

**NAPA COUNTY AGREEMENT NO. 230309B**

**PROFESSIONAL SERVICES AGREEMENT**

**THIS AGREEMENT** is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between NAPA COUNTY, a political subdivision of the State of California, hereinafter referred to as “COUNTY”, and MILLER PACIFIC ENGINEERING GROUP, a California corporation, whose mailing address is 135 Camino Dorado, Suite 3, Napa, CA 94558, hereinafter referred to as “CONTRACTOR.”

**RECITALS**

**WHEREAS**, COUNTY wishes to obtain specialized services, as authorized by Government Code section 31000, in order to provide engineering design and support services for the Dry Creek Road Mile Post Marker (MPM) 11.6 slide repair hereinafter referred to as “Project”; and

**WHEREAS**, CONTRACTOR is willing to provide such specialized services to COUNTY under the terms and conditions set forth herein.

**NOW, THEREFORE**, COUNTY hereby engages the services of CONTRACTOR, and CONTRACTOR agrees to serve COUNTY in accordance with the terms and conditions set forth herein.

**TERMS**

1. **Term of the Agreement.** The term of this Agreement shall commence on the date first above written and shall expire on June 30, 2025, unless terminated earlier in accordance with Paragraphs 9 (Termination for Cause), 10 (Other Termination) or 23(a) (Covenant of No Undisclosed Conflict); except that the obligations of the parties under Paragraphs 7 (Insurance) and 8 (Indemnification) shall continue in full force and effect after said expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of the Agreement, and the obligations of CONTRACTOR to COUNTY shall also continue after said expiration date or early termination in relation to the obligations prescribed by Paragraphs 15 (Confidentiality), 20 (Taxes) and 21 (Access to Records/Retention).

2. **Scope of Services.** CONTRACTOR shall provide COUNTY those services set forth in Exhibit “A”, attached hereto and hereby incorporated by reference.

3. **Compensation.**

(a) **Rates.** In consideration of CONTRACTOR’s fulfillment of the Scope of Services, COUNTY shall pay CONTRACTOR at the fixed price set forth in Exhibit “A”.

(b) **Expenses.** No travel or other expenses will be reimbursed by COUNTY.

(c) Maximum Amount. Notwithstanding subparagraphs (a) and (b), the maximum payments under this Agreement shall be a total of TWO HUNDRED THIRTY NINE THOUSAND, THREE HUNDRED NINETY ONE DOLLARS AND FIFTY FIVE CENTS (\$239,391.55) for professional services provided, however, that such amounts shall not be construed as guaranteed sums, and compensation shall be based upon services actually rendered and reimbursable expenses actually incurred

**4. Method of Payment.**

(a) Professional Services. All payments for compensation and reimbursement for expenses shall be made only upon presentation by CONTRACTOR to COUNTY of an itemized billing invoice in a form acceptable to the Napa County Auditor which indicates, at a minimum, CONTRACTOR's name, address, and Social Security or Taxpayer Identification Number. If the Agreement provides for payment on an hourly basis, each billing invoice shall also include itemization of the hours worked, a detailed description of the tasks completed during the billing period, the names of person(s) performing the services and the position(s) held by such person(s), and the approved hourly or task rate.

(b) Expenses. No travel or other expenses will be reimbursed by COUNTY.

(c) Fixed Price. If the Agreement provides for a fixed price, if CONTRACTOR presents interim invoices, CONTRACTOR must state the percentage of work completed, which must be verified by COUNTY, i.e., 35% design, 95% design, draft report, et cetera, at which time CONTRACTOR shall be paid the equivalent percentage of the fixed price.

(d) Invoices Generally. Except as provided for in subparagraph 4(e) immediately below, CONTRACTOR shall submit invoices not more often than monthly to the project manager who, after review and approval as to form and content, shall submit the invoice to the Napa County Auditor no later than fifteen (15) calendar days following receipt. A sample invoice showing the level of detail required is attached as Exhibit "B".

(e) Invoices Due at Start of Fiscal Year. Notwithstanding the limitations described in subparagraph 4(d) immediately above, within fifteen (15) calendar days of a new fiscal year CONTRACTOR shall submit all invoices due in the prior fiscal year that have not yet been submitted to COUNTY. CONTRACTOR understands that failure to submit such invoice(s) at the beginning of the new fiscal year can result in CONTRACTOR not being reimbursed for their work. For the purposes of this subparagraph 4(e), "fiscal year" shall be the period of July 1 through June 30.

(f) Legal status. So that COUNTY may properly comply with its reporting obligations under federal and state laws pertaining to taxation, if CONTRACTOR is or becomes a corporation during the term of this Agreement, proof that such status is currently recognized by and complies with the laws of both the state of incorporation or organization and the State of California, if different, shall be provided to the project engineer upon request in a form satisfactory to the Napa County Auditor. Such proof shall include, but need not be limited to, a copy of any annual or other periodic filings or registrations required by the state of origin or California, the current address for service of process on the corporation or limited liability partnership, and the name of any agent designated for service of process by CONTRACTOR within the State of California.

5. **Independent Contractor.** CONTRACTOR shall perform this Agreement as an independent contractor. CONTRACTOR and the officers, agents and employees of CONTRACTOR are not, and shall not be deemed, COUNTY employees for any purpose, including workers' compensation and employee benefits. CONTRACTOR shall, at CONTRACTOR's own risk and expense, determine the method and manner by which duties imposed on CONTRACTOR by this Agreement shall be performed; provided, however, that COUNTY may monitor the work performed by CONTRACTOR. COUNTY shall not deduct or withhold any amounts whatsoever from the compensation paid to CONTRACTOR, including, but not limited to amounts required to be withheld for state and federal taxes, unless required to do so by court order. As between the parties to this Agreement, CONTRACTOR shall be solely responsible for all such payments.

6. **Specific Performance.** It is agreed that CONTRACTOR, including the agents or employees of CONTRACTOR, shall be the sole providers of the services required by this Agreement. Because the services to be performed by CONTRACTOR under the terms of this Agreement are of a special, unique, unusual, extraordinary, and intellectual or time-sensitive character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action of law, COUNTY, in addition to any other rights or remedies which COUNTY may possess, shall be entitled to injunctive and other equitable relief to prevent a breach of this Agreement by CONTRACTOR.

7. **Insurance.** CONTRACTOR shall obtain and maintain in full force and effect throughout the term of this Agreement, and thereafter as to matters occurring during the term of this Agreement, the following insurance coverage:

(a) Workers' Compensation Insurance. To the extent required by law during the term of this Agreement, CONTRACTOR shall provide workers' compensation insurance for the performance of any of CONTRACTOR's duties under this Agreement, including but not limited to, coverage for workers' compensation and employer's liability and a waiver of subrogation, and shall provide COUNTY with certification of all such coverages upon request by COUNTY's Risk Manager.

(b) Liability Insurance. CONTRACTOR shall obtain and maintain in full force and effect during the term of this Agreement the following liability insurance coverages, issued by a company admitted to do business in California and having an A.M. Best rating of A:VII or better, or equivalent self-insurance:

(1) General Liability. Commercial general liability [CGL] insurance coverage (personal injury and property damage) of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence, covering liability or claims for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of CONTRACTOR or any officer, agent, or employee of CONTRACTOR under this Agreement. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

(2) Professional Liability/Errors and Omissions. Professional liability [or errors and omissions] insurance for all activities of CONTRACTOR arising out of or in connection with this Agreement in an amount not less than ONE MILLION DOLLARS

(\$1,000,000) per claim. If the coverage includes an aggregate limit the aggregate limit shall be no less than twice the per occurrence limit.

(3) Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with CONTRACTOR's business of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence. Coverage shall be business auto insurance coverage using Insurance Services Office (ISO) form number CA 0001 06 92 including symbol 1 (any Auto) or the exact equivalent. If CONTRACTOR owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the General Liability Insurance described in subparagraph (b)(1) above. If CONTRACTOR or CONTRACTOR's employees, officers, or agents will use personal automobiles in any way in the performance of this Agreement, CONTRACTOR shall provide evidence of personal auto liability coverage for each such person upon request.

(c) Certificates of Coverage. All insurance coverages referenced in paragraph 7(b), above, shall be evidenced by one or more certificates of coverage or, with the consent of COUNTY's Risk Manager, demonstrated by other evidence of coverage acceptable to COUNTY's Risk Manager, which shall be filed by CONTRACTOR with the Department of Public Works prior to commencement of performance of any of CONTRACTOR's duties.

(1) The certificate(s) or other evidence of coverage shall reference this Agreement by its COUNTY number or title and department; shall be kept current during the term of this Agreement; shall provide that COUNTY shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.

(2) Waiver of Subrogation and Additional Insured Endorsements. For the commercial general liability insurance coverage referenced in paragraph 7(b)(1) and, for the comprehensive automobile liability insurance coverage referenced in paragraph 7(b)(3) where the vehicles are covered by a commercial policy rather than a personal policy, CONTRACTOR shall also file with the evidence of coverage an endorsement from the insurance provider naming COUNTY, its officers, employees, agents and volunteers as additional insureds and waiving subrogation. For the Workers Compensation insurance coverage, CONTRACTOR shall file with the evidence of coverage an endorsement waiving subrogation.

(3) The certificate or other evidence of coverage shall provide that if the same policy applies to activities of CONTRACTOR not covered by this Agreement, then the limits in the applicable certificate relating to the additional insured coverage of COUNTY shall pertain only to liability for activities of CONTRACTOR under this Agreement, and that the insurance provided is primary coverage to COUNTY with respect to any insurance or self-insurance programs maintained by COUNTY. The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94.

(4) Upon request by COUNTY's Risk Manager, CONTRACTOR shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

(d) Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to, and be subject to approval by, COUNTY's Risk Manager, which approval shall not be denied unless the COUNTY's Risk Manager determines that the deductibles or self-insured retentions are unreasonably large in relation to compensation payable under this Agreement and the risks of liability associated with the activities required of CONTRACTOR by this Agreement. At the option of and upon request by COUNTY's Risk Manager if the Risk Manager determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects COUNTY, its officers, employees, agents and volunteers or CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

(e) Inclusion in Subcontracts. CONTRACTOR agrees to require all subcontractors and any other entity or person who is involved in providing services under this Agreement to comply with the Workers Compensation and General Liability insurance requirements set forth in this Paragraph 7.

**8. Hold Harmless/Defense/Indemnification.**

(a) In General. Except as otherwise prohibited by Civil Code section 2782.8, CONTRACTOR shall defend at its own expense, indemnify, and hold harmless the COUNTY and its officers, agents, employees, volunteers or representatives from and against any and all liability, claims, actions, proceedings, losses, injuries, damages or expenses of every name, kind, and description, including litigation costs and reasonable attorney's fees incurred in connection therewith, brought for or on account of, personal injury (including death), including but not limited to COUNTY employees, and the public, or damage to the property of any person or entity, which arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONTRACTOR, its officers, agents, employees, volunteers, representatives, contractors and subcontractors. This duty of CONTRACTOR includes the duty of defense, inclusive of that set forth in California Civil Code Section 2778. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, provided that nothing shall require either party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

(b) Employee Character and Fitness. CONTRACTOR accepts responsibility for determining and approving the character and fitness of its employees (including volunteers, agents or representatives) to provide the services required of CONTRACTOR under this Agreement, including completion of a satisfactory criminal/background check and period rechecks to the extent permitted by law. Notwithstanding anything to the contrary in this Paragraph, CONTRACTOR shall hold COUNTY and its officers, agents and employees harmless from any liability for injuries or damages resulting from a breach of this provision or CONTRACTOR's actions in this regard.

9. **Termination for Cause.** If either party shall fail to fulfill in a timely and proper manner that party's obligations under this Agreement or otherwise breach this Agreement and fail to cure such failure or breach within fifteen (15) days of receipt of written notice from the other party describing the nature of the breach, the non-defaulting party may, in addition to any other remedies it may have, terminate this Agreement by giving ten (10) days prior written notice to the defaulting party in the manner set forth in Paragraph 13 (Notices). The Napa County Purchasing Agent or designee pursuant to Napa County Code section 2.36.050 is hereby authorized to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of COUNTY for cause.

10. **Other Termination.** This Agreement may be terminated by COUNTY for any reason and at any time by giving prior written notice of such termination to CONTRACTOR specifying the effective date thereof at least thirty (30) days prior to the effective date; provided, however, that no such termination may be affected by COUNTY unless an opportunity for consultation is provided prior to the effective date of the termination. COUNTY hereby authorizes the Napa County Executive Officer to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of COUNTY for the convenience of COUNTY.

11. **Disposition of, Title to, and Payment for Work Upon Expiration or Termination.**

(a) Upon expiration of this Agreement or termination for cause under Paragraph 9 or termination for convenience under Paragraph 10:

(1) To the extent CONTRACTOR has provided services through Software and Applications materials licensed to COUNTY, COUNTY shall promptly return the Software and Application materials to CONTRACTOR. In addition, to the extent CONTRACTOR maintains COUNTY data on those portions of digital software hosted by CONTRACTOR and not controlled by COUNTY ("County data"), CONTRACTOR shall promptly return County data to COUNTY Information Technology Department (ITS) in a format designated by ITS and shall subsequently purge County data from CONTRACTOR's systems upon confirmation from COUNTY that the copy of the data provided to COUNTY is comprehensive of the data previously hosted by CONTRACTOR.

(2) All finished or unfinished documents and other materials, if any, and all rights therein shall become, at the option of COUNTY, the property of and shall be promptly returned to COUNTY, although CONTRACTOR may retain a copy of such work for its personal records only, except as otherwise provided under Paragraph 15 (Confidentiality) of this Agreement. Unless otherwise expressly provided in this Agreement, any copyrightable or patentable work created by CONTRACTOR under this Agreement shall be deemed a "work made for hire" for purposes of copyright or patent law and only COUNTY shall be entitled to claim or apply for the copyright or patent thereof. Notwithstanding the foregoing and to the extent services under this Agreement involve the development of previously patented inventions or copyrighted software, then upon expiration or termination of this Agreement, title to, ownership of, and all applicable patents, copyrights and trade secrets in the products developed or improved under this Agreement, shall remain with CONTRACTOR or any other person or entity if such person previously owned or held such patents, copyrights, and trade secrets, and such persons shall retain complete rights to market such product; provided, however, that COUNTY shall receive, at no additional cost, a perpetual license to use such products for its own

use or the use of any consortium or joint powers agency to which COUNTY is a party. If the product involves a source code, CONTRACTOR shall either provide a copy of the source code to COUNTY or shall place the source code in an escrow account, at CONTRACTOR's expense, from which the source code may be withdrawn and used by COUNTY for the sole purpose of maintaining and updating the system dependent upon such code when such use is necessary to prevent loss of service to COUNTY.

(b) CONTRACTOR shall be entitled to receive compensation for any satisfactory work completed prior to expiration or receipt of the notice of termination or commenced prior to receipt of the notice of termination and completed satisfactorily prior to the effective date of the termination; except that CONTRACTOR shall not be relieved of liability to COUNTY for damages sustained by COUNTY by virtue of any breach of the Agreement by CONTRACTOR whether or not the Agreement expired or otherwise terminated, and COUNTY may withhold any payments not yet made to CONTRACTOR for purpose of setoff until such time as the exact amount of damages due to COUNTY from CONTRACTOR is determined.

12. **No Waiver.** The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

13. **Notices.** All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any mailed notice, demand, request, consent, approval or communication that either party desires to give the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

COUNTY

Public Works Director  
Napa County Department of Public Works  
1195 Third Street, Suite 101  
Napa, CA 94559

CONTRACTOR

Miller Pacific Engineering Group  
135 Camino Dorado, Suite 3  
Napa, CA 94558

14. **Compliance with COUNTY Policies on Waste, Harassment, Drug/Alcohol-Free Workplace, and Computer Use.** CONTRACTOR hereby agrees to comply, and require its employees and subcontractors to comply, with the following policies, copies of which are on file with the Clerk of the Board of Supervisors and incorporated by reference herein. CONTRACTOR also agrees that it shall not engage in any activities, or permit its officers, agents and employees to do so, during the performance of any of the services required under this Agreement, which would interfere with compliance or induce violation of these policies by COUNTY employees or contractors.

(a) Napa County “Waste Source Reduction and Recycled Product Content Procurement Policy” adopted by resolution of the Board of Supervisors (BOS) effective March 26, 1991, which is found in Napa County Policy Manual Part I, Section 8D.

(b) Napa County “Policy: Discrimination, Harassment, and Retaliation Prevention Policy” adopted by resolution of the BOS effective May 2, 1995 and subsequently revised effective June 20, 2017 which is found in Napa County Policy Manual Part I, Section 37K.

(c) Napa County “Drug and Alcohol Policy” which is found in Napa County Policy Manual Part I, Section 37O.

(d) “Napa County Information Technology Use & Security Policy” adopted by resolution of the BOS effective March 25, 1997 and subsequently revised effective April 17, 2001, which is found in Napa County Policy Manual Part I, Section 31A. To this end, all employees and subcontractors of CONTRACTOR whose performance of services under this Agreement requires access to any portion of the COUNTY computer network shall sign and have on file with COUNTY’s ITS Department prior to receiving such access the certification attached to said Policy.

(e) Napa County Workplace Violence Policy, adopted by the BOS effective May 23, 1995 and subsequently revised effective November 2, 2004, which is found in Napa County Policy Manual Part I, Section 37U.

## 15. **Confidentiality.**

(a) Maintenance of Confidential Information. Confidential information is defined as all information disclosed to CONTRACTOR which relates to COUNTY’s past, present, and future activities, as well as activities under this Agreement. CONTRACTOR shall hold all such information as CONTRACTOR may receive, if any, in trust and confidence, except with the prior written approval of COUNTY, expressed through its project manager. Upon cancellation or expiration of this Agreement, CONTRACTOR shall return to COUNTY all written and descriptive matter which contains any such confidential information, except that CONTRACTOR may retain for its files a copy of CONTRACTOR’s work product if such product has been made available to the public by COUNTY.

(b) Protection of Personally Identifiable Information and Protected Health Information.

(1) To the extent CONTRACTOR is provided, creates, or has access to, Protected Health Information (PHI), Personally Identifiable Information (PII), or any other legally protected confidential information or data in any form or matter (collectively referred to as “Protected Information”), CONTRACTOR shall adhere to all federal, state and local laws, rules and regulations protecting the privacy of such information. CONTRACTOR shall adhere to all existing and future federal, state and local laws, rules and regulations regarding the privacy and security of Protected Information, including, but not limited to, laws and regulations requiring data encryption or policy and awareness programs for the protection of COUNTY Protected Information provided to, or accessed or created by, CONTRACTOR.

(2) CONTRACTOR shall ensure that its staff is trained to its privacy and security policies and procedures and that appropriate physical, technological and administrative safeguards are in place to protect the confidentiality of COUNTY’s Protected Information, including, but not limited to, PHI and PII. Upon request, CONTRACTOR shall make available



to COUNTY its policies and procedures, staff training records and other documentation of compliance with this Paragraph 15.

(3) CONTRACTOR agrees to notify COUNTY immediately of any unauthorized access to or disclosure of Protected Information that it becomes aware of.

(4) CONTRACTOR will be responsible for all costs associated with CONTRACTOR's breach of the security and privacy of COUNTY's Protected Information, or its unauthorized access to or disclosure of COUNTY's Protected Information, including, but not limited to, mitigation of the breach, cost to the County of any monetary sanctions resulting from breach, notification of individuals affected by the breach, and any other action required by federal, state, or local laws, rules or regulations applicable at the time of the breach.

**16. No Assignments or Subcontracts.**

(a) In General. A consideration of this Agreement is the personal reputation of CONTRACTOR; therefore, CONTRACTOR shall not assign any interest in this Agreement or subcontract any of the services CONTRACTOR is to perform hereunder without the prior written consent of COUNTY, which shall not be unreasonably withheld. The inability of the assignee to provide personnel equivalent in experience, expertise, and numbers to those provided by CONTRACTOR, or to perform any of the remaining services required under this Agreement within the same time frame required of CONTRACTOR shall be deemed to be reasonable grounds for COUNTY to withhold its consent to assignment. For purposes of this subparagraph, the consent of COUNTY may be given by the project manager.

(b) Consent to Subcontractor(s). COUNTY consents to CONTRACTOR subcontracting with ADKO Engineering and to ADKO subcontracting with Albion Survey and Kleinfelder for the work attributed to each in Exhibit A.

(c) Effect of Change in Status. If CONTRACTOR changes its status during the term of this Agreement from or to that of a corporation, limited liability partnership, limited liability company, general partnership, or sole proprietorship, such change in organizational status shall be viewed as an attempted assignment of this Agreement by CONTRACTOR. Failure of CONTRACTOR to obtain approval of such assignment under this Paragraph shall be viewed as a material breach of this Agreement.

**17. Amendment/Modification.** Except as specifically provided herein, this Agreement may be modified or amended only with the prior written consent of both parties. Failure of CONTRACTOR to secure such authorization in writing in advance of performing any extra or changed work shall constitute a waiver of any and all rights to adjustment in the contract price or contract time and no compensation shall be paid for such extra work.

**18. Interpretation; Venue.**

(a) Interpretation. The headings used herein are for reference only. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California without regard to the choice of law or conflicts.

(b) Venue. This Agreement is made in Napa County, California. The venue for any legal action in state court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Napa, a unified court. The venue for any legal action in federal court filed by either party to

this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation or similar legal proceedings under this Agreement shall be Napa County, California; however, nothing in this sentence shall obligate either party to submit to mediation or arbitration any dispute arising under this Agreement.

19. **Compliance with Laws.** CONTRACTOR shall observe and comply with all applicable Federal, State and local laws, ordinances, and codes. Such laws shall include, but not be limited to, the following, except where prohibited by law:

(a) Non-Discrimination. During the performance of this Agreement, CONTRACTOR and its subcontractors shall not deny the benefits thereof to any person on the basis of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age, mental disability, physical disability, genetic information, or medical condition (including cancer, HIV, and AIDS), or political affiliation or belief, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age (over 40), mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS), use of family care leave, or political affiliation or belief. CONTRACTOR shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Agreement subcontracts to CONTRACTOR services or works required of COUNTY by the State of California pursuant to agreement between COUNTY and the State, the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990, subd. (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are expressly incorporated into this Agreement by reference and made a part hereof as if set forth in full, and CONTRACTOR and any of its subcontractors shall give written notice of their obligations thereunder to labor organizations with which they have collective bargaining or other agreements.

(b) Documentation of Right to Work. CONTRACTOR agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of CONTRACTOR performing any services under this Agreement have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. CONTRACTOR shall make the required documentation available upon request to COUNTY for inspection.

(c) Inclusion in Subcontracts. To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall

include all of the provisions of this Paragraph 19 in all such subcontracts as obligations of the subcontractor.

(d) Prevailing Wages. To the extent required, CONTRACTOR shall comply with the prevailing wages and related provisions as set forth in Exhibit "C", attached hereto and incorporated herein by this reference.

20. **Taxes.** CONTRACTOR agrees to file federal and state tax returns or applicable withholding documents and to pay all applicable taxes or make all required withholdings on amounts paid pursuant to this Agreement and shall be solely liable and responsible to make such withholdings and/or pay such taxes and other obligations including, without limitation, state and federal income and FICA taxes. CONTRACTOR agrees to indemnify and hold COUNTY harmless from any liability it may incur to the United States or the State of California as a consequence of CONTRACTOR's failure to pay or withhold, when due, all such taxes and obligations. In the event that COUNTY is audited for compliance regarding any withholding or other applicable taxes or amounts, CONTRACTOR agrees to furnish COUNTY with proof of payment of taxes or withholdings on those earnings.

21. **Access to Records/Retention.** COUNTY, any federal or state grantor agency funding all or part of the compensation payable hereunder, the State Controller, the Comptroller General of the United States, or the duly authorized representatives of any of the above, shall have access to any books, documents, papers and records of CONTRACTOR which are directly pertinent to the subject matter of this Agreement for the purpose of making audit, examination, excerpts and transcriptions. Except where longer retention is required by any federal or state law, CONTRACTOR shall maintain all required records for at least seven (7) years after COUNTY makes final payment for any of the work authorized hereunder and all pending matters are closed, whichever is later.

22. **Authority to Contract.** CONTRACTOR and COUNTY each warrant hereby that they are legally permitted and otherwise have the authority to enter into and perform this Agreement.

23. **Conflict of Interest.**

(a) Covenant of No Undisclosed Conflict. The parties to the Agreement acknowledge that they are aware of the provisions of Government Code section 1090, et seq., and section 87100, et seq., relating to conflict of interest of public officers and employees. CONTRACTOR hereby covenants that it presently has no interest not disclosed to COUNTY and shall not acquire any interest, direct or indirect, which would conflict in any material manner or degree with the performance of its services or confidentiality obligation hereunder, except as such as COUNTY may consent to in writing prior to the acquisition by CONTRACTOR of such conflict. CONTRACTOR further warrants that it is unaware of any financial or economic interest of any public officer or employee of COUNTY relating to this Agreement. CONTRACTOR agrees that if such financial interest does exist at the inception of this Agreement, COUNTY may terminate this Agreement immediately upon giving written notice without further obligation by COUNTY to CONTRACTOR under this Agreement.

(b) Statements of Economic Interest. CONTRACTOR acknowledges and understands that COUNTY has developed and approved a Conflict of Interest Code as required

by state law which requires CONTRACTOR to file with the Elections Division of the Napa County Assessor-Clerk Recorder “assuming office”, “annual”, and “leaving office” Statements of Economic Interest as a “consultant”, as defined in California Code of Regulations, title 2, section 18701, subd. (a)(2), unless it has been determined in writing that CONTRACTOR, although holding a “designated” position as a consultant, has been hired to perform a range of duties so limited in scope as to not be required to fully comply with such disclosure obligation.

24. **Third Party Beneficiaries.** Nothing contained in this Agreement shall be construed to create any rights in third parties and the parties do not intend to create such rights.

25. **Attorney’s Fees.** In the event that either party commences legal action of any kind or character to either enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing party in such litigation shall be entitled to all costs and reasonable attorney’s fees incurred in connection with such action. The “prevailing party” is the party determined by statute to be as such, or if no statute governs, then by the Court that serves as the venue for the legal action at issue.

26. **Severability.** If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

27. **Entirety of Contract.** This Agreement, including any documents expressly incorporated by reference whether or not attached hereto, constitutes the entire agreement between the parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the parties with respect to the subject matter hereof.

28. **Counterparts.** This Agreement may be executed in counterparts, which when taken together, shall constitute a single signed original as though all parties had executed the same page.

29. **Special Terms and Conditions.**


(a) CONTRACTOR shall comply with those federal provisions set forth in Exhibit “D”, attached hereto and incorporated herein by this reference, and shall exercise reasonable professional care to comply with any other applicable federal, state, or local requirements subsequently deemed applicable to the work completed in connection with this Agreement.

(b) CONTRACTOR shall document all work done in this Agreement and as directed by the Napa County Auditor and/or the Director of Public Works.

(c) COUNTY delegates its authority to the Director of Public Works to approve future changes or amendments to Exhibits “A” and “B,” attached to this Agreement, provided that any such change or amendment does not materially alter the nature of the services to be provided or increase the maximum compensation available under this Agreement.

IN WITNESS WHEREOF, this Agreement was executed by the parties hereto as of the date first above written.

MILLER PACIFIC ENGINEERING GROUP

By   
MIKE MORISOLI, Vice President

By   
LAURA HANSEN, Chief Financial Officer

“CONTRACTOR”

NAPA COUNTY, a political subdivision of the State of California

By \_\_\_\_\_  
BELIA RAMOS, Chair of the Napa County Board of Supervisors

“COUNTY”

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <u>Ryan FitzGerald (e-sign)</u> Deputy County Counsel</p> <p>Date: <u>2/7/23</u></p> <p>PL No.: <u>86081</u></p>	<p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS</p> <p>Date: _____</p> <p>Processed By: _____</p> <p>Deputy Clerk of the Board</p>	<p>ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors</p> <p>By: _____</p>
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## EXHIBIT “A”

### SCOPE OF WORK

CONTRACTOR shall provide COUNTY with the following services within the specified not-to-exceed amounts.

#### **PROJECT UNDERSTANDING**

During the storm event that started in January of 2023, significant damage occurred at Dry Creek Road MPM 11.6, which is located in the unincorporated Napa County. Dry Creek Road MPM 11.6 sustained road and bank failure consisting of downslope failure on the northern side of the roadway, where a portion of the road slid down the hillside threatening the remaining portions of the road. The slide is approximately 100 feet long by 12 feet wide.

Design of the repair will utilize Napa County, Caltrans Standards, and other appropriate standards and guidance documents. Design will be based on geotechnical recommendations and other engineering studies and evaluations. Existing or pre-damaged roadway widths, stripping, and pavement section will be maintained unless geotechnical and engineering studies recommend otherwise. Safety and drainage features will be incorporated as appropriate.

#### **TASK 1: PROJECT MANAGEMENT AND MEETINGS (\$7,655.14)**

##### **Task 1.1 - Project Management activities will include:**

- Project administration, coordination with subconsultants, county and other stakeholders
- Attend meetings and prepare meeting minutes, and action items
- Prepare progress schedule and monitor schedule
- Manage project budget and prepare monthly invoices

##### **Task 1.2: Project Meetings and Site Visit**

CONTRACTOR’s team will participate in design development meetings and resolve technical issues as they arise and review project status and budget. CONTRACTOR shall participate in a minimum of four design development meetings. CONTRACTOR’s team will participate in conference calls to receive and respond to review comments. One site visit is anticipated for the project.

##### ***Deliverables***

- Meeting Minutes
- Schedules
- Site Visit

#### **TASK 2: PERFORM SURVEYS AND PREPARE BASE PLANS (\$7,150.00)**

##### **Task 2.1: Field Survey and Mapping**

Albion Surveys will provide the necessary project control and topographic surveys of the site. The topographic surveys will cover the project limits as determined by the design consultants as well as the areas described in the Damage Assessment and Recommendation Report for each site. In addition, field reconnaissance and surveys for existing controlling monuments of record will be performed to assist in the placement of record right of way and ownership information onto the surveys. All field surveying activities will be overseen by Jon Webb, PLS, including planning, methodology and equipment. All office surveying activities will be overseen by Jon Webb, PLS, including data reduction, terrain modeling, boundary analysis and quality control. Albion shall not be responsible for providing any right of entry or encroachment. Specific services for these projects will be as follows:

- Records research related to property boundaries, control and benchmarks.
- Prepare field survey plan and the necessary search coordinates for boundary and right of way information.
- Establish project control by GPS data logging and processing through the NGS OPUS web interface to obtain CCS83, Zone 2 horizontal control and NAVD 88 vertical control.
- Set a minimum of two permanent control points at each site which will be suitable for future construction uses.
- Tie existing controlling monuments found during field reconnaissance.
- Topographic field surveys to gather spot elevations sufficient for a design level topographic survey, including all grade breaks, high/low points and other features necessary to develop a proper terrain model.
- Field surveys to locate the existing improvements at the project site, visible surface utility features, such as manholes, valve boxes, utility poles, etc., existing trees, driveways, fences and other improvements that may be present within the project limits developed for each site. All accessible manholes and drain inlets will be investigated and pipe sizes and depths recorded.
- Office analysis of the field data to reconcile the record data with the evidence found in the field.
- Develop a digital terrain model of each site and process 1' contours across both.
- Prepare a 1"= 20' topographic survey exhibit for each site. Each exhibit will also include the existing right of way and ownership information available, the location of the project control and Information related to the horizontal and vertical datum's used.
- Prepare legal description and exhibit plat for Temporary Construction Easements

### **Task 2.2: Survey Verification Construction Phase**

Albion Surveys will perform construction survey verification of the CONTRACTOR's layout.

#### ***Deliverables:***

- Digitally signed pdf copy of each survey site.
- AutoCAD drawing files of each site
- Copies of field notes and photos taken during our field survey efforts.

- Plats and legal descriptions (if applicable )
- Survey verification memorandum

### **TASK 3: GEOTECHNICAL (\$48,000.00)**

CONTRACTOR will provide geotechnical services and develop geotechnical recommendations for the project. The recommendations will be used by the design team to develop the design recommendations and prepare the construction plans and technical specifications for the project.

#### **Task 3.1: Geotechnical Borings**

Based on existing conditions and drill rig access, we propose two exploratory borings in the damaged portion of roadway/slide area. With current distress, one boring can be performed with a truck-mounted drill rig and one with a small, tracked rig. Borings will likely extend to a depth of 35 feet or refusal in hard rock and CONTRACTOR will sample frequently to determine the slide depth. We will also retain samples for laboratory testing. Water levels will be measured, and the borings will be backfilled prior to leaving the site. CONTRACTOR will prepare a rough site plan along with borings logs/laboratory test results for transmittal to the project team.

#### **Task 3.2: Geotechnical Investigation Report with Design Recommendations**

CONTRACTOR will consult with the project consultants and COUNTY Staff as plans are being prepared and will review plans to offer an opinion on whether they conform to CONTRACTOR's recommendations.

#### **Task 3.3: Supplemental Consultation**

CONTRACTOR will consult with the project consultants and COUNTY Staff as plans are being prepared and will review plans to offer an opinion on whether they conform to CONTRACTOR's recommendations.

#### **Task 3.4: Construction Observation and Testing**

During construction, CONTRACTOR shall be present intermittently to observe and test the geotechnical portions of the work in order to verify conditions are as anticipated and that the selected Construction Contractor's workmanship is in general conformance to the project plans and specifications. Items to be observed include foundation excavation and concrete placement (if a conventional wall is selected) or geogrid for a block wall, wall drainage and backfill placement and compaction along with other items, depending on final design and roles of other consultants.

#### ***Deliverables:***

- Geotechnical Borings
- Geotechnical Report
- Supplemental Consultation Memorandum
- Construction Observation and Testing report



## **TASK 4: ENVIRONMENTAL STUDIES (\$77,375.00)**

### **Task 4.1: Biological Resources Assessment and Letter Report**

This task is comprised of a pre-field desktop evaluation of terrestrial wildlife and plant species and habitats, and a one-day reconnaissance-level biological field survey to document existing biological resources within the proposed project area.

Prior to the field survey, a query of the California Department of Fish and Wildlife (CDFW) California Natural Diversity Database (CNDDDB), the U.S. Fish and Wildlife Service (USFWS) Information for Planning and Consultation (IPaC) Planning Tool, and the California Native Plant Society (CNPS) Rare Plant Inventory will be performed to identify any occurrences of listed or special-status species, sensitive habitats, and/or rare and endangered plants found within a one-mile radius of the site.

During the field survey, a Kleinfelder biologist will create a baseline biological resources map that will include vegetation communities and conspicuous sensitive species. Vegetation communities will be mapped and recorded on an appropriately scaled aerial photograph of the project area via a handheld digital field mapping tool. During the field survey, a general inventory of plant and wildlife species detected by sight, calls, tracks, scat, or other signs will be compiled, as well as any habitat that could potentially support special-status species or sensitive biological communities. Furthermore, any sensitive resources which require focused surveys that may occur on the site but are not apparent at the time of the survey, will be identified, including rare annual plants, sensitive amphibian, reptile, mammalian or avian species.

The results of the biological field survey will be presented in a technical letter report. The report will include a description of the project, a discussion of the survey methods, an assessment of existing vegetation communities, sensitive biological resources, wetlands or other waters potentially under jurisdiction of the U.S. or State, the significance of potential project impacts in accordance with CEQA and/or NEPA, and any recommended avoidance and mitigation measures that would be necessary for project approval to avoid or reduce these impacts.

The need for additional focused biological surveys or formal wetlands delineation will be identified, as well as regulatory mechanisms necessary for approval of the slide repair. Graphics will be prepared to illustrate the location of the site, the existing biological conditions, and any potential wetlands or waters of the U.S. or State. Proposed mitigation requirements for potential impacts to sensitive resources will be discussed in terms of regional planning, state and federal laws and guidelines.

### **Task 4.2: Cultural Resources Assessment and Letter Report**

Kleinfelder will conduct a records search at the Northwest Information Center (NWIC), located at Sonoma State University to request all previous site records and reports completed within the project area and the surrounding 0.5-mile radius. CONTRACTOR's staff will also conduct site-specific research for the project area and surrounding vicinity including references on file from

previous work conducted in the project vicinity and a review of historic maps (e.g., Sanborn Fire Insurance Maps, Government Land Office Plat Maps). The cultural resources review will identify any previous archaeological and/or historic-period built environment resources reported in the area. A Sacred Lands File (SLF) search with the Native American Heritage Commission (NAHC) will be conducted to determine if any SLFs have been reported within the Project Area or surrounding vicinity.

Kleinfelder will also conduct a cultural resources survey and inventory of the project area to assess any cultural resources present on the site. This task assumes one archaeologist will perform one, 8-hour field survey and record and/or update resources within the project area. This estimate includes costs associated with pre-field preparation, travel, and other direct costs (e.g., mileage, global positioning system [GPS] usage). Within approximately 30 business days after completion of the fieldwork, a Draft Cultural Resources Inventory Report will be prepared and submitted. One report will be prepared to satisfy both CEQA and Section 106 of the National Historic Preservation Act (NHPA). The report will describe the results of the background research, cultural context, records search and survey results, and any management recommendations.

#### **Assumptions:**

- A map depicting the limits of ground disturbance with depth of ground disturbance per construction activity will be provided at notice to proceed (NTP).
- No Native American consultation support is included.
- No in-person meetings are required for archaeological or tribal cultural resources.
- The cost of the records search at the NWIC will not exceed \$500.
- This scope assumes no more than one cultural resource will require recordation or updates. If additional cultural resources are encountered or if the project has the potential to impact a cultural resource, additional cultural resources technical studies may be required, and a scope/budget augment prepared.
- Does not include completion or implementation of any proposed or required mitigation measures (e.g., additional documentation of historic structure).
- The final approved report will be submitted to the NWIC.
- One electronic version of the Archaeological Assessment Report will be provided within approximately six (6) weeks of NTP. Kleinfelder will respond to one round of comments (4 hours maximum) and provide a final electronic version of the report.

#### **Task 4.3: NEPA Permitting**

Because the COUNTY may pursue recovery of Project funding through the Federal Emergency Management Agency (FEMA) in the future, this task includes up to 16 hours of time for a qualified biologist to review and assist COUNTY with Section 7 NEPA compliance documentation. Any additional time necessary to complete this task would require prior authorization from the client in writing. This task assumes COUNTY will prepare the required FEMA project documentation for USFWS NEPA review, and Kleinfelder will provide information regarding environmental

resources in the vicinity of the site and provide responses to any comments during the review process. No field surveys or in person meetings are included in this task.

#### **Task 4.4: Northern Spotted Owl Protocol-Level Surveys**

A team of two qualified Kleinfelder biologists will conduct protocol-level surveys for Northern Spotted Owl (NSO) within an approximate 0.25-mile buffer around the project area that contains suitable habitat for NSO. Up to 100 acres will be included in the buffer area. The survey procedure will follow guidance from the U.S. Fish and Wildlife Service (USFWS) Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls (2012) and will consist of performing six nighttime spot calling surveys at established calling stations. Surveys will be performed at least seven days apart, and at least three of the complete visits will be conducted before 30 June; this includes at least one visit in April, one in May and one in June. A digital wildlife caller will be used and NSO recordings will be played for the duration of approximately 3-4 complete calls, then 1-2 minutes will be spent listening at each station before playing another set of calls. This cycle will be repeated for approximately 10-15 minutes at each station, or until a NSO responds. Surveys will not be performed during periods of inclement weather (e.g., rain, heavy fog, or high winds), or in areas near streams where there is potential for noise interference with NSO calls. This task assumes the COUNTY will coordinate access to private property within the buffer area and any related landowner notifications prior to the survey.

During each survey, datasheets will be utilized to record information regarding survey time, location, weather, presence of other raptors, compass bearing and approximate distance to NSO, time of first response, age of NSO (if known), status (resident single, individual, or pair, and if there is an active nest), and type of detection (audible or visual). Each NSO estimated location will be recorded with a GPS device and depicted on an appropriately scaled map.

Should a NSO detection occur during any of the nighttime calling surveys, this task includes one daytime follow-up survey to determine the status of the detected NSO. No additional daytime follow-up surveys are included, as Kleinfelder will assume surveys are complete and the project area is occupied if a NSO is detected. Should there be a gap between project initiation/construction and the start of the NSO nesting season, this task includes up to three spot check surveys, to be performed using the U.S. Fish and Wildlife Service (USFWS) Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls (2012). A summary memo for each spot check survey is included in this task.

The results of the surveys will be documented in an email to the COUNTY within 48 hours after completion. A memo will be prepared at the conclusion of the surveys that will describe the site location, times and dates of the surveys, weather observations, methods, and results of the surveys. Any active nests will be recorded by the qualified biologist and depicted on a field map for

documentation. This task includes up to 12 hours of time for pre-project coordination with the design team, coordination with CDFW regarding the results of the protocol-level surveys, and response to any comments from CDFW on the summary memo. Per diem and mileage at the standard federal 2023 GSA rate is included in this task.

## **TASK 5: DESIGN (\$79,163.54)**

### **Task 5.1: Design Basis Memorandum**

The CONTRACTOR's team will develop the Design Basis Memorandum which will investigate and discuss design and construction issues such as: any required temporary construction easement and right of entry, utility coordination.

#### ***Deliverables:***

- Design Basis Memorandum (.dwg, .xcl, .doc and PDF as applicable)

### **Task 5.2: 35% Plans and Estimate Submittal**

The CONTRACTOR's team will prepare 35% preliminary plans and estimates for roadway design and retaining wall. The CONTRACTOR's team will follow 2018 Caltrans and COUNTY specifications wherever possible. ADKO will be responsible for retaining wall design plans, specifications, and estimate. This effort will include addressing all of the COUNTY's comments on the 35% PS&E package.

### **Task 5.3: 65% PS&E Submittal**

The CONTRACTOR's team will prepare 65% plans, specifications, and estimates for roadway design, retaining wall, drainage improvements, grading, paving, temporary water pollution control, permanent erosion control and any permit requirement design elements. The CONTRACTOR's team will follow 2018 Caltrans and COUNTY specifications wherever possible. ADKO will be responsible for retaining wall design plans, specifications, and estimate. This effort will include addressing all of the COUNTY's comments on the 35% PS&E package.

#### ***Deliverables:***

- 65% Plans, Technical Specifications, and Estimate (.dwg, .xcl, .doc and PDF as applicable)

### **Task 5.4 95%: PS&E Submittal**

The CONTRACTOR's team will refine the 65% PS&E and generate the 95% design PS&E by addressing all of the COUNTY's comments on the 65% PS&E package.

#### ***Deliverables:***

- 95% Plans, Technical Specifications, and Estimate (.dwg, .xcl, .doc and PDF as applicable)

applicable)

#### **Task 5.5: 100% PS&E Submittal**

The CONTRACTOR's team will work with the COUNTY to issue a bid set of the PS&E documents. It is anticipated that the COUNTY will take the ADKO's technical specifications and combine with the COUNTY prepared front-end specifications to complete the bid package.

#### ***Deliverables:***

- Issued for Bid Plans, Technical Specifications, and Estimate (.dwg, .xcl, .doc and PDF as applicable)

### **TASK 6: CONSTRUCTION SUPPORT (\$20,047.87)**

#### **Task 6.1: Bid support**

CONTRACTOR's team will provide ongoing support to assist in responding to comments and inquiries, which includes the following tasks:

- Attend Pre-bid and Pre-construction Meetings
- Respond to Bid Inquiries

#### **Task 6.2: Design Services during Construction**

CONTRACTOR's team will provide the following services:

- Review Appropriate Construction Submittals
- Answer questions and address issues that may arise during construction (RFIs & CCOs)
- Perform close-out inspection and help COUNTY develop close-out punch list for the selected Construction Contractor
- Provide construction certification of completion

#### ***Deliverables:***

- Approved submittals
- Respond to RFI
- Change order recommendations
- Construction close-out punch list and construction certification of completion (PDF)

#### **Task 6.3: As-Built Design Plans**

Following completion of construction, the selected Construction Contractor will provide redline markups of the design plans. The CONTRACTOR's team will incorporate the redlines into the CAD Files, clouding any changes made in construction, and submit them as final As-Built Plans.

#### ***Deliverables:***

- Final As-Built Plans (DWG and PDF)

#### **Task 6.4: Resident Engineer/Structures Rep**

CONTRACTOR's team will provide a resident engineer during construction. The resident engineer will prepare weekly resident engineer's report and work closely with the construction engineer and design team to ensure the project is constructed in compliance with the contract documents and schedule. The resident engineer will attend construction progress meetings and prepare meeting minutes and track RFI, submittals and change orders, etc.

#### **Assumptions**

- This Project will be designed to Caltrans 2018 Standard Plans and Specifications.
- COUNTY will obtain Encroachment Permit to cover the Contractor's team if needed.
- The COUNTY will provide the right-of-way width information.
- COUNTY staff will prepare the Board Letters, advertise to the Project to bidders, open bids, and coordinate with affected property owners/ stakeholders.

**II. COMPLIANCE WITH GOVERNMENT CODE SECTION 7550.** As required by Government Code section 7550, each document or report prepared by CONTRACTOR for or under the direction of COUNTY pursuant to this Agreement shall contain the numbers and dollar amounts of the Agreement and all subcontracts under the Agreement relating to the preparation of the document or written report. The Agreement and subcontract dollar amounts shall be contained in a separate section of the document or written report. If multiple documents or written reports are the subject of the Agreement or subcontracts, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written reports

**EXHIBIT "B"**

**[Company Name]**  
[Street Address]  
[City, ST ZIP Code]  
Phone [phone] Fax [fax]  
Taxpayer ID #

**SAMPLE  
INVOICE**

INVOICE # \_\_\_\_\_  
DATE: \_\_\_\_\_

**TO:**  
[Customer Name]  
[Street Address]  
[City, ST ZIP Code]

**FOR:**  
[Project or service description]  
Contract No.

<b>Date</b>	<b>DESCRIPTION</b>	<b>Task Total</b>	<b>Complete to date</b>	<b>Remaining</b>	<b>This Invoice</b>
3/10/20	Task 1, Project Management	\$6,771	\$2,771	\$4,000	\$771
TOTAL					\$771

## EXHIBIT C

### CALIFORNIA PREVAILING WAGE REQUIREMENTS

Pursuant to California Labor Code sections 1720 and 1771, construction, alteration, demolition, installation, repair and maintenance work performed under this Agreement is subject to State prevailing wage laws. State prevailing wage laws require certain provisions be included in all contracts for public works. The Contractor and any subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below.

**1. Compliance with Prevailing Wage Requirements.** Pursuant to sections 1720 through 1861 of the California Labor Code, the Contractor and all subcontractors shall ensure that all workers who perform work under this Agreement are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design, site assessment, feasibility study, and other preconstruction phases of construction including, but not limited to, inspection and land surveying work, regardless of whether any further construction work is conducted, and work performed during the post-construction phases of construction, including, but not limited to, all cleanup work at the jobsite.

**1.1.** Copies of such prevailing rate of per diem wages are on file at the Napa County Public Works Department and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. The Contractor and all subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.

**1.2.** The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of this Agreement. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Agreement in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this Agreement, each successive predetermined wage rate shall apply to this Agreement on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Agreement, such wage rate shall apply to the balance of the Agreement.

**2. Penalties for Violations.** The Contractor and all subcontractors shall comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed. This shall be in addition to any other applicable penalties allowed under California Labor Code sections 1720 through 1861.



**3. Payroll Records.** The Contractor and all subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. The Contractor shall require its subcontractors to also comply with Labor Code section 1776. The Contractor and all subcontractors shall furnish records specified in California Labor Code section 1776 on a monthly basis, both to the County and directly to the Labor Commissioner in the manner required by California Labor Code section 1771.4. The Contractor shall ensure its subcontractors prepare and submit payroll records to the County and the DIR as required by this section.

**3.1.** If the Contractor or a subcontractor is exempt from the DIR registration requirement pursuant to section 9.4 below, then the Contractor or such subcontractor is not required to furnish payroll records directly to the Labor Commissioner but shall retain the records for at least three years after completion of the work, pursuant to California Labor Code section 1771.4(a)(4).

**3.2.** The County may require the Contractor and its subcontractors to prepare and submit records specified in Labor Code section 1776 to the County and the Labor Commissioner on a weekly basis, at no additional cost to the County.

**4. Apprentices.** The Contractor and all subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. The Contractor is responsible for compliance with this section for all apprenticeable occupations pursuant to California Labor Code section 1777.5(n).

**5. Working Hours.** The Contractor and all subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specify penalties to be imposed on contractors and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.

**6. Required Provisions for Subcontracts.** The Contractor shall include, at a minimum, a copy of the following provisions in any contract they enter into with a subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.

**7. Labor Code Section 1861 Certification.** In accordance with California Labor Code section 3700, the Contractor is required to secure the payment of compensation of its employees. By signing the Agreement, to which this is an exhibit, the Contractor certifies that:

“I am aware of the provisions of Section 3700 of the California 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

I will comply with such provisions before commencing the performance of the work of this Agreement.”

**8. Compliance Monitoring and Enforcement.** This project is subject to compliance monitoring and enforcement by the DIR. The County must withhold contract payments from the Contractor as directed by the DIR, pursuant to California Labor Code section 1727.

**9. Contractor and Subcontractor Registration Requirements.** The Contractor and all subcontractors shall not be qualified to bid on, be listed in a bid or proposal, subject to the requirements of section 4104 of the California Public Contract Code, or engage in the performance of any contract for public work, unless currently registered and qualified to perform public work pursuant to California Labor Code section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by California Business and Professions Code section 7029.1 or by California Public Contract Code sections 10164 or 20103.5 provided the Contractor is registered to perform public work pursuant to Labor Code section 1725.5 at the time the contract is awarded.

**9.1.** A Contractor’s inadvertent error in listing a subcontractor who is not registered pursuant to California Labor Code section 1725.5 in response to a solicitation shall not be grounds for filing a protest or grounds for considering the bid or proposal non-responsive provided that any of the following apply: (1) the subcontractor is registered prior to the proposal due date; (2) within twenty-four hours after the proposal due date, the subcontractor is registered and has paid the penalty registration fee specified in California Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered subcontractor pursuant to California Public Contract Code section 4107.

**9.2.** By submitting a bid or proposal to the County, the Contractor is certifying that it has verified that all subcontractors used on this project are registered with the DIR in compliance with California Labor Code sections 1771.1 and 1725.5, and the Contractor shall provide proof of registration for themselves and all listed subcontractors to the County at the time of the bid or proposal due date or upon request.

**9.3.** The County may ask the Contractor for the most current list of subcontractors (regardless of tier), along with their DIR registration numbers, utilized on this project at any time during performance of this Agreement, and the Contractor shall provide the list within ten (10) working days of the County’s request.

**9.4.** This section shall not apply to work performed on a public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars (\$15,000) or less when the project is for maintenance work, pursuant to California Labor Code sections 1725.5(f) and 1771.1(n).

**10. Stop Order.** Where a contractor or subcontractor engages in the performance of any public work contract without having been registered in violation of California Labor Code sections 1725.5 or 1771.1, the Labor Commissioner must issue and serve a stop order prohibiting the use

of the unregistered contractor or subcontractor on ALL public works until the unregistered contractor or subcontractor is registered. Failure to observe a stop order is a misdemeanor.

**Exhibit "D"**  
**FEDERAL PROVISIONS**

**I. DEFINITIONS**

- A. Government** means the United States of America and any executive department or agency thereof.
- B. FEMA** means the Federal Emergency Management Agency.
- C. Third Party Subcontract** means a subcontract at any tier entered into by Contractor or subcontractor, financed in whole or in part with Federal assistance originally derived from the Federal Emergency Management Agency.

**II. FEDERAL CHANGES**

- A.** Contractor shall at all times comply with all applicable regulations, policies, procedures, and FEMA Directives as they may be amended or promulgated from time to time during the term of this Agreement, including but not limited to those requirements of 2 CFR 200.317 through 200.326 and more fully set forth in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards, which is included herein by reference. Contractor's failure to so comply shall constitute a material breach of this contract.
- B.** The Contractor agrees to include the above clause in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**III. ACCESS TO RECORDS**

- A.** The Contractor agrees to provide the County, FEMA, the Comptroller General of the United States or any their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- B.** The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- C.** The Contractor agrees to maintain all books, records, accounts, and reports required under this Agreement for a period of not less than three years after the later of: (a) the date of termination or expiration of this Agreement or (b) the date County makes final payment under this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case, Contractor agrees to maintain same until the County, FEMA, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto.
- D.** The requirements set for in paragraphs A, B, and C above are all in addition to, and should not be considered to be in lieu of, those requirements set forth in Section 21 of the Agreement.

**IV. DEBARMENT AND SUSPENSION**

If this contract is for a price in excess of \$25,000, Contractor agrees as follows:

- A. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- B. The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- C. This certification is a material representation of fact relied upon by the County. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- D. The Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**V. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR**

- A. The County and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Government, the Government is not a party to this contract and shall not be subject to any obligations or liabilities to the County, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- B. The Contractor agrees to include the above clause in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**VI. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE (applicable to all construction contracts awarded meeting the definition of "federally assisted construction contract" under 41 CFR 61-1.3)**

During the performance of this contract, the contractor agrees as follows:

- A. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:  
Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places,

available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- B.** The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- C.** The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- D.** The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E.** The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- F.** The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- G.** In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- H.** The Contractor will include the provisions of this section 5 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The County further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the County is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The County agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The County further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the County agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the County under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from the County; and refer the case to the Department of Justice for appropriate legal proceedings.

**VII. ANTI-KICKBACK ACT COMPLIANCE (applicable to all contracts and subgrants for construction or repair; 44 CFR §13.36(i)(4))**

Contractor agrees to comply with the Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3).

**VIII. DAVIS-BACON ACT COMPLIANCE (applicable to construction contracts in excess of \$2,000 awarded by grantees and subgrantees when required by Federal grant program legislation;)**

To the extent required by any Federal grant programs applicable to expected funding or reimbursement of County’s expenses incurred in connection with the services provided under this Agreement, Contractor agrees to comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a–7) as supplemented by Department of Labor regulations (29 CFR Part 5) as set forth below. These requirements are in addition to the requirements set forth in Section 19(b) of the Agreement.

- A. The Contractor shall be bound to the provisions of the Davis-Bacon Act, and agrees to be bound by all the provisions of Labor Code section 1771 regarding prevailing wages. All labor on this project shall be paid neither less than the greater of the minimum wage rates established by the U.S. Secretary of Labor (Federal Wage Rates), or by the State of California Director of Department of Industrial Relations (State Wage Rates). Current DIR requirements may be found at <http://www.dir.ca.gov/lcp.asp>.
- B. The general prevailing wage rates may be accessed at the Department of Labor Home Page at [www.wdol.gov](http://www.wdol.gov). Under the Davis Bacon heading, click on "Selecting DBA WDs." In the drop down menu for State, select, "California." In the drop down menu for County, select "Sonoma." In the drop down menu for Construction Type, make the appropriate selection. Then, click Search.

**IX. CONTRACT WORK HOURS AND SAFETY STANDARDS (applicable to all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, but not to purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence)**

- A. **Compliance:** Contractor agrees that it shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5), which are incorporated herein.
- B. **Overtime:** No contractor or subcontractor contracting for any part of the work under this Agreement which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- C. **Violation; liability for unpaid wages; liquidated damages:** In the event of any violation of the provisions of Paragraph B, the Contractor and any subcontractor responsible therefore shall be liable to any affected employee for its unpaid wages. In additions, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph B in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of their standard workweek of forty hours without payment of the overtime wages required by paragraph B.
- D. **Withholding for unpaid wages and liquidated damages:** The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set for in paragraph C of this section.
- E. **Subcontracts:** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the



subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this section.

**X. NOTICE OF REPORTING REQUIREMENTS**

- A. Contractor acknowledges that it has read and understands the reporting requirements of FEMA in Part III of Chapter 11 of the United States Department of Justice's Office of Justice Programs Financial Guide, and agrees to comply with any such applicable requirements.
- B. The Contractor agrees to include the above clause in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**XI. NOTICE OF REQUIREMENTS PERTAINING TO COPYRIGHTS**

- A. Contractor agrees that FEMA shall have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for government purposes:
  - 1) The copyright in any work developed with the assistance of funds provided under this Agreement;
  - 2) Any rights of copyright to which Contractor purchases ownership with the assistance of funds provided under this Agreement.
- B. The Contractor agrees to include paragraph A above in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**XII. PATENT RIGHTS (applicable to contracts for experimental, research, or development projects financed by FEMA; 44 CFR §13.36(i)(8))**

- A. General. If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the County and Contractor agree to take actions necessary to provide immediate notice and a detailed report to FEMA.
- B. Unless the Government later makes a contrary determination in writing, irrespective of Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the County and Contractor agree to take the necessary actions to provide, through FEMA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR, Part 401.
- C. The Contractor agrees to include paragraphs A and B above in each third party subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FEMA.

**XIII. ENERGY CONSERVATION REQUIREMENTS**

- A. The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC 6201).
- B. The Contractor agrees to include paragraph A above in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**XIV. CLEAN AIR AND WATER REQUIREMENTS (applicable to all contracts and subcontracts in excess \$150,000, including indefinite quantities where the amount is expected to exceed \$150,000 in any year)**

- A. Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387), and will report violations to FEMA and the Regional Office of the Environmental Protection Agency (EPA).
- B. Contractor agrees to report each violation of these requirements to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to FEMA and the appropriate EPA regional office.
- C. The Contractor agrees to include paragraph A and B above in each third party subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

**XV. TERMINATION FOR CONVENIENCE OF COUNTY (applicable to all contracts in excess of \$10,000)**

See Paragraphs 10 and 11 of the Agreement.

**XVI. TERMINATION FOR DEFAULT (applicable to all contracts in excess of \$10,000)**

Contractor's failure to perform or observe any term, covenant or condition of this Agreement shall constitute an event of default under this Agreement. See Paragraphs 9 and 11 of the Agreement.

**XVII. CHANGES.**

See Paragraph 17 of the Agreement.

**XVIII. LOBBYING (Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended).)**

- A. Contractor shall not use or pay any funds received under this Agreement to influence or attempt to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- B. Contractor agrees to the provisions of Attachment D2, Certification Regarding Lobbying, attached hereto and incorporated herein (applicable for contracts or subcontracts in excess of \$100,000).
- C. Contractor agrees to include paragraphs A and B above in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**XIX. MBE / WBE REQUIREMENTS**

The County intends to seek reimbursement of its costs incurred in connection with this project from FEMA. Accordingly, the Contractor shall make every effort to procure Minority and Women's Business Enterprises ("DBEs") through the "Good Faith Effort" process as required in 2 CFR 200.321 when adding new subcontracts.

PRIME CONTRACTOR RESPONSIBILITIES

All recipients of this grant funding, as well as their prime contractors and subcontractors, must take all affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible make every effort to solicit bids from eligible DBEs. This information must be documented and reported.

"GOOD FAITH" EFFORT PROCESS

Any public or private entity receiving federal funds must demonstrate that efforts were made to attract MBE/WBEs. The process to attract MBE/WBEs is referred to as the "Good Faith" effort. This effort requires the recipient, prime contractor and any subcontractors to take the steps listed below to assure that MBE/WBEs are used whenever possible as sources of supplies, construction, equipment, or services. If a contractor fails to take the steps outlined below shall cause the bid to be rejected as non-responsive and/or be deemed a material breach of the contract.

- A. Place qualified small and minority businesses and women's business enterprises on solicitation lists;
- B. Assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- C. Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- D. Establish delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and
- E. Use the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.
- F. If subcontracts are to be let, Contractor shall take the affirmative steps listed in 2 CFR 200.321.

**XX. PROCUREMENT OF RECOVERED MATERIALS (2 CFR 200.322)**

Contractor shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**XXI. INCORPORATION OF UNIFORM ADMINISTRATIVE REQUIREMENTS**

The preceding provisions include, in part, certain standard terms and conditions required by FEMA, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by FEMA are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FEMA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any County requests that would cause County to be in violation of the FEMA terms and conditions.

**XXII. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.**

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

**XXIII. DHS SEAL, LOGO, AND FLAGS.**

The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

**XXIV. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (2 CFR 200.216)**

The Contractor and its subcontractors shall comply with Public Law 115-232, section 889. The requirements of Public Law 115-232, section 889 include prohibitions against using any federal loan or grant funds to procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Covered telecommunications equipment includes equipment produced by Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

## Attachment D1

### **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS**

(Lower Tier refers to the agency or contractor receiving Federal funds, as well as any subcontractors that the agency or contractor enters into contract with using those funds)

As required by Executive Order 12549, Debarment and Suspension, as defined at 44 CFR Part 17, County may not enter into contract with any entity that is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Federal Government from participating in transactions involving Federal funds. Contractor is required to sign the certification below which specifies that neither Contractor nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Federal agency. It also certifies that Contractor will not use, directly or indirectly, any of these funds to employ, award contracts to, engage the services of, or fund any contractor that is debarred, suspended, or ineligible under 44 CFR Part 17.

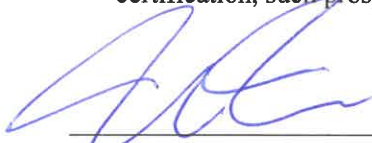
#### **Instruction for Certification**

1. By signing and submitting this Attachment, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definition and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this agreement that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction originated may pursue available remedies, including suspension and/or debarment.

***Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions***

1. The prospective lower tier participant certifies, by submission of its proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.



Contractor Signature



Date

**Attachment D2**

**CERTIFICATION REGARDING LOBBYING**

*Certification for Contracts, Grants, Loans, and Cooperative Agreements*

The undersigned certifies, to the best of their knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loan, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

The Contractor, MILLER PACIFIC ENGINEERING GROUP, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

  
\_\_\_\_\_  
Contractor Signature

2/14/23  
\_\_\_\_\_  
Date