

AGREEMENT FOR PROFESSIONAL SERVICES

Water Study

**VARELA & ASSOCIATES, INC
ENGINEERING & MANAGEMENT**

THIS PROFESSIONAL SERVICES AGREEMENT (this "Agreement") is made by and between the City of Cheney, a non-charter code city of the State of Washington (the "City") and Varela & Associates, Inc Engineering & Management, a Washington state limited liability company, (the "Consultant"). The City and Consultant are jointly referred to as the "parties."

IN CONSIDERATION of the terms and conditions contained herein the parties covenant and agree as follows:

1. **Services to Be Performed.** The Consultant will provide all labor, services and material to satisfactorily complete the scope of services (referred to herein as the "Scope of Services" or "Services"). The Scope of Services with Fee Schedule, attached hereto and incorporated by reference herein as "Exhibit A," includes this Agreement, the Request for Proposals/Qualifications dated 10/4/2018 (the "RFQ"). In the event of a conflict concerning the Scope of Services, the RFQ and the SOQ, the order and preference of interpretation shall be in the order listed in this Section 1 with deference given first to this Agreement.

A. **Administration.** The Mayor (which term includes designee) shall administer and be the primary contact for Consultant. Prior to commencement of the Services, Consultant shall receive a written "Professional Services Authorization" identifying the particular Services requested. Upon receipt of the request, Consultant shall commence work, perform the requested tasks and promptly cure any failure in performance under this Agreement. The City shall provide Consultant with available information concerning the City's request including all drawings and related documents. At any time, the City may order the Consultant to stop work.

B. **Representations.** The City has relied upon the qualifications of the Consultant in entering into this Agreement. By execution of this Agreement, Consultant represents it possesses the ability, skill and resources necessary to perform the Scope of Services and is familiar with all current laws, rules and regulations which reasonably relate to the Scope of Services. No substitutions of personnel identified in the Scope of Services shall be made without the prior written consent of the City.

Consultant shall be responsible for the technical accuracy of its Services and prepared documents. The City shall not be responsible for discovering deficiencies therein. Consultant shall correct such deficiencies without additional compensation except to the extent such action is directly attributable to deficiencies in City furnished information.

The standard of care for all professional services performed or furnished under this Agreement will be the care and skill ordinarily used by members of Consultant's profession practicing under similar circumstances at the same time and in the same locality.

C. **Modifications.** The Scope of Services may be added to, modified or changed by written agreement of the parties. In addition, the City may modify this agreement and order changes in the Services whenever necessary or advisable. The Consultant will accept modifications when ordered in writing by the Mayor. The parties shall, in good faith, adjust the compensation for reduced or extra work.

2. **Term of Contract.** This Contract shall be in full force and effect upon execution of this agreement and shall remain in effect until completion of all contractual requirements.

Either party may terminate this Agreement by thirty (30) days written notice to the other party. In the event of such termination, the City shall pay the Consultant for all Services previously authorized and satisfactorily performed prior to the termination date.

3. **Compensation.** The City agrees to pay the Consultant based on the attached fee schedule for services performed under this agreement. The City shall reimburse the Consultant for photocopying, postage, graphic reproduction at actual cost and will pay for authorized travel (excluding travel to the City to attend meetings, presentations or otherwise perform the services herein) at the effective IRS rate.

4. **Payment.** The Consultant shall submit an invoice for payment to the address listed below stated address. Invoices shall be paid within fifteen (15) days of receipt. Payment shall be for services performed.

The City reserves the right to withhold payment under this agreement which is determined in the reasonable judgment of the Mayor to be noncompliant with the Scope of Services, City Standards, City ordinances, or federal or state standards.

5. **Notice.** Notice shall be given in writing as follows:

TO THE CITY:

Name: Todd Ableman,
Public Works Director
Phone Number: (509) 498-9293
Address: 112 Anderson Rd
Cheney, WA 99004

TO THE CONSULTANT:

Varela & Associates, Inc
Kurt Holland
Phone Number: 509-328-6066
Address: 601-A W Mallon Ave
Spokane, WA 99201

6. **Applicable Laws and Standards.** The parties, in the performance of this Agreement, agree to comply with all applicable Federal, State, Local laws, ordinances, and regulations.

7. **Relationship of the Parties.** It is hereby understood, agreed and declared that the Consultant shall be an independent contractor and not the agent or employee of the City, that the City is interested in only the results to be achieved and that the right to control the particular

manner, method and means in which the services are performed is solely within the discretion of the Consultant. Any and all employees who provide services to the City under this Agreement shall be deemed employees solely of the Consultant. The Consultant shall be solely responsible for the conduct and actions of all employees under this agreement and any liability that may attach thereto.

8. **Ownership of Documents.** All drawings, plans, specifications, and other related documents prepared by the Consultant under this Agreement are and shall be the property of the City.

9. **Records.** The City or State Auditor or any of their representatives shall have full access to and the right to examine during normal business hours the Consultant's records with respect to all matters covered in this contract. Such representatives shall be permitted to audit, examine and make excerpts or transcripts from such records and to make audits of all contracts, invoices, materials, payrolls and record of matters covered by this contract for a period of three years from the date final payment is made hereunder.

10. **Insurance.** Unless waived in writing by the Mayor, the Consultant shall maintain in force at its own expense, the following insurance:

A. Workers Compensation Insurance in compliance with RCW 51.12, which requires subject employers to provide workers compensation coverage for all their subject workers and Employer's Liability or Stop Gap Insurance in the amount of \$1,000,000.00;

B. General Liability Insurance on an occurrence basis with a combined single limit, of not less than \$1,000,000.00 each occurrence for bodily injury and property damage. It shall include contractual liability coverage for the indemnity provided under this contract. It shall provide that the City, its officers, employees and agents are additional insureds but only with respect to the Consultant's Services to be provided under the contract;

C. Automobile Liability Insurance with a combined single limit, or the equivalent, or not less than \$1,000,000.00 each accident for bodily injury and property damage, including coverage for owned, hired or non-owned vehicles; and

D. Professional Liability Insurance with a combined single limit of not less than \$1,000,000.00 each claim, incident or occurrence. This is to cover damages caused by the error, omission, or negligent acts related to the professional services to be provided under this Agreement. The coverage must remain in effect for at least two (2) years after the Agreement is completed.

There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without thirty (30) days written notice from the Consultant or its insurer(s) to the City.

As evidence of the insurance coverage required by this Agreement, the Consultant shall furnish acceptable insurance certificates to the City at the time the Consultant returns the signed contract. The certificate shall specify all of the parties who are additional insured, and will include applicable policy endorsements, the thirty (30) day cancellation clause, and the deduction or retention level. Insuring companies or entities are subject to City acceptance. If requested, complete copies of insurance policies shall be provided to the City. The Consultant shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

11. **Indemnification and Hold Harmless.** Each party shall indemnify and hold the other, its officers, employees, agents and volunteers harmless from and against any and all claims, demands, orders, decrees or judgments for injuries, death or damage to any person or property arising or resulting from any act or omission on the part of said party or its agents, employees or volunteers in the performance of this Agreement.

12. **Waiver.** No officer, employee, agent or other individual acting on behalf of either party has the power, right or authority to waive any of the conditions or provisions of this Agreement, except as set forth in paragraph 10. No waiver in one instance shall be held to be a waiver of any other subsequent breach or nonperformance. All remedies afforded in this Agreement or by law, shall be taken and construed as cumulative, and in addition to every other remedy provided herein or by law. Failure of either party to enforce at any time any of the provisions of this agreement or to require at any time performance by the other party of any provision hereof shall in no way be construed to be a waiver of such provisions nor shall it affect the validity of this Agreement or any part thereof.

13. **Assignment and Delegation.** Neither party shall assign, transfer or delegate any or all of the responsibilities of this agreement or the benefits received hereunder without first obtaining the written consent of the other party.

14. **Subcontracts.** Consultant may subcontract portions of the Services upon first obtaining the City's written consent which the City may withhold in its sole discretion. The parties understand, agree and acknowledge that subcontractors, if used, shall have no contractual privity with the City, third party beneficiary/creditor status with the City, nor any interest in this Agreement. Consultant shall pay for all subcontractor Services performed; however, Consultant may assess the City a three percent (3%) administrative charge for managing the subcontracted Services. Notwithstanding the foregoing, the Consultant shall be responsible for, and shall be liable to, the City for all work performed under the Scope of Services.

15. **Confidentiality.** Consultant may from time to time receive information which is deemed by the City to be confidential. Consultant shall not disclose such information without the express consent of the City or upon order of a Court of competent jurisdiction.

16. **Jurisdiction and Venue.** This Agreement is entered into in Spokane County, Washington. Venue shall be in Spokane County, State of Washington.

17. **Arbitration.** All disputes arising under this Agreement shall be resolved through arbitration pursuant to State law. Rules for arbitration shall be those prescribed by the American Association of Arbitration.

18. **Entire Agreement.** This written Agreement constitutes the entire and complete agreement between the parties and supersedes any prior oral or written agreements. This Agreement may not be changed, modified or altered except in writing signed by the parties hereto.

19. **Anti-kickback.** No officer or employee of the City, having the power or duty to perform an official act or action related to this Agreement shall have or acquire any interest in this Agreement, or have solicited, accepted or granted a present or future gift, favor, service or other thing of value from any person with an interest in this Agreement.

20. **Addenda.** Attached documents behind Exhibit A are the "City's Request for Proposals/Qualifications dated 10/4/18.

IN WITNESS WHEREOF, the parties have executed this Agreement this ____ day of _____, 2019.

CITY OF CHENEY

CONSULTANT

Chris Grover , Mayor

Its:

Federal Tax ID Number:

ATTEST:

Cindy Niemeier, Finance Director

Exhibit "A"