, defend, and hold harmless the City and its officials, officers, employees, agents, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subconsultants, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises from the sole negligence or willful misconduct of the City or its officers, employees, agents, or volunteers and (2) the actions of Consultant or its employees, subconsultant, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

17. Insurance Requirements.

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

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

Certificate of Exemption from Workers Compensation Insurance in a form approved by the City Attorney.

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

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

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

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

i. The City, its elected or appointed officers, officials, employees, agents and volunteers are to be covered as additional insured with respect to liability arising out of work performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work or operations.

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

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

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

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

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

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

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

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

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

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

If to Consultant: \_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

19. Entire Agreement. This Agreement constitutes the complete and exclusive statement of Agreement between the City and Consultant. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, are superseded in total by this Agreement.

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

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

22. Travel Expenses and Per Diem. Travel and per diem reimbursements to Consultant will be allowable as Project costs only after those costs are incurred and paid for by the Consultant. Travel expenses and per diem rates for subcontractors shall be reimbursed pursuant to Section 3, above.

23. Eligible Expenses. Eligible activities must have a transportation nexus per the California Constitution, Article XIX Section 2 and 3. Some examples of eligible costs include:

- a. Data gathering and analysis
- b. Planning consultants
- c. Conceptual drawings and design
- d. Community surveys, meetings, charrettes, focus groups
- e. Bilingual services for interpreting and/or translation services for meetings
- f. Community/stakeholder advisory groups
- g. Project administration (up to 5% of the grant is allowed, e.g. quarterly reports, invoicing, project management)
- h. Light refreshments for public outreach events may be permitted

24. Ineligible Expenses. Some activities, tasks, project components, etc. are not eligible under these grant programs. Ineligible activities and expenses include:

- a. Environmental studies, plans, or documents normally required for project development under the National Environmental Policy Act or the California Environmental Quality Act
- b. Engineering plans and design specification work
- c. Project Initiation Documents
- d. RTPS or updates to the RTP, excluding SCS development
- e. Construction projects, capital costs, such as the building of a facility, or maintenance
- f. Office furniture purchases, or other capital expenditures
- g. Decorations, e.g. for public workshop events
- h. Acquisition of vehicles or shuttle programs
- i. Organizational membership fees
- j. Unreasonable incentives such as prizes for public participation. The use of incentives and support such as childcare services are subject to Caltrans approval.
- k. Charges passed on to sub-recipient for oversight of awarded grant funds



I. Other items unrelated to the project

25. Americans with Disabilities Act. Consultant shall fully comply with the applicable provisions of the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.).

26. Nondiscrimination Clause (2 CCR 11105 Clause b).

a. Consultant shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. CITY shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

b. Consultant shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, § 12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, § 11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code, §§ 11135-11139.5), and the regulations or standards adopted by CALTRANS to implement such article.

c. Consultant shall permit access by representatives of the City of Fair Employment and Housing and CALTRANS upon reasonable notice at any time during the normal business hours, but in no case less than twenty four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said City or CALTRANS shall require to ascertain compliance with this clause.

d. Consultant shall give written notice of their obligations under this clause to labor.

27. Retention of Records / Audits.

a. Consultant shall establish and maintain an accounting system and records that properly accumulate and segregate incurred Project costs and matching funds by line. The accounting system of Consultant shall conform to Generally Accepted Accounting Principles (GAAP), enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices. All accounting records and other supporting papers of Consultant connected with Project performance under the RGA shall be maintained for a minimum of three (3) years from the date of final payment to CITY and shall be held open to inspection, copying, and audit by representatives of CALTRANS, the California State Auditor, and auditors representing the federal government. Copies thereof will be furnished by CITY, its contractors, its subcontractors and subrecipients upon receipt of any request made by CALTRANS or its agents. In conducting an audit of the costs and match credits claimed under the RGA, CALTRANS will rely to the maximum extent possible on any prior audit of CITY pursuant to the provisions of State and CITY law. In the absence of such an audit, any acceptable audit work performed by CITY's external and internal auditors may be relied upon and used by CALTRANS when planning and conducting additional audits.

b. For the purpose of determining compliance with applicable State and CITY law in connection with the performance of CITY's contracts with third parties pursuant to

GC Section 8546.7, CITY, CITY's sub-recipients, contractors, subcontractors, and CALTRANS shall each maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts. All of the above referenced parties shall make such materials available at their respective offices at all reasonable times during the entire Project period and for three (3) years from the date of final payment to CITY under the RGA. CALTRANS, the California State Auditor, or any duly authorized representative of CALTRANS or the United States Department of Transportation, shall each have access to any books, records, and documents that are pertinent to a Project for audits, examinations, excerpts, and transactions, and CITY shall furnish copies thereof if requested.

c. Consultant will permit access to all records of employment, employment advertisements, employment application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission, or any other CITY of the State of California designated by CALTRANS, for the purpose of any investigation to ascertain compliance with this RGA.

d. Additionally, all grants may be subject to a pre-award audit prior to execution of the RGA to ensure CITY has an adequate financial management system in place to accumulate and segregate reasonable, allowable and allocable costs.

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

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

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

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

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

34. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

35. Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party. The City Manager is authorized to enter into an amendment or otherwise take action on behalf of the City to make the following modifications to the Agreement: (a) a name change; (b) grant extensions of time; (c) non-monetary changes in the scope of services; and/or (d) suspend or terminate the Agreement.

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

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

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

[Signatures on next page]

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

“CITY”

CITY OF LAKE ELSINORE, a municipal corporation

“CONSULTANT”

Chen Ryan Associates, Inc., a California Corporation

\_\_\_\_\_  
Grant Yates, City Manager

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

Its: \_\_\_\_\_

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

Attachments: Exhibit A – Consultant’s Proposal