

**DRAFT**

AGREEMENT FOR ENGINEERING SERVICES  
FOR BIOLA COMMUNITY SERVICES DISTRICT  
BIOLA COMMUNITY SERVICES DISTRICT WATER SYSTEM UPGRADE PROJECT  
DRINKING WATER STATE REVOLVING FUND PROJECT NO. 1010049-008C

THIS AGREEMENT. Made this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between the BIOLA COMMUNITY SERVICES DISTRICT, a California community services district, hereinafter referred to as "District," and YAMABE & HORN ENGINEERING, Inc., a California corporation, hereinafter referred to as "Engineer";

WITNESSETH:

WHEREAS, District requires the services of a qualified engineer to provide services for funding administration, preparation of final construction documents and bid documents, construction management, public works inspection, and materials testing for the upgrade of the Biola Community Services District water system, as shown in Exhibit "A" attached hereto (referred to hereafter as the "Engineering services");

WHEREAS, Engineer is a firm of engineers and land surveyors, having the necessary experience and qualifications to provide the Engineering services;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, it is agreed by and between the District and the Engineer as follows:

ARTICLE I: GENERAL

The District hereby employs Engineer to perform the Engineering services herein set forth at the compensation and upon the terms and conditions herein expressed, and Engineer hereby agrees to perform such services for said compensation, and upon said terms and conditions. This Agreement is non-exclusive and District may engage other engineers or consultants as it sees fit.

ARTICLE II: OBLIGATIONS, DUTIES AND RESPONSIBILITIES OF ENGINEER

It shall be the duty, obligation and responsibility of the Engineer, in a skilled and professional manner, to perform, furnish, and supply to the District the following Engineering work and services: .

A. Scope of Work

1. As described on the attached EXHIBIT "A", which is incorporated herein by this reference.
2. Engineer shall perform its services in a manner consistent with the standard of care and skill ordinarily exercised by members of the profession practicing under similar conditions in the area and in the time the services are performed.
3. Provide any other Engineering services requested by the District and not specifically provided herein, when mutually agreed upon by both parties.

B. Ownership, Delivery, and Reproduction of Drawings and Specifications

All field data, sketches, test results, reports, and other documents prepared or provided by the Engineer under this Agreement are the property of the District upon termination or completion of the Agreement, and the Engineer shall not permit the reproduction or use thereof by any other person

except as provided herein. However, any use of such completed deliverables or documents other than for this project or any use of incomplete deliverables or documents shall be at the District's sole risk. Upon request by District, Engineer shall provide additional copies at his cost, which cost shall be paid by the District.

### ARTICLE III: DISTRICT'S RESPONSIBILITIES

District shall:

- A. Provide access to all information and data upon request which are required in connection with the engineering services, including, but not limited to, pertinent plans, specifications, and reports.
- B. Provide upon request access to, and make all provisions necessary to enter upon, public or private lands as required for Engineer to perform such work.

### ARTICLE IV: SUBCONTRACTING FOR SPECIALIZED SERVICES

The Engineer is authorized to subcontract any specialized work, provided that the District has given its written approval of each subcontractor in advance of the engagement of the subcontractor. Engineer shall be responsible for payment of subcontractor, and shall require sub-contractor to comply with this agreement.

### ARTICLE V: ENGINEER'S FEES AND COMPENSATION; AMOUNT; HOW AND WHEN PAYABLE

- A. Fees – For all engineering work and services, including supplies and equipment, pertaining to the Project and required to be furnished by the Engineer to the District, District agrees to pay to the Engineer and Engineer agrees to accept and receive as payment in full the fees and compensation which shall be known as the "Fee" to be paid as hereinafter set forth and shown in attached EXHIBIT "A"
- B. Monthly Progress Billing – Engineer shall furnish District with itemized monthly progress billings for all services rendered and supplies furnished pertaining to services to be paid on an hourly rate basis, such progress payments shall be due and payable by the District to Engineer within thirty (30) days after presentation of invoices to District, up to the total amount authorized by the District. Additional hourly fees shall require written authorization.
- C. District and Engineer agree that the funding for these Engineering Services is being derived from a grant from the State of California Water Resources Control Board. Engineer agrees to complete the work and services in accordance with the requirements of the grant funding agreement. In the event that the State should terminate its funding agreement with the District this agreement may also be terminated at the discretion of the District in compliance with Article VII, Termination.

### ARTICLE VI: ENGINEER'S AGREEMENT TO HOLD HARMLESS AND INSURANCE REQUIREMENTS

- 1. In the furnishing of the services provided for herein, the Engineer is acting as an independent contractor and not as an agent or employee of the District.
- 2. Subject to the restrictions of California Civil Code section 2782.8, Yamabe & Horn shall indemnify and hold harmless District, 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 expenses for any damage due to the death or injury to any person and injury to property resulting from the Yamabe & Horn's negligence, recklessness, or willful misconduct, or the negligence, recklessness or willful misconduct of Yamabe & Horn's officers, employees, servants, agents, subcontractors, volunteers or any other person or entity involved by, for, with or on behalf of Yamabe & Horn in the performance of this Agreement. Yamabe & Horn also agrees to pay a proportionate share of the costs of defense for such claims, demands, causes of action, liability, losses, costs or expenses to the extent of Yamabe & Horn's proportionate percentage of fault, or as otherwise required by section 2782.8.

The parties understand and agree that the duty of Yamabe & Horn to indemnify and hold harmless includes the duty to pay only a share of costs based upon Yamabe & Horn's proportionate share of fault as adjudged by a trier of fact.

3. Engineer shall procure and maintain for the duration of the contract 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 Engineer, his agents, representatives, employees, or subcontractors. The cost of such insurance shall be paid by Engineer.

1. **MINIMUM SCOPE AND LIMITS OF INSURANCE**

Coverage shall be at least as broad as:

- (1) Errors and Omissions Insurance: Not less than \$1,000,000 claim and \$1,000,000 in the aggregate during the performance of this agreement.

The Engineer agrees to purchase and maintain claims made, errors and omissions coverage providing coverage for a minimum of two years after completion of this contract.

- (2) General Liability Insurance: Insurance Service Office form number GL 0002 (Ed. 1/73) covering Comprehensive General Liability and Insurance Services Office form GL 0404 covering Broad Form Comprehensive General Liability coverage ("occurrence" form 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 this project or the general aggregate limit shall be twice the required occurrence limit.

- (3) Automobile Liability Insurance: Insurance Services Office form number CA 0001 (Ed. 1/78) covering Automobile Liability, code 1 "any auto" and endorsement CA 0025 not less than \$1,000,000 combined single limit per accident for bodily injury and property damage.

- (4) Workers' Compensation and Employer's Liability Insurance: Workers Compensation Insurance limits as required by the Labor Code of the State of California; Employers' Liability Insurance limits of \$1,000,000 per accident.

2. **DEDUCTIBLES AND SELF-INSURED RETENTIONS**

Any deductibles or self-insured retentions must be declared to and approved in writing by the District. At the option of the District, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the District, its officers, officials,

employees, and volunteers; or the Engineer shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

3. OTHER INSURANCE PROVISIONS

The policies are to contain, or be endorsed to contain, the following provisions:

a. General Liability and Automobile Liability Coverages.

(1) The District, its officers, officials, and employees are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Engineer, products and completed operations of the Engineer; premises owned, occupied, or used by the Engineer or automobiles owned, leased, hired, or borrowed by the Engineer. The coverage shall contain no special limitations on the scope of protection afforded to the District, its officers, officials or employees.

(2) The Engineer's insurance coverage shall be primary insurance as respects the District, its officers, officials and employees. Any insurance or self-insurance maintained by the District, its officers, officials or employees shall be excess of the Engineer's 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 District, its officers, officials, or employees.

(4) The Engineer'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 District, its officers, officials, and employees for losses arising from work performed by the Engineer for the District.

c. All Coverages.

Coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the District.

4. 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 District.

4. The Engineer shall provide certificates of said insurance prior to issuance of a "Notice to Proceed."

ARTICLE VII: TERMINATION

This Agreement may be terminated by mutual agreement or it may be terminated by the District upon giving thirty (30) days' written notice of intent to terminate the agreement.

Notice of termination shall be mailed to the District:

Biola Community Services District  
P. O. Box 57  
Biola, CA 93606

To the Engineer:

Yamabe & Horn Engineering, Inc.  
2985 North Burl Avenue, Suite 101  
Fresno, CA 93727

In the event of such termination, Engineer shall be paid for work completed to date of termination, and any such work completed shall become property of the District and the amount of final fee due and payable by District to Engineer will be based on the costs incurred by the Engineer, on a time and materials basis, up to the date of termination and not previously paid.

#### ARTICLE VIII: MISCELLANEOUS PROVISIONS

- A. Compliance with Federal, State and Local Laws. Engineer shall be responsible for and shall comply with all applicable laws, rules and regulations 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 Fresno, the District 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. Engineer represents that it currently has, and will maintain in effect all proper licensing and permits necessary for providing the described services.
- B. Independent Contractor. Engineer is an independent contractor and not an officer, agent, servant or employee of District. Engineer shall provide his own tools, equipment and materials for the performance of his or her services, unless the parties expressly agree in writing to a different arrangement. Engineer is solely responsible for the acts and omissions of its officers, agents, employees and subcontractors. Nothing in this Agreement shall be construed as creating a partnership or joint venture between District and Engineer. Neither Engineer nor its officers, employees, agents shall obtain any rights to retirement or other benefits that accrue to District employees.
- C. 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 Fresno. Except in the case of an equitable remedy, any legal disputes shall be subject to an alternative dispute remedy (ADR) process. If the parties are unable to resolve their dispute, either informally or by mediation (whether facilitated or not by a mediator), the District and Engineer shall submit their dispute to binding arbitration under the rules of the American Arbitration Association (AAA) in Fresno, California. The parties shall share the cost of the mediator or arbitrator, as the case may be, and shall bear their separate attorney's fees and costs.
- D. Amendment or Modification. This Agreement may be amended or modified only by written agreement of the parties hereto. The parties agree to meet and confer in good faith if amendments or modifications are proposed.

- E. Savings Clause and Entirety. If any material provision of this Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the validity and enforceability of any of the remaining provisions of this Agreement.
- F. 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement at Biola, California, the day and year first above written.

BIOLA COMMUNITY SERVICES DISTRICT "District"

By \_\_\_\_\_  
Board President

Approved as to form:

\_\_\_\_\_  
Attorney for District

YAMABE & HORN ENGINEERING, Inc. "Engineer"

By \_\_\_\_\_  
Jerry Jones, Vice President

EXHIBIT "A"

SCOPE OF SERVICES

- 1. **Phase**
  - a. ...
- 2. **Phase**
  - a. ...

FEE SCHEDULE

Fees for the above-described work shall be on a time and material basis, payable monthly as the work progresses, with not to exceed amounts (without prior written approval by District) by phase as follows:

- 1. Phase ..... Y&H to provide
- 2. Phase ..... Y&H to provide
- Total .....

Hourly rates will be based on Engineer's Fee Schedule in effect at time cost is incurred. Engineer's current fee schedule is provided on the following page.



# YAMABE & HORN ENGINEERING, INC.

## 2023 FEE SCHEDULE

PRINCIPAL ENGINEER .....	\$ 210	per hour
EXPERT WITNESS.....	\$ 290	per hour
CIVIL ENGINEER V.....	\$ 205	per hour
CIVIL ENGINEER IV.....	\$ 185	per hour
CIVIL ENGINEER III.....	\$ 175	per hour
CIVIL ENGINEER II.....	\$ 165	per hour
CIVIL ENGINEER I.....	\$ 155	per hour
PROJECT MANAGER II .....	\$ 160	per hour
PROJECT MANAGER I .....	\$ 150	per hour
ASSISTANT ENGINEER III .....	\$ 135	per hour
ASSISTANT ENGINEER II .....	\$ 130	per hour
ASSISTANT ENGINEER I .....	\$ 120	per hour
LAND SURVEYOR II .....	\$ 165	per hour
LAND SURVEYOR I .....	\$ 145	per hour
ASSISTANT SURVEYOR II.....	\$ 140	per hour
ASSISTANT SURVEYOR I.....	\$ 125	per hour
GIS ANALYST.....	\$ 130	per hour
GIS TECHNICIAN .....	\$ 120	per hour
CONSTRUCTION MANAGER II .....	\$ 160	per hour
CONSTRUCTION MANAGER I .....	\$ 145	per hour
PROJECT SERVICES ADMINISTRATOR.....	\$ 95	per hour
INSPECTOR II .....	\$ 165	per hour
INSPECTOR I .....	\$ 155	per hour
CAD MANAGER.....	\$ 130	per hour
CAD DRAFTER II.....	\$ 115	per hour
CAD DRAFTER I.....	\$ 105	per hour
CLERICAL .....	\$ 85	per hour
2-PERSON SURVEY CREW.....	\$ 225	per hour
2-PERSON SURVEY CREW PREVAILING WAGE .....	\$ 275	per hour
1-PERSON SURVEY CREW.....	\$ 175	per hour
1-PERSON SURVEY CREW PREVAILING WAGE .....	\$ 215	per hour
TRAVEL .....	current Federal	per mile cost
PRINTING.....	Cost plus 10%	

Fee schedule is effective through December 31, 2023 and will be adjusted each year after at a rate of 2 to 5%.

Note: Prevailing wage rates are shown for Fresno County. The Prevailing Wage rates will vary depending on the County where the work is performed.