



**TO:** Mayor and Councilmembers

**FROM:** Rosemarie Gaglione, Public Works Director

**CONTACT:** Kathy Garcia, Deputy Public Works Director

**SUBJECT:** Miscellaneous Concrete Repair Project FY 2016-17 Award of Contract to Brough Construction, Inc.

**RECOMMENDATIONS:**

- A. Authorize the City Manager to execute a construction contract with Brough Construction, Inc. for the Miscellaneous Concrete Repair Project FY 2016-17 in the not to exceed amount of \$398,279, subject to the requirements of the contract documents; and
- B. Authorize the City Manager to approve contingency contract change orders, if necessary, in an amount not to exceed \$40,000; and
- C. Authorize the City Manager to execute a consultant services agreement with MNS Engineering, Inc., in the not to exceed amount of \$59,980 for Construction Management Services for the Miscellaneous Concrete Repair Project FY 2016-17.

**BACKGROUND:**

The Miscellaneous Concrete Repair Project, FY 2016/17, includes removing and replacing damaged concrete sidewalks, driveway aprons, and spandrel/cross gutters, pruning tree roots, and installing access ramps on various streets within the City of Goleta.

Council approved the Plans and Specifications for the Miscellaneous Concrete Repair Project, FY 2016/17 and authorized staff to advertise a notice inviting bids for the project on July 19, 2016. A Notice to Invite Bids was published in the Santa Barbara News Press on August 15 and 24, 2016. A Notice to Invite Bids was also posted on the City's website. The project was also advertised on E-Bidboard.

**DISCUSSION:**

Sealed bids were opened at City Hall on September 8, 2016. A total of five (5) bids were received. A summary of the bids received is shown in the table below.

<b>Contractor</b>	<b>City</b>	<b>Bid Amount</b>
Brough Construction, Inc.	Arroyo Grande, CA	\$ 398,279.00
Toro Enterprises, Inc.	Oxnard, CA	\$ 683,521.00
V. Lopez Jr., & Sons	Santa Maria, CA	\$ 454,349.60
Berry General Engineering Contractors, Inc.	Ventura, CA	\$ 438,054.70
D-KAL Engineering, Inc.	San Luis Obispo, CA	\$ 501,853.00

Staff has reviewed the bid from Brough Construction Inc. (Brough), and finds it to be responsive to the bid solicitation. Staff has investigated Brough and finds no basis for this Council to not find them to be a responsible bidder.

The bid received from Brough in the amount of \$398,279 is the lowest priced bid. As such, staff is recommending award of the construction contract to Brough. A contract in the amount of \$398,279 is included as Attachment 1. Staff is also requesting the City Council delegate authority to the City Manager to approve contract change orders up to \$40,000 above the bid price.

The total projected cost for construction of the project including construction, contingencies, construction management and design support during construction is \$498,259 as shown in the following table:

Construction Contract	\$398,279
Construction Contingency	\$ 40,000
Construction Management	\$ 59,980
<b>TOTAL</b>	<b>\$498,259</b>

**Construction Management**

Staff is recommending that Council authorize awarding a professional design services agreement with MNS Engineers, Inc. (MNS) for Construction Management of the project in the not to exceed amount of \$59,980 (attachment 2). MNS is one of the firms currently on the City's short list for consultants. Staff is recommending Council select MNS for construction management services because of their considerable experience in managing similar projects in accordance with the Caltrans Construction Manual and the Caltrans Standard Specifications. MNS has not participated in the planning or design phases of the Project.

**GOLETA STRATEGIC PLAN:**

The Project is consistent with Goleta's Strategic Plan; City-wide Strategy, "Strengthen Infrastructure."

**FISCAL IMPACTS**

There is sufficient budget to cover the cost of the project and no new appropriations are necessary.

<b>Fund</b>	<b>Account</b>	<b>Name</b>	<b>FY15/16 Balance (Carryovers)</b>	<b>FY16/17 Budget</b>	<b>Total</b>
201	5-5800-411	Maintenance - Concrete	120,000	120,000	240,000
205	5-5800-411	Maintenance - Concrete	114,000	200,000	314,000
212	5-5800-414.01	Maintenance - School Crossing S&S Improvements	25,000		25,000
		<b>Total</b>	<b>259,000</b>	<b>320,000</b>	<b>579,000</b>

**ALTERNATIVES:**

The Council may elect to reject all bids and direct staff to re-bid the Project. However, doing so would significantly delay project construction.

**Legal Review By:****Approved By:**
  
 Tim W. Gilés  
 City Attorney

  
 Michelle Greene  
 City Manager
**ATTACHMENTS:**

1. Construction contract with Brough Construction Inc.
2. Professional Services Agreement for Construction Management with MNS Engineers, Inc.

## **Attachment 1**

Construction contract with Brough Construction Inc.

**CONSTRUCTION CONTRACT  
FOR  
MISCELLANEOUS CONCRETE REPAIR PROJECT FY 2016-17**

**This Construction Contract for MISCELLANEOUS CONCRETE REPAIR PROJECT FY 2016-17** ("Contract") is made and entered into for the above stated project this 20<sup>th</sup> of September, 2016, by and between the **CITY OF GOLETA** ("City") and **BROUGH CONSTRUCTION, INC.**, ("Contractor").

**1. Contract Documents.**

"Contract Documents" means the Notice Inviting Sealed Bids; Bidding Instructions; Supplementary Instructions to Bidders; Bid Proposal; this Contract; Standard Specifications; Supplementary Conditions; Exhibits; Technical Specifications; List of Drawings; Drawings; Addenda; Notice to Proceed; Change Orders; Notice of Completion; and all other documents identified in the Contract Documents which together form the contract between the City and the Contractor for the Work.

**2. Work.**

For and in consideration of the payments and agreements to be made and performed by City, Contractor agrees to furnish all materials and perform all work required for the Project, and to fulfill all other obligations as set forth in the Contract Documents ("Work").

**3. Contract Amount.**

The City agrees to pay the Contractor a sum not to exceed **three hundred ninety-eight thousand two hundred seventy-nine** dollars (**\$398,279**) for the Work in the manner set forth in the Contract Documents. The City may adjust this amount as set forth in the Contract Documents.

**4. Time for Performance.**

- 4.1 The Contractor will fully complete the Work within **forty (40)** working days (the "Contract Time").
- 4.2 The Contract Time will commence when the City issues a notice to proceed. The Contract Documents will supersede any conflicting provisions included on the notice to proceed issued pursuant to this Contract.
- 4.3 The Contractor shall not perform any Work until:
  - i. The Contractor furnishes proof of insurance as required by the Contract Documents; and
  - ii. The City gives the Contractor a notice to proceed.

- 4.4 By signing this Contract, the Contractor represents to the City that the Contract Time is reasonable for completion of the Work and that the Contractor will complete the Work within the Contract Time.
- 4.5 Should the Contractor begin the Work before receiving written authorization to proceed, any such Work is at the Contractor's own cost and risk.

**5. Labor Practices.**

- 5.1 Contractor acknowledges that this Contract is subject to the provisions of Division 2, Part 7, Chapter 1 (commencing the Section 1720) of the California Labor Code relating to Community Services and public agencies and agrees to be bound by all the provisions thereof as though set forth in full herein. The California prevailing rates of per diem wages are on file in the office of the City Clerk.
- 5.2 Contractor agrees to comply with the provisions of California Labor Code Sections 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. Contractor shall, as a penalty to the City, forfeit not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of Industrial Relations for the work or craft in which the worker is employed for any public work done under the Contract by Contractor or by any Subcontractor.
- 5.3 Contractor agrees to comply with the provisions of California Labor Code Section 1777.5 concerning the employment of apprentices on Community Services projects, and further agrees that Contractor is responsible for compliance with Section 1777.5 by all of its Subcontractors.
- 5.4 Contractor agrees to comply with the provisions of California Labor Code Section 1813 concerning penalties for workers who work excess hours. Except as provided by Labor Code Section 1815, the Contractor shall, as a penalty to the City, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the Contract by the Contractor or by any Subcontractor for each calendar day during which such worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 (commencing at Section 1810) of the California Labor Code.
- 5.5 In accordance with California Labor Code Sections 1860 and 3700, every contractor is required to secure the payment of compensation to its employees. In accordance with the provisions of California Labor Code Section 1861, Contractor, by signing this Contract, certifies that Contractor is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code,

and will comply with such provisions before commencing the performance of the work of this Contract.

- 5.6 Contractor agrees to comply with the provisions of California Labor Code Section 1776 concerning the creation, retention, and inspection of payroll records, and further agrees to be responsible for compliance with Section 1776 by all of its Subcontractors.

## **6. Insurance.**

- 6.1 Insurance Requirements. CONTRACTOR shall provide and maintain insurance, acceptable to the City Manager and City Attorney, in full force and effect throughout the term of this AGREEMENT, against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by CONTRACTOR, its agents, representatives or employees. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-:VII. CONTRACTOR shall provide the following scope and limits of insurance:

as: A. Minimum Scope of Insurance. Coverage shall be at least as broad

- (1) Insurance Services Office form Commercial General Liability coverage (Occurrence Form CG 0001).
- (2) Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, including code 1 "any auto" and endorsement CA 0025, or equivalent forms subject to the written approval of the City.
- (3) Workers' Compensation insurance as required by the Labor Code of State of California and Employer's Liability insurance and covering all persons providing services on behalf of the CONTRACTOR and all risks to such persons under this AGREEMENT.

B. Minimum Limits of Insurance. CONTRACTOR shall maintain limits of insurance no less than:

- (1) General Liability: \$2,000,000 general aggregate for bodily injury, personal injury and property damage.
- (2) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
- (3) Workers' Compensation and Employer's Liability: Workers' Compensation as required by the Labor Code of the State of

California and Employers Liability limits of \$1,000,000 per accident.

6.2 Other Provisions. Insurance policies required by this AGREEMENT shall contain the following provisions:

- A. All Policies. Each insurance policy required by this paragraph shall be endorsed and state the coverage shall not be suspended, voided, cancelled by the insurer or either party to this AGREEMENT, reduced in coverage or in limits except after 30 days' prior written notice by Certified mail, return receipt requested, has been given to City's Risk Manager.
- B. General Liability and Automobile Liability Coverages.
  - (1) CITY, and its respective elected and appointed officers, officials, and employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities CONTRACTOR performs; products and completed operations of CONTRACTOR; premises owned, occupied or used by CONTRACTOR; or automobiles owned, leased, hired or borrowed by CONTRACTOR. The coverage shall contain no special limitations on the scope of protection afforded to CITY, and their respective elected and appointed officers, officials, or employees.
  - (2) CONTRACTOR's insurance coverage shall be primary insurance with respect to CITY, and its respective elected and appointed, its officers, officials, employees and volunteers. Any insurance or self insurance maintained by CITY, and its respective elected and appointed officers, officials, employees or volunteers, shall apply in excess of, and not contribute with, CONTRACTOR's insurance.
  - (3) CONTRACTOR'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.
  - (4) Any failure to comply with the reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to CITY, and its respective elected and appointed officers, officials, employees or volunteers.
- C. Workers' Compensation and Employer's Liability Coverage. Unless the City Manager otherwise agrees in writing, the insurer shall agree to waive all rights of subrogation against CITY, and its



respective elected and appointed officers, officials, employees and agents for losses arising from work performed by CONTRACTOR.

- 6.3 Other Requirements. CONTRACTOR agrees to deposit with CITY, at or before the effective date of this contract, certificates of insurance necessary to satisfy CITY that the insurance provisions of this contract have been complied with. The City Manager may require that CONTRACTOR furnish CITY with copies of original endorsements effecting coverage required by this Section. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. CITY reserves the right to inspect complete, certified copies of all required insurance policies, at any time.
- A. Any deductibles or self-insured retentions must be declared to and approved by CITY. At the option of CITY, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY or its respective elected or appointed officers, officials, employees and volunteers or the CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims.
- B. The procuring of such required policy or policies of insurance shall not be construed to limit CONTRACTOR's liability hereunder nor to fulfill the indemnification provisions and requirements of this AGREEMENT.

## **7. Independent Contractor.**

Contractor is and shall at all times remain as to the City, a wholly independent contractor. Neither the City nor any of its agents shall have control of the conduct of Contractor or any of the Contractor's employees, except as herein set forth. Contractor shall not at any time or in any manner represent that it or any of its agents or employees are in any manner agents or employees of City.

## **8. Permits and Licenses**

CONSULTANT, at its sole expense, shall obtain and maintain during the term of this AGREEMENT, all appropriate permits, licenses, and certificates, including a CITY business license, that may be required in connection with the performance of services under this AGREEMENT.

## **9. Taxes.**

The Contractor is responsible for paying all retail, sales and use, transportation, export, import, special, or other taxes, licenses, and duties applicable to, and assessable against any work, materials, equipment, services, processes and operations incidental to or involved in this Contract. The Contractor is responsible for ascertaining and arranging to

pay them. The prices established in this Contract shall include compensation for any taxes the Contractor is required to pay by laws and regulations in effect on the bid opening date.

#### **10. Notices.**

All notices and communications shall be sent to the parties at the following address:

CITY: City Manager, Michelle Greene  
City of Goleta  
130 Cremona Drive, Suite B  
Goleta, CA 93117

CONTRACTOR: President, Jeffrey Brough  
Brough Construction, Inc.  
634 Printz Road  
Arroyo Grande, CA 93420

#### **11. Ownership of Documents.**

All documents, data, studies, drawings, maps, models, photographs and reports prepared by the Contractor under the Contract Documents are the City's property. The Contractor may retain copies of such documents and materials as desired, but will deliver all original materials to the City upon the City's written notice.

#### **12. Audit of Records.**

The Contractor will maintain full and accurate records with respect to all services and matters covered under this Contract. The City will have free access at all reasonable times to such records, and the right to examine and audit the same and to make transcript therefrom, and to inspect all program data, documents, proceedings and activities. The Contractor will retain such financial and program service records for at least three (3) years after termination or final payment under the Contract Documents.

#### **13. Indemnification.**

Contractor agrees to defend, indemnify and hold harmless City and all of its officers, employees and agents from any liability, financial loss, claims, demands, or causes of action, including but not limited to related expenses, attorney's fees and costs, based on, arising out of, or in any way related to the work undertaken by Contractor or any person employed by Contractor or its agents. Nothing in this section shall narrow the indemnification provisions contained in the City's Standard Specifications.

#### **14. Assignment.**

This Contract is not assignable nor the performance of either party's duties delegable without the prior written consent of the other party. Any attempted or purported

assignment or delegation of any or the rights of obligations of either party without the prior written consent of the other shall be void and of no force and effect.

**15. Integration.**

This Contract supersedes any and all other agreements either oral or written, between the parties and contains all of the covenants and agreements between the parties pertaining to the work of improvements described herein. Each party to this Contract acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that any other agreement, statements or promise not contained in this Contract shall not be valid or binding.

**16. Authority/Modification.**

The parties represent and warrant that all necessary action has been taken by the parties to authorize the undersigned to execute this Contract and to engage in the actions described herein. This Contract may be modified by written amendment. The City's City Manager, or designee, may execute any such amendment on the City's behalf when properly authorized pursuant to municipal code §3.05.

**17. Interpretation.**

This Contract was drafted in, and will be construed in accordance with the laws of the State of California, and exclusive venue for any action involving this Contract will be in Santa Barbara County.

**18. Severability.**

If any portion of the Contract Documents are declared by a court of competent jurisdiction to be invalid or unenforceable, then such portion will be deemed modified to the extent necessary in the opinion of the court to render such portion enforceable and, as so modified, such portion and the balance of this Contract will continue in full force and effect.

**19. Captions.**

The captions of the sections of this Contract are for convenience of reference only and will not affect the interpretation of this Contract.

**20. Time of Essence.**

Time is of the essence for each and every provision of the Contract Documents.

**In concurrence and witness whereof**, this AGREEMENT has been executed by the parties effective on the date and year first above written.

**CITY OF GOLETA**

**CONTRACTOR**

\_\_\_\_\_  
Michelle Greene, City Manager

\_\_\_\_\_  
Jeffrey Brough, President

**ATTEST:**

\_\_\_\_\_  
Deborah Lopez, City Clerk

\_\_\_\_\_  
Heather Brough, Sec/ CFO

**APPROVED AS TO FORM**

**Contractor's License No.**

  
\_\_\_\_\_  
Tim W. Giles, City Attorney

\_\_\_\_\_  
851220-A

## **Attachment 2**

Professional Services Agreement for Construction Management with MNS Engineers,  
Inc.

**AGREEMENT FOR PROFESSIONAL DESIGN SERVICES  
BETWEEN THE CITY OF GOLETA  
AND  
MNS ENGINEERS, INC.**

This AGREEMENT FOR PROFESSIONAL DESIGN SERVICES is made and entered into this 20<sup>th</sup> day of September, 2016, by and between the **CITY OF GOLETA**, a municipal corporation (herein referred to as "CITY"), and **MNS ENGINEERS, INC.**, (herein referred to as "CONSULTANT").

**WHEREAS**, CONSULTANT represents that they are sufficiently experienced and capable of providing the services agreed to herein and are sufficiently familiar with the needs of the CITY; and

**WHEREAS**, CONSULTANT was evaluated for award of this AGREEMENT by the Public Works Director following a competitive Request for Proposals"; and

**WHEREAS**, CONSULTANT was selected for award of this AGREEMENT by City Council; and

**WHEREAS**, the City Council, on this 20th day of September, 2016, approved this AGREEMENT and authorized the City Manager to execute this AGREEMENT per the Goleta Municipal Code 3.05.240.

CITY and CONSULTANT agree as follows:

**1. RETENTION AS CONSULTANT**

CITY hereby retains CONSULTANT, and CONSULTANT hereby accepts such engagement, to perform the services described in Section 2. CONSULTANT warrants it has the qualifications, experience, and facilities to properly and timely perform said services.

**2. DESCRIPTION OF SERVICES**

The services to be performed by CONSULTANT are as follows:

Professional Construction Management & Inspection Services in conjunction with Miscellaneous Concrete Repair Project FY 2016-17. Services shall generally include Construction Management and Inspection services, as more particularly set forth in the Scope of Work, attached as Exhibit "A," and incorporated herein.

### **3. COMPENSATION AND PAYMENT**

(a) **Maximum and Rate.** The total compensation payable to CONSULTANT by CITY for the services under this AGREEMENT **SHALL NOT EXCEED** the sum of \$59,9810 (herein "not to exceed amount"), and shall be earned as the work progresses on the following basis:

Hourly at the hourly rates and with reimbursement to CONSULTANT for those expenses set forth in CONSULTANT's Schedule of Fees marked Exhibit "B," attached and incorporated herein. The rates and expenses set forth in that exhibit shall be binding upon CONSULTANT until December 31, 2017, after which any change in said rates and expenses must be approved in writing by CITY's Project Manager (CITY is to be given 60 days notice of any rate increase request), provided the not to exceed amount is the total compensation due CONSULTANT for all work described under this AGREEMENT.

(b) **Payment.** CONSULTANT shall provide CITY with written verification of the actual compensation earned, which written verification shall be in a form satisfactory to CITY's Project Manager. Invoices shall be made no more frequently than on a monthly basis, and describe the work performed (including a list of hours worked by personnel classification). All payments shall be made within 30 days after CITY's approval of the invoice.

### **4. EXTRA SERVICES**

CITY shall pay CONSULTANT for those CITY authorized extra services, not reasonably included within the services described in Section 2, as mutually agreed to in advance. Unless CITY and CONSULTANT have agreed in writing before the performance of extra services, no liability and no right to claim compensation for such extra services or expenses shall exist. The applicable hourly rates for extra services shall be at the hourly rates set forth in the compensation exhibit. Any compensation for extra services shall be part of the total compensation and shall not increase the not to exceed amount identified in Section 3.

### **5. CITY PROJECT MANAGER AND SERVICES BY CITY**

The services to be performed by CONSULTANT shall be accomplished under the general direction of, and coordinate with, CITY's "Project Manager", as that staff person is designated by CITY from time to time, and who presently is Rosemarie Gaglione, PE. Project Manager shall have the authority to act on behalf of the CITY in administering this AGREEMENT but shall not be authorized to extend the term of the AGREEMENT or increase the not to exceed amount.

## **6. TERM, PROGRESS AND COMPLETION**

The term of this AGREEMENT is from the date first written above to December 31, 2017, unless term of this AGREEMENT is extended or the AGREEMENT is terminated as provided for herein.

CONSULTANT shall not commence work on the services to be performed until (i) CONSULTANT furnishes proof of insurance as required by paragraph 10 below, and (ii) CITY gives written authorization to proceed with the work provided by CITY's Project Manager.

## **7. OWNERSHIP OF DOCUMENTS**

All drawings, designs, data, photographs, reports and other documentation (other than CONSULTANT's drafts, notes and internal memorandum), including duplication of same prepared by CONSULTANT in the performance of these services, are the property of CITY. CITY shall be entitled to immediate possession of the same upon completion of the work under this AGREEMENT, or at any earlier or later time when requested by CITY. CITY agrees to hold CONSULTANT harmless from all damages, claims, expenses, and losses arising out of any reuse of the plans and specifications for purposes other than those described in this AGREEMENT, unless written authorization of CONSULTANT is first obtained.

## **8. PERSONAL SERVICES/NO ASSIGNMENT/SUBCONTRACTOR**

This AGREEMENT is for professional services which are personal to CITY. Bill Callaghan is deemed to be specially experienced and is a key member of CONSULTANT's firm, and shall be directly involved in performing, supervising or assisting in the performance of this work. This key person shall communicate with, and periodically report to, CITY on the progress of the work. Should any such individual be removed from assisting in this contracted work for any reason, CITY may terminate this AGREEMENT. This AGREEMENT is not assignable by CONSULTANT without CITY's prior consent in writing.

## **9. HOLD HARMLESS AND INDEMNITY**

(a) **Hold Harmless for CONSULTANT's Damages.** CONSULTANT holds CITY, its elected officials, officers, agents, and employees, harmless from all of CONSULTANT's claims, demands, lawsuits, judgments, damages, losses, injuries or liability to CONSULTANT, to CONSULTANT's employees, to CONSULTANT's contractors or subcontractors, or to the owners of CONSULTANT's firm, which damages, losses, injuries or liability occur during the work required under this AGREEMENT, or occur while CONSULTANT is on CITY property, or which are connected, directly or indirectly, with CONSULTANT's performance of any activity or work required under this AGREEMENT.



**(b) Defense and Indemnity of Third Party Claims/Liability.** CONSULTANT shall indemnify, defend with counsel approved by CITY, and hold harmless CITY, its officers, officials, employees and volunteers from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with CONSULTANT's negligence, recklessness or willful misconduct in the performance of work hereunder or its failure to comply with any of its obligations contained in this AGREEMENT, except such loss or damage which is caused by the sole active negligence or willful misconduct of the CITY. Should conflict of interest principles preclude a single lawyer from representing both CITY and CONSULTANT, or should CITY otherwise find CONSULTANT's legal counsel unacceptable, then CONSULTANT shall reimburse the CITY its costs of defense, including without limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation. The CONSULTANT shall promptly pay any final judgment rendered against the CITY (and its officers, officials, employees and volunteers) with respect to claims determined by a trier of fact to have been the result of the CONSULTANT's negligent, reckless or wrongful performance. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this AGREEMENT.

**(c) No Waiver.** CITY does not waive, nor shall be deemed to have waived, any indemnity, defense or hold harmless rights under this section because of the acceptance by CITY, or the deposit with CITY, of any insurance certificates or policies described in Section 10.

## **10. INSURANCE**

CONSULTANT shall, at CONSULTANT's sole cost and expense, provide insurance as described herein. All insurance is to be placed with insurers authorized to do business in the State of California with an A.M. Best and Company rating level of A- or better, Class VII or better, or as otherwise approved by CITY.

Insurance shall include the following (or broader) coverage:

- a) Insurance Services Office Commercial Liability coverage "occurrence" form CG 00 01 or its exact equivalent with an edition date prior to 2004 and with minimum limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
- b) Insurance Services Office form number CA 0001 or equivalent covering Automobile Liability, including hired and non-owned automobile liability with a minimum limit of \$1,000,000 per accident. If the Service Provider owns no vehicles, this requirement may be satisfied by a non-owned and hired auto endorsement to Service Provider's commercial general liability policy.

- c) Workers' Compensation insurance complying with California worker's compensation laws, including statutory limits for workers' compensation and an Employer's Liability limit of \$1,000,000 per accident or disease.
- d) Professional Liability insurance on a policy form appropriate to CONSULTANT's profession. Limits shall be no less than \$1,000,000 per claim.

Liability insurance policies required to be provided by CONSULTANT hereunder shall contain or be endorsed to contain the following provisions:

- a) CITY, its employees, officials, agents and member agencies shall be covered as additional insureds. Coverage shall apply to any and all liability arising out of the work performed or related to the contract. Additional insured status under the general liability requirement shall be provided on Insurance Services Office Form CG 20 10 with an edition date prior to 2004, or its exact equivalent. Additional insured status for completed operations shall be provided either in the additional insured form or through another endorsement such as CG 20 37 with an edition date prior to 2004.
- b) CONSULTANT's insurance shall apply to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability. Coverage will not be limited to CITY's vicarious liability.
- c) Liability coverage shall be primary and non-contributing with any insurance maintained by CITY.
- d) Evidence of coverage (including the workers' compensation and employer's liability policies) shall provide that coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except after 30 days' prior written notice has been given to CITY. Such provision shall not include any limitation of liability of the insurer for failure to provide such notice.
- e) No liability insurance coverage provided to comply with this AGREEMENT shall prohibit CONSULTANT, or CONSULTANT's employees, or agents, from waiving the right of recovery prior to a loss. CONSULTANT waives its right of recovery against CITY.
- f) CONSULTANT agrees to deposit with CITY within fifteen days of Notice to Proceed of the Contract certificates of insurance and required endorsements.
- g) There shall be no recourse against CITY for payment of premiums or other amounts with respect to the insurance required to be provided by CONSULTANT hereunder. Any failure, actual or alleged, on the part of CITY to monitor compliance with these requirements will not be deemed as a

waiver of any rights on the part of CITY. CITY has no additional obligations by virtue of requiring the insurance set forth herein. In the event any policy of insurance required under this AGREEMENT does not comply with these requirements or is canceled and not replaced, CITY has the right but not the duty to obtain the insurance it deems necessary and any premium paid by CITY will be promptly reimbursed by CONSULTANT or CITY will withhold amounts sufficient to pay premium from CONSULTANT payments.

- h) CONSULTANT agrees to provide immediate notice to CITY of any claim or loss against CONSULTANT arising out of the work performed under this AGREEMENT. CITY assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve CITY.

#### **11. RELATION OF THE PARTIES**

The relationship of the parties to this AGREEMENT shall be that of independent contractors and that in no event shall CONSULTANT be considered an officer, agent, servant or employee of CITY. CONSULTANT shall be solely responsible for any workers compensation insurance, withholding taxes, unemployment insurance, and any other employer obligations associated with the described work.

#### **12. CORRECTIONS**

In addition to the above indemnification obligations, CONSULTANT shall correct, at its expense, all errors in the work that may be disclosed during CITY's review of CONSULTANT's report or plans. Should CONSULTANT fail to make such correction in a reasonably timely manner, such correction shall be made by CITY, and the cost thereof shall be charged to CONSULTANT or withheld from any funds due to CONSULTANT hereunder.

#### **13. TERMINATION BY CITY**

CITY, by notifying CONSULTANT in writing, may upon 15 calendar days notice, terminate without cause any portion or all of the services agreed to be performed under this AGREEMENT. If termination is for cause, no notice period need be given. In the event of termination, CONSULTANT shall have the right and obligation to immediately assemble work in progress for the purpose of closing out the job. All compensation for actual work performed and charges outstanding at the time of termination shall be payable by CITY to CONSULTANT within 30 days following submission of a final statement by CONSULTANT unless termination is for cause. In such event, CONSULTANT shall be compensated only to the extent required by law.

#### **14. ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE**

The acceptance by CONSULTANT of the final payment made under this AGREEMENT shall operate as and be a release of CITY from all claims and liabilities

for compensation to CONSULTANT for anything done, furnished, or relating to CONSULTANT'S work or services. Acceptance of payment shall be any negotiation of CITY's check or the failure to make a written extra compensation claim within 10 calendar days of the receipt of that check. However, approval or payment by CITY shall not constitute, nor be deemed, a release of the responsibility and liability of CONSULTANT, its employees, subcontractors, agents and CONSULTANTS for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by CITY for any defect or error in the work prepared by CONSULTANT, its employees, subcontractors, agents and CONSULTANTS.

#### **15. AUDIT OF RECORDS**

At any time during normal business hours and as often as it may deem necessary, CONSULTANT shall make available to a representative of CITY for examination of all its records with respect to all matters covered by this AGREEMENT and will permit CITY to audit, examine and/or reproduce such records. CONSULTANT will retain such financial records, time sheets, work progress reports, invoices, bills and project records for at least two years after termination or final payment under this AGREEMENT.

#### **16. WAIVER; REMEDIES CUMULATIVE**

Failure by a party to insist upon the strict performance of any of the provisions of this AGREEMENT by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand strict compliance by such other party in the future. No waiver by a party of a default or breach of the other party shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omissions by a party to take any action with respect to such default or breach. No express written waiver of a specified default or breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period of time specified. All of the remedies permitted or available to a party under this AGREEMENT, or at law or in equity, shall be cumulative and alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right of remedy.

#### **17. CONFLICT OF INTEREST**

CONSULTANT is unaware of any CITY employee or official that has a financial interest in CONSULTANT'S business. During the term of this AGREEMENT and/or as a result of being awarded this AGREEMENT, CONSULTANT shall not offer, encourage or accept any financial interest in CONSULTANT'S business by any CITY employee or official.

**18. CONSTRUCTION OF LANGUAGE OF AGREEMENT**

The provisions of this AGREEMENT shall be construed as a whole according to its common meaning of purpose of providing a public benefit and not strictly for or against any party. It shall be construed consistent with the provisions hereof, in order to achieve the objectives and purposes of the parties. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neutral genders or vice versa.

**19. MITIGATION OF DAMAGES**

In all situations arising out of this AGREEMENT, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

**20. GOVERNING LAW**

This AGREEMENT, and the rights and obligations of the parties, shall be governed and interpreted in accordance with the laws of the State of California. Should litigation occur, venue shall be in Superior Court of Santa Barbara County.

**21. NONDISCRIMINATION**

CONSULTANT shall comply with the federal Americans with Disability Act, Public Law 101-336, and observe the disability discrimination prohibitions of such laws in the performance of the work required under this AGREEMENT.

**22. TAXPAYER IDENTIFICATION NUMBER**

CONSULTANT shall provide CITY with a complete Request for Taxpayer Identification Number and Certification, Form W-9 (Rev. 12-87), as issued by the Internal Revenue Service.

**23. NON-APPROPRIATION OF FUNDS**

Payments due and payable to CONSULTANT for current services are within the current budget and within an available, unexhausted and unencumbered appropriation of CITY funds. In the event CITY has not appropriated sufficient funds for payment of CONSULTANT services beyond the current fiscal year, this AGREEMENT shall cover only those costs incurred up to the conclusion of the current fiscal year.

**24. MODIFICATION OF AGREEMENT**

The tasks described in this AGREEMENT and all other terms of this AGREEMENT may be modified only upon mutual written consent of CITY and CONSULTANT.

**25. USE OF THE TERM "CITY"**

Reference to "CITY" in this AGREEMENT includes City Manager or any authorized representative acting on behalf of CITY.

**26. PERMITS AND LICENSES**

CONSULTANT, at its sole expense, shall obtain and maintain during the term of this AGREEMENT, all appropriate permits, licenses, and certificates, including a CITY business license, that may be required in connection with the performance of services under this AGREEMENT.

**27. CAPTIONS**

The captions or headings in this AGREEMENT are for convenience only and in no other way define, limit or describe the scope or intent of any provision or section of the AGREEMENT.

**28. AUTHORIZATION**

Each party has expressly authorized the execution of this AGREEMENT on its behalf and bind said party and its respective administrators, officers, directors, shareholders, divisions, subsidiaries, agents, employees, successors, assigns, principals, partners, joint venturers, insurance carriers and any others who may claim through it to this AGREEMENT.

**29. ENTIRE AGREEMENT BETWEEN PARTIES**

Except for CONSULTANT'S proposals and submitted representations for obtaining this AGREEMENT, this AGREEMENT supersedes any other agreements, either oral or in writing, between the parties hereto with respect to the rendering of services, and contains all of the covenants and agreements between the parties with respect to said services.

**30. PARTIAL INVALIDITY**

If any provision in this AGREEMENT is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

**31. NOTICES**

Any notice required to be given hereunder shall be deemed to have been given by depositing said notice in the United States mail, postage prepaid, and addressed as follows:

TO CITY:

Attn: Michelle Greene, City Manager  
City of Goleta  
130 Cremona Drive, Suite B  
Goleta, CA 93117

TO CONSULTANT:

Attn: Gregory Chelini, P.E.  
MNS Engineering, Inc.  
201 N. Calle Cesar Chavez, Suite 300  
Santa Barbara, CA 93101

**In concurrence and witness whereof**, this AGREEMENT has been executed by the parties effective on the date and year first above written.

**CITY OF GOLETA**

**CONSULTANT**

\_\_\_\_\_  
Michelle Greene, City Manager

\_\_\_\_\_  
James Salvito, President

**ATTEST:**

\_\_\_\_\_  
Deborah Lopez, City Clerk

\_\_\_\_\_  
Greg Chelini, Vice President

**APPROVED AS TO FORM**



\_\_\_\_\_  
Tim W. Giles, City Attorney

## **EXHIBIT A SCOPE OF WORK**

### **Project Descriptions**

The scope of work is for Construction Management & Inspection Services for the Miscellaneous Concrete Repair Project, FY 2016-17. The work includes construction of sidewalk and ramp improvements at various locations throughout the City. The consultant shall remove and replace concrete sidewalks, driveways, spandrel/cross gutters, root pruning, installation of ADA accessible ramps, and miscellaneous paving on various streets within the City. The Consultant shall provide a part-time Resident Engineer to manage the construction and an inspector for the daily inspection of the field work. The project is within the City of Goleta ROW and shall be performed in accordance to the City and Caltrans procedures.

The consultant shall provide the following:

- Contract Administration (progress pay estimates, correspondence, coordination, CCO's material certifications)
- Inspection of the construction for compliance to the specifications
- Preparation of daily inspection reports and maintain photographic record of construction
- Act as the City's point-of-contact for the Contractor



## Exhibit B Schedule of Fees

### MNS Engineers Standard Schedule of Fees

<b>Direct Expenses</b> Use of outside consultants as well as copies, blueprints, survey stakes, monuments, computer plots, telephone, travel (out of area) and all similar charges directly connected with the work will be charged at cost plus fifteen percent (15%). Mileage will be charged at the current federal mileage reimbursement rate.	<b>Project Management</b> Principal-In-Charge Senior Project Manager Project Manager Project Coordinator	<b>Hourly Rate</b>	<b>Surveying</b>	<b>Hourly Rate</b>
<b>Prevailing Wage Rates</b> Rates shown with Prevailing Wage "(PW)" an notation are used for field work on projects subject to federal or state prevailing wage law.	<b>Engineering</b> Principal Engineer Supervising Engineer Senior Project Engineer Project Engineer Associate Engineer Assistant Engineer			
	<b>Municipal Services</b> City Engineer Deputy City Engineer Assistant City Engineer Plan Check Engineer Permit Engineer City Inspector City Inspector (PW) Planning Director Senior City Planner Assistant Planner			
	<b>Electrical/Traffic Signal Inspector</b>			
	<b>Administrative Support</b> Administrative Analyst Administrative Assistant			
			<b>Technical Support</b>	