

## NAPA COUNTY AGREEMENT NO. 260391B

### PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into in Napa County, California, effective retroactively to the 1<sup>st</sup> day of April 2026, (“Effective Date”) by and between Napa County, a political subdivision of the State of California, hereinafter referred to as “County,” and MGE Engineering, Inc., a California corporation, whose business address is 7415 Greenhaven Drive, Suite 100, Sacramento, CA 95831 hereinafter referred to as “Consultant.”

#### RECITALS

- A. County wishes to obtain specialized services to provide engineering design and support services for the 555 Wall Road Storm Repair Project to repair the damaged section of Wall Road caused by the 2019 Storm hereinafter referred to as “Project”.
- B. Consultant was originally selected to provide professional services after a competitive process conducted pursuant to Request for Qualifications for the 2019 Napa County FEMA Slide Repair Projects dated November 18, 2019. Consultant was subsequently awarded a Professional Services Agreement (No. 210081B) on August 18, 2020. Consultant completed Phase I of Agreement No. 210081B (“35% design”). The 35% design was submitted to FEMA for Version 1 Review and was denied. While the County’s appeal of the denial was pending, Agreement No. 210081B expired. Now that FEMA has approved the County’s appeal, the County and Consultant wish to enter a new Agreement under substantially the same terms as Agreement No. 210081B.
- C. For good and valuable consideration, the sufficiency of which is acknowledged, County and Consultant agree as follows:

#### AGREEMENT

##### ARTICLE I – SCOPE OF SERVICES

**1.1 Scope of Services.** Consultant shall provide professional services to County as described in Exhibit A to this Agreement, and in accordance with the Contract Documents. The Contract Documents consist of this Agreement and its Exhibits, the Request for Proposals or Qualifications issued by County (if any), and Consultant’s proposal or statement of qualifications.

**1.2 Schedule.** Consultant shall perform and complete the scope of services in accordance with the schedule set forth in Exhibit A. Consultant shall further perform the scope of services in compliance with any interim milestones or deadlines, as may be set forth in Exhibit A.

**1.3 Standard of Care.** Consultant represents that the professional services rendered under this Agreement shall be performed in accordance with the standards customarily adhered to by an experienced and competent professional using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California under the same or similar conditions. This standard of care shall govern all of Consultant's obligations under this Agreement. Such standard of care is not a warranty or guarantee, and Consultant shall have no such obligation. Consultant shall correct any professional services falling below this standard at its sole cost and expense, if notified by County within one year after completion of such services. This remedy is in addition to any other remedies that may be available to County in law or equity.

**1.4 Correction of Deficient Services.** Consultant shall take reasonable steps to commence correction of any services that fail to meet the standard of care within seven days of receipt of written notice from County unless otherwise agreed by the parties. If Consultant fails to commence such steps within the seven day or other agreed-upon period, County may, in addition to any other remedies provided under the Contract Documents, commence correction of such services without further written notice to Consultant. If County takes such corrective action, Consultant shall be responsible for all reasonable costs incurred by County in performing such correction, including but not limited to the cost of County staff time and the amount paid to another consultant to correct the deficient services.

**1.5 Other Remedies.** This Article applies only to Consultant's obligation to correct services that do not meet the standard of care and is not intended to constitute a period of limitations or waiver of any other rights or remedies County may have regarding the Consultant's other obligations under the Contract Documents or federal or state law.

**1.6 Key Personnel.** Key personnel identified in Consultant's proposal or statement of qualifications shall be the individuals who will actually perform the services. Changes in key personnel must be reported by Consultant in writing and approved by County.

**1.7 Government Code Section 7550.** Every document or report prepared by Consultant for or under the direction of County pursuant to this Agreement shall contain the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of the document or written report if the total cost for the work performed by nonemployees of County exceeds five thousand dollars (\$5,000). The contract and subcontract numbers and dollar amounts shall be contained in a separate section of the document or written report. If multiple documents or written reports are the subject or product of this Agreement, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written reports.

## ARTICLE II – DURATION OF AGREEMENT

**2.1 Term of the Agreement.** The term of this Agreement shall begin on the Effective Date entered on page 1 of this Agreement. This Agreement shall expire one year after completion of the scope of services, unless terminated earlier in accordance with this Article.

**2.2 Suspension for Convenience.** County may suspend all or any portion of Consultant's performance under this Agreement at its sole option and for its convenience at no cost for a period of time not to exceed 60 days. County must give 10 days prior written notice to Consultant of such suspension. County may rescind the suspension prior to or at 60 days by providing Consultant with written notice of the rescission, at which time Consultant will be required to resume performance in compliance with the terms and provisions of this Agreement. Consultant shall be entitled to an extension of time to complete performance equal to the length of the suspension unless otherwise agreed to in writing by the parties.

**2.3 Termination for Convenience.** County may terminate all or any portion of this Agreement at its sole option and for its convenience, by giving 30 days prior written notice of such termination to Consultant. The termination of the Agreement shall be effective 30 days after receipt of the notice by Consultant. After receipt of notice of termination of all or any portion of the Agreement, Consultant shall immediately discontinue all affected performance (unless the notice directs otherwise) and complete any additional work necessary for the orderly filing of documents and closing of Consultant's affected performance under the Agreement. Consultant shall deliver to County all data, drawings, specifications, reports, estimates, summaries, and such other information and materials created or received by Consultant in performing this Agreement, whether completed or unfinished. Consultant may keep copies for its own records. County shall pay Consultant for services satisfactorily provided before the effective date of termination, and reasonable costs incurred by Consultant in providing County with the data and documents required by this paragraph. Consultant shall not be compensated for lost or anticipated profit or overhead on the terminated portion of this Agreement.

**2.4 Termination for Cause.** County may terminate this Agreement for default if Consultant fails to satisfactorily perform any material obligation required by this Agreement. Default includes Consultant's failure to timely provide services in accordance with the schedule. If Consultant fails to satisfactorily cure a default within 10 days of receiving written notice from County specifying the nature of the default, County may immediately terminate this Agreement, and terminate each and every right of Consultant, and any person claiming any rights by or through Consultant under this Agreement. The rights and remedies of County enumerated in this paragraph are in addition to and independent of County's rights under any other provision of this Agreement and any right or remedy available to County at law or in equity.

**2.4.1 Absence of Default.** If after County gives notice of termination for cause, it is determined that Consultant was not in default of a material obligation of this Agreement, the termination shall be deemed to be a termination for the convenience of County under paragraph 2.3.

**2.5 Purchasing Agent's Authority.** The County Purchasing Agent or their designee is hereby authorized to make all decisions and take all actions required under this Article to suspend or terminate this Agreement.

### ARTICLE III – COMPENSATION

**3.1 Amount of Compensation.** County shall pay Consultant for satisfactory performance of the scope of services, as follows:

**3.1.1 Rates.** County shall pay Consultant at the unit prices set forth in Exhibit B.

**3.1.2 Expenses.** Travel or other expenses will only be reimbursed by County if such expenses are specifically identified in Exhibit B. Any travel expenses must comply with the Napa County Travel Policy found in the Napa County Policy Manual, Part I, Section 43, regardless of anything to the contrary in Exhibit B.

**3.1.3 Maximum Amount.** Notwithstanding paragraphs 3.1.1 and 3.1.2, the maximum payments under this Agreement shall not exceed a total of FIVE HUNDRED NINETY-THREE THOUSAND SIX HUNDRED NINETEEN AND 91/100 DOLLARS (\$593,619.91); provided, however, that such amounts shall not be construed as guaranteed sums, and compensation shall be based upon services actually provided and reimbursable expenses actually incurred. \$101,725.40 of the maximum amount had already been billed under Agreement 210081B.

**3.2 Payment Process.** Consultant may submit one invoice per calendar month in arrears for services provided, to the Project Manager who will review the invoice to confirm its contents match the services provided during the period covered by the invoice. If approved, the invoice will be forwarded to the Napa County Auditor no later than 15 days following receipt of the invoice.

**3.2.1 Content of Invoices.** Invoices shall be in a form acceptable to the Napa County Auditor and include Consultant's name, address, Social Security or Taxpayer Identification Number, and the Napa County Agreement number. If this Agreement provides for payment based on unit prices or tasks completed, invoices shall include itemization of the hours worked, descriptions of the tasks completed during the billing period, the names and positions of person(s) performing the services, and the hourly or task rates. If the Agreement or Exhibit B provides for a fixed or lump sum price and Consultant presents monthly invoices, each invoice must indicate the percentage of work completed (e.g., 50% of design or draft report) or the milestone(s) achieved in Exhibit B, which will allow Consultant to be paid the equivalent percentage of the fixed price.

**3.2.2 Expenses.** If the Agreement provides for reimbursement of expenses, invoices shall describe the nature and cost of the expense, and the date incurred. Receipts must be included with the invoice.

**3.3 Annual Appropriation of Funds.** Consultant acknowledges that the term of this Agreement may extend over multiple County fiscal years, and that compensation under this Agreement is contingent on the Board of Supervisors appropriating funding for this Agreement for those fiscal years. This Agreement may be terminated at the end of the fiscal year for which sufficient funding is not appropriated and authorized. County is not obligated to pay Consultant, nor is Consultant obligated to provide further services if sufficient funds have not been appropriated and authorized by the Board of Supervisors.

#### ARTICLE IV – INSURANCE

**4.1 Insurance.** Prior to commencing the scope of services, Consultant 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 insurance coverage set forth in Exhibit C.

**4.2 Inclusion in Subcontracts.** Consultant shall require its subconsultants and any other entity or person providing services under this Agreement to comply with the Workers Compensation and General Liability insurance requirements set forth in Exhibit C.

#### ARTICLE V – INDEMNIFICATION

**5.1 Indemnification and Hold Harmless.** To the fullest extent permitted by law, Consultant shall defend at its own expense, indemnify, and hold harmless County and its officers, agents, employees, volunteers, and 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) or damage to property, arising from all acts or omissions of Consultant or its officers, agents, employees, volunteers, consultants and subconsultants in providing services under this Agreement, excluding, however, such liability, claims, actions, losses, injuries, damages or expenses to the extent arising from the active or sole negligence or willful misconduct of County. 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.

**5.2 Design Professionals.** To the extent Consultant is providing the services of a “design professional” as defined in California Civil Code section 2782, County acknowledges that Consultant’s obligations under paragraph 5.1 may be limited under Civil Code section 2782.8.

**5.3 Effect of Insurance.** The provisions of this Article are not limited by the requirements of Article IV related to insurance.

**5.4 Enforcement Costs.** Consultant shall reimburse any and all costs County incurs enforcing the indemnity, hold harmless, and defense provisions set forth in this Article.

**5.5 Survival.** This Article shall survive termination or expiration of this Agreement and continue in effect so long as a viable claim may exist.

## **ARTICLE VI – MANDATORY COUNTY PROVISIONS**

**6.1 Compliance with County Policies.** Consultant shall comply, and require its employees and subconsultants to comply, with the following policies, copies of which are available on County’s website at <https://www.countyofnapa.org/771/Purchasing> and are hereby incorporated by reference.

**6.1.1** Napa County “Waste Source Reduction and Recycled Product Content Procurement Policy,” which is found in the Napa County Policy Manual Part I, Section 8D.

**6.1.2** Napa County “Discrimination, Harassment and Retaliation Prevention Policy,” which is found in the Napa County Policy Manual Part I, Section 37K.

**6.1.3** Napa County “Drug and Alcohol Policy,” which is found in the Napa County Policy Manual Part I, Section 37O.

**6.1.4** “Napa County Information Technology Use and Security Policy” which is found in the Napa County Policy Manual Part I, Section 31A.

**6.1.5** Napa County “Workplace Violence Policy,” which is found in the Napa County Policy Manual Part I, Section 37U.

**6.2 Inducement of County Employees.** Consultant shall not permit its officers, agents, or employees to engage in any activities during the performance of any of services under this Agreement that would interfere with compliance or induce violation of these policies by County employees or consultants.

## **ARTICLE VII – COMPLIANCE WITH LAWS**

**7.1 Compliance with Controlling Law.** Consultant shall comply with all laws, ordinances, regulations, and policies of federal, California, and local governments applicable to this

Agreement. Consultant shall comply immediately with all directives issued by County or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations.

**7.2 Conflict of Interest.** Consultant acknowledges that they are aware of the provisions of Government Code sections 1090, et seq., and sections 87100, et seq., relating to conflict of interest of public officers and employees. Consultant 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 the scope of services under this Agreement. Consultant further warrants that it is unaware of any financial or economic interest of any public officer or employee of County relating to this Agreement. Violation of this paragraph by Consultant is a material breach of this Agreement which may result in termination of the Agreement for cause.

**7.3 Taxes.** Consultant shall file federal and state tax returns or applicable withholding documents and pay all applicable taxes or make all required withholdings on amounts paid pursuant to this Agreement. Consultant shall be solely liable and responsible to make such withholdings and pay such taxes and other obligations including, without limitation, state and federal income and FICA taxes. Consultant shall indemnify and hold County harmless from any liability it may incur to the United States or the State of California if Consultant fails to pay or withhold, when due, all such taxes and obligations. If County is audited for compliance regarding any withholding or other applicable taxes or amounts, Consultant shall furnish County with proof of payment of taxes or withholdings on those earnings within 10 business days after notice from County.

**7.4 Prevailing Wage Requirements.** The scope of services includes “public works” as defined in the California Labor Code. Consultant shall comply with all State prevailing wage requirements, including but not limited to, those set forth in Exhibit D.

## **ARTICLE VIII – DISPUTE RESOLUTION**

**8.1 Mandatory Non-binding Mediation.** If a dispute arises out of or relates to this Agreement, or the breach thereof, and if said dispute cannot be settled through normal contract negotiations, the parties agree to attempt to settle the dispute in an amicable manner, using mandatory mediation through Judicial Arbitration and Mediation Services (JAMS) or any other neutral organization agreed to by the parties. To initiate mediation, the initiating party shall send written notice of its request for mediation to the opposing party. Mediation is mandatory before either party may initiate litigation or have recourse in a court of law.

**8.2 Mediation Costs.** The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties, unless they agree otherwise.

**8.3 Selection of Mediator.** A single mediator that is acceptable to both parties shall be used to mediate the dispute. The mediator may be selected from lists furnished by JAMS or any other agreed upon mediator. The parties shall endeavor to agree on a mediator within 10 business days, unless a longer period is mutually agreed to in writing by Consultant and County. If the parties cannot agree on a mediator, JAMS or other neutral organization shall select the mediator.

**8.4 Conduct of Mediation Sessions.** Mediation hearings will be conducted in an informal manner and discovery will not be allowed. The discussions, statements, or admissions will be confidential to the proceedings and will be subject to Evidence Code section 1152. The parties may agree to exchange any information they deem necessary. Both parties shall have a representative attend the mediation who is authorized to settle the dispute, though County's recommendation of settlement may be subject to the approval of the Board of Supervisors. Either party may have attorney(s), witnesses, or expert(s) present. Either party may request a list of witnesses and notification whether attorney(s) will be present.

**8.5 Mediation Results.** Any resultant agreements from mediation shall be documented in writing. Mediation results and documentation, by themselves, shall be "non-binding" and inadmissible for any purpose in any legal proceeding, unless such admission into evidence is otherwise agreed to in writing by both parties. Mediators shall not be subject to any subpoena or liability, and their files and actions shall not be subject to discovery.

## ARTICLE IX – GENERAL PROVISIONS

**9.1 Access to Records/Retention.** Consultant shall provide County with access to Consultant's records which are reasonably necessary for County to review or audit Consultant's compliance with the provisions of this Agreement. Consultant shall provide such access within 10 business days after written request by County, either by providing copies of the requested records to County or allowing County to inspect and photocopy the records at Consultant's place of business where the records are kept. Consultant shall maintain all records related to this Agreement for at least four years after expiration or termination of this Agreement.

**9.2 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

CONSULTANT

Napa County Department of Public Works

MGE Engineering, Inc.

**9.3 Independent Contractors.** Consultant and its subconsultants, if any, are independent contractors and not agents of County. Any provisions of this Agreement that may appear to give County any right to direct Consultant concerning the details of performing the scope of services, or to exercise any control over such performance, shall mean only that Consultant shall follow the direction of County concerning the end results of the performance.

**9.4 Contract Interpretation.** This Agreement and all Contract Documents shall be deemed to be made under, and shall be construed in accordance with and governed by, the laws of the State of California without regard to the conflicts or choice of law provisions thereof. It is the intent of the Contract Documents to completely describe the goods and services to be provided. Any work, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result shall be supplied whether or not specifically called for or identified in the Contract Documents. When words or phrases which have a well-known technical or industry or trade meaning are used to describe work, materials, equipment, goods, or services such words or phrases shall be interpreted in accordance with that meaning unless a definition has been provided in the Contract Documents. In resolving conflicts resulting from errors or discrepancies in any of the Contract Documents, the order of precedence shall be in descending order as set forth below (the document in paragraph 9.4.1 having the highest precedence). Provisions of the Contract Documents addressing the same subject which are consistent but have different degrees of specificity shall not be considered to be in conflict, and the more specific language shall control. Order of Precedence:

- 9.4.1 Exhibit E to this Agreement
- 9.4.2 This Agreement.
- 9.4.3 Exhibits A, B, C, and D to this Agreement.
- 9.4.4 The RFQ or RFP issued by County.
- 9.4.5 Consultant's proposal or statement of qualifications.

**9.5 Drafting Ambiguities.** The parties acknowledge that they have the right to be advised by legal counsel with respect to the negotiations, terms, and conditions of this Agreement, and the decision of whether to seek advice of legal counsel with respect to this Agreement is the sole responsibility of each party. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Agreement.

**9.6 Third Party Beneficiaries.** Unless expressly set forth in this Agreement, none of the provisions of this Agreement are intended to benefit any third party not specifically referenced herein. No person other than County and Consultant shall have the right to enforce any of the provisions of this Agreement.

**9.7 Force Majeure.** In the event either party's performance is delayed due to causes which are outside the control of both parties and their subconsultants, contractors and employees, and could not be avoided by the exercise of due care, which may include, but is not limited to, delays by regulating agencies, wars, floods, adverse weather conditions, labor disputes, unusual delay in transportation, epidemics abroad, earthquakes, fires, terrorism, incidence of disease or other illness that reaches outbreak, epidemic and/or pandemic proportions, unusual delay in deliveries, riots, civil commotion or other unavoidable casualties, and other acts of God, both parties will be entitled to an extension in their time for performance equivalent to the length of delay. Neither party will be entitled to compensation from the other for force majeure events. The party claiming its performance is delayed must demonstrate to the reasonable satisfaction of the other party that a force majeure event is causing the delay; the mere occurrence of a force majeure event is insufficient to extend the time for performance.

**9.8 Confidentiality of Services.** All services performed by Consultant and any subconsultants, including but not limited to all drafts, data, information, correspondence, proposals, reports of any nature, estimates compiled or composed by Consultant, are for the sole use of County. Neither the documents nor their contents shall be released by Consultant or any subconsultant to any third party without the prior written consent of County. Contractor shall not disclose records or other information provided by County under this Agreement to any third party, except as necessary to perform the scope of services, unless the records or information: (1) were publicly known, or otherwise known to Consultant, at the time it was disclosed to Consultant by County; (2) subsequently become publicly known through no act or omission of Consultant; or (3) otherwise become known to Consultant other than through disclosure by County.

**9.9 Insolvency.** Consultant shall notify County if Consultant enters into bankruptcy proceedings. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of County contract numbers and contracting offices for all County contracts against which final payment has not been made. This obligation remains in effect until final payment is made under this Agreement.

**9.10 RESERVED**

**9.11 Venue.** This Agreement is made and entered into in Napa County, California. 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. 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 shall be in the Northern District of California.

**9.12 Exhibits Incorporated.** All Exhibits referenced in this Agreement are hereby incorporated into the Agreement by this reference.

**9.13 County Powers.** Nothing contained in this Agreement shall be construed as a limitation upon the powers of County as a subdivision of the State of California. Nothing in this Agreement shall be interpreted as limiting the rights and obligations of County in its governmental or regulatory capacity.

**9.14 Survival of Obligations.** All indemnifications and other obligations that by their nature involve performance after the early termination or expiration of this Agreement or after completion and acceptance of the scope of services, shall survive the early termination or expiration of this Agreement. Such obligations include, but are not limited to, paragraphs 1.4 (Correction of Deficient Services), 9.1 (Access to Records/Retention), 9.8 (Confidentiality of Services), and Article VIII (Dispute Resolution). Obligations related to insurance or indemnity shall continue in full force and effect after the date of early termination or Agreement expiration, but only with regard to acts or omissions that occurred during the term of the Agreement.

**9.15 Severability.** Should any provision of this Agreement be held invalid or illegal by a court of competent jurisdiction, such invalidity or illegality shall not invalidate the whole of this Agreement, but rather, the Agreement shall be construed as if it did not contain the invalid or illegal provision, and the rights and obligations of the parties shall be construed and enforced accordingly, except to the extent that enforcement of this Agreement without the invalidated provision would materially and adversely impact either or both parties' consideration for entering into this Agreement.

**9.16 Amendment/Modification.** This Agreement may be modified or amended only in writing and with the prior written consent of both parties. Failure of Consultant 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 compensation or contract time.

**9.17 No Waivers.** Any failure by either party to insist upon the strict performance by the other of any obligation of this Agreement, or any failure to exercise any right or remedy for a breach of any term or condition of this Agreement, shall not constitute a waiver of any such failure to perform or breach of any term or condition. A waiver must be express and in writing. 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.

**9.18 No Assignments.** Consultant may not assign the obligations under this Agreement, nor any monies due or to become due under this Agreement, without County's prior written approval. Any assignment in violation of this paragraph shall constitute a default and is grounds for termination of this Agreement at County's sole discretion. In no event shall any putative assignment create a contractual relationship between County and any putative assignee.

**9.19 Successors in Interest.** All rights and obligations created by this Agreement shall be in force and effect whether or not any parties to the Agreement have been succeeded by another entity, and all rights and obligations created by this Agreement shall be vested and binding on any party's successor in interest.

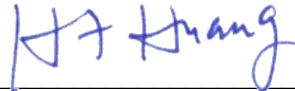
**9.20 Entirety of Contract.** This Agreement, including any documents expressly incorporated by reference whether or not attached hereto, constitutes the entire agreement between the parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations,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


**9.21 Electronic Signatures and Counterparts.** By executing this Agreement, all parties consent and agree that any electronic signature, as defined by Civil Code section 1633.2(h), affixed hereto shall have the full force and effect as a wet or manual signature. 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.

**9.22 Instruments of Service.** Plans, specifications, concepts, designs, drawings, calculations and other documents, regardless of their format, prepared by Consultant ("Instruments of Service") are useful with respect to the subject project only. County shall not use or modify the Instruments of Service for other projects or without Consultant's involvement and oversight. Any unauthorized use or modification or use without Consultant's involvement and oversight of the Instruments of Service shall be at County's sole risk and without liability to Consultant. County shall, to the fullest extent permitted by law, indemnify and hold harmless Consultant, its officers, directors, and employees against any third party claims, damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from or in any way connected with such use, unauthorized use or modification of the Instruments of Service by County or any person or entity that acquires or obtains them from or through County without the written authorization of Consultant.

**IN WITNESS WHEREOF**, this Agreement is executed by County, acting by and through the Chair of the Board of Supervisors, and by Consultant through its duly authorized officer(s).

MGE ENGINEERING, INC.

By   
H. FRED HUANG, President

By   
H. FRED HUANG, Secretary

NAPA COUNTY, a political subdivision of  
the State of California

By \_\_\_\_\_  
AMBER MANFREE, Chair of the Board of  
Supervisors

<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>June 4, 2026</u></p>	<p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS</p> <p>Date: _____ Processed By: _____ _____ 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 SERVICES**

### **I. Description of Goods and/or Services**

#### **Project Description: 555 Wall Road Storm Repair Project**

- Excessive rain saturated a 235-foot-long portion of road near 555 Wall Road causing movement of the road and supporting grounds in 2019. FEMA inspected the site on August 15, 2019 and declared the damage occurred during the rainstorm a disaster event. MGE Engineering, Inc. was selected through a Request for Qualification to provide engineering design services and assist with FEMA's request for information to repair the roadway.

#### **Scope of Services:**

#### **Phase I – Completed Under Agreement 210081B**

##### **1. Project Management**

- a. MGE will meet with County staff to establish protocol, learn of funding limitations, finalize the schedule, and discuss other issues that will need to be considered in the development of permanent repairs for the 555 Wall Road site.
- b. MGE will participate in meetings as necessary to complete the design tasks and coordinate between technical disciplines.
- c. MGE will submit a monthly Progress Report to accompany invoices. The reports will include a narrative on work accomplished during the reporting period; work planned for the next reporting period; information/decisions required to maintain the Project schedule and complete deliverables; problems encountered that may affect the schedule, budget, and anticipated work items; and recommendations to resolve issues. MGE will also update the project schedule on a quarterly basis within this task.
- d. Deliverables: Meeting agendas and minute, project schedule, progress reports & invoices.

##### **2. Survey and Base Mapping**

- a. Cinquinni and Passarino (CPI) will perform topographic and control surveys of the 555 Wall Road project site. CPI will provide project survey on California Coordinate System of 1983, Zone 2 and perform a ground survey for the location of the topographic information, as needed. Survey vertical control shall be NAVD 88. Ground based surveys will be supplemented with aerial LiDAR to evaluate the landslide geomorphology.
  - i. Optional Survey Task: CPI will perform boundary survey and record of survey, if necessary, at additional cost.
- b. Deliverables: Topographic survey map and digital terrain model of project site compatible with Civil3D and AutoCAD.dwg file of the topographic survey containing the survey points, topographic survey files.

### **3. Geotechnical Engineering**

- a. MGE will perform the geotechnical exploration, geologic reconnaissance, and prepare reports. MGE will collect samples at 5-foot intervals and will recover core samples if diamond coring methods are required to advance the boring. Laboratory testing will likely include moisture content, dry density, soil classification, compressive strength tests and point load index tests on rock, corrosivity, and one R-value.
- b. MGE will perform geologic reconnaissance and will use the topographic mapping to evaluate the landslide and surrounding slopes. MGE expects geologic reconnaissance will consist of site review and observations of the terrain, any seepage areas, general geologic conditions, and observations of rock outcrop characteristics such as bedding, rock type, weathering, fracturing, etc. MGE will perform three to four seismic refraction lines at the toe of the roadway embankment to supplement data acquired from the borings. Seismic refraction data will evaluate depth to competent rock and provide information on the landslide depth and geometry below ground surface. MGE will develop preliminary geotechnical criteria for the preferred design alternative, including site preparation and grading, excavation characteristics, suitability of excavated soils within the roadway for re-use as fill, and the treatment of existing fill, expansive and porous soils, as appropriate; foundation design criteria for walls or other structures required for the repair and pavement sections for asphalt-paved areas based on the R-value test results and Caltrans Highway Design Manual criteria.
- c. MGE will prepare a preliminary geotechnical report that includes laboratory test results, boring logs, and geologic cross sections, to provide a basis for evaluating preliminary repair alternatives.
- d. Deliverables: Preliminary Geotechnical Report

### **4. Preliminary Engineering & Type Selection Report**

- a. MGE will complete enough preliminary engineering and design work to select a preferred alternative for the project. Under this task, MGE will complete the following tasks:
  - i. Field Review
  - ii. Preliminary Engineering and Type Selection Report
  - iii. Alternatives Development
  - iv. Draft Type Selection Report
  - v. Review and Respond to County & FEMA Review Comments
  - vi. Type Selection Meeting
  - vii. Final Type Selection Report
- b. Deliverables: Type Selection Meeting Minutes & Draft and Final Type Selection Reports

### **Phase II – To Be Completed Under This Agreement.**

1. Engineering Design

- a. MGE will prepare draft and final geotechnical reports.
  - b. MGE will prepare plans, special provisions and estimates (PS&E) for construction of the permanent repairs. The contract documents will be developed in accordance with Napa County and FEMA requirements.
  - c. Under this task, MGE will complete the following:
    - i. 65% PS&E – Structure Design Development, Roadway Design, and Quality Control
    - ii. 90% PS&E – Incorporates comments from the 65% Design
    - iii. 100% PS&E – Construction ready set for competitive bidding.
  - d. Deliverables: Final design plans and project special provisions, engineering’s estimate, design and design check calculations and quantities, resident engineer pending file.
2. Bid Assistance and Construction Support Services
- a. Bidding Assistance: MGE will help the County during the bidding period with responses to Requests for Information or Plan Clarifications, provide design support for addenda, review Bid Proposals for irregularities, and assist the County with Award Recommendations.
  - b. Design Services During Construction: MGE will provide engineering support services for the duration of construction. MGE anticipates that this task will include attendance of the project pre-construction meeting, review of submittals related to design and specialized materials, engineering support for design changes, change order review, review of shop drawings, review of RFI’s, and periodic field review and inspections as requested by the County. In addition, MGE will assist the County with the final project walk and the development of the project punch list.
  - c. Record Drawings (As-Built Plans): MGE will prepare record drawings (as-built plans) based on the resident engineer’s plan mark ups. The as-built changes will be added to the construction drawings (changes will be identified with “clouds”) and provide to the County in electronic format.
  - d. Deliverables: Addenda, Response to RFI’s and Submittal Reviews, and As-Built Plans
3. Additional Scope:
- a. Surveying to update the four-year-old topographic survey and optional boundary surveys - \$3,000
  - b. Environmental services that include noise, biological and spotted owl surveys to support FEMA’s NEPA project compliance completed by NCE - \$61,125

County Responsibilities:

- Facilitate coordination with FEMA
- Coordinate with FEMA to complete environmental permits, any environmental studies (including hazardous materials) and site environmental field reviews required
- Coordinate utility relocations, as necessary
- Provide comments on submittals within three weeks of receipt.

MGE Assumptions:

- MGE will not characterize hazardous materials at the site
- Boundary survey and record of survey is not required
- The County and/or FEMA will provide all the required environmental studies and permits
- MGE assumes that encroachment permit will not require a fee or bond
- Two alternatives will be developed for the site during the Type Selection Process
- County and FEMA will provide all comments on designs in one summary document for MGE to address

## **II. Schedule**

Consultant shall complete the Scope of Services and allow time for the completion for construction by the completion date set by FEMA.

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**EXHIBIT B  
COMPENSATION AND FEE SCHEDULE**

County will pay Consultant in accordance with the attached fee schedules beginning on the next page.

*[The remainder of this page is intentionally left blank]*

**HOURLY BILLING RATES**

MGE Engineering, Inc.

Effective 1/1/26 – 12/31/26

<b><u>Classification</u></b>	<b><u>Rate</u></b>
Principal Engineer	\$389
Project Manager	\$347
Supervising Engineer	\$326
Geologist/Geotechnical Engineer	\$294
Senior Engineer II	\$294
Senior Engineer I	\$273
Resident Engineer/Structures Rep.	\$255
Associate Engineer	\$226
Construction Inspector	\$236
Assistant Engineer	\$189
Junior Engineer	\$147
CADD Technician III	\$210
CADD Technician II	\$179
CADD Technician I	\$147
Admin Assistant	\$158

**Direct Costs:**

Reproduction and Delivery	At Cost
Auto Mileage	Federal Rate ( \$0.725/mile)
Per Diem	CT Travel Guide

***Note: Above rates are subject to up to 5% escalation per year over the next 3 years beginning January 1<sup>st</sup> of each calendar year.***

Agreement No.: 210080B  
 Project Name: Wall Road 555  
 Napa County  
 Dept of Public Works

Consultant:  
 MGE Engineering, Inc.  
 7415 Greenhaven Drive, Suite 100  
 Sacramento, CA 95831  
 Taxpayer I.D.: 68-0231292

Revised Budget 2026

Task	Description	2026 Total Amount	Original Budget	Budget Difference for 2026
Task 1	Project Management	\$ 8,225.68	\$ 6,108.34	\$ 2,117.34
Task 2	Surveying/Topographic Mapping	\$ 839.36	\$ 631.90	\$ 207.46
Task 3	Geotechnical Engineering	\$ 36,260.14	\$ 30,325.21	\$ 5,934.93
Task 4	Preliminary Utility Conflict Identification	\$ 839.36	\$ 795.72	\$ 43.64
Task 5	Preliminary Engineering	\$ -	\$ 40,845.13	\$ -
Task 6	Final Design and Engineering Services	\$ 340,814.50	\$ 268,676.26	\$ 72,138.24
Task 7	Bid Assistance and Construction Support Services	\$ 24,534.35	\$ 19,714.61	\$ 4,819.74
<b>MGE ODC</b>		\$ -	\$ 50,286.25	\$ -
MGE Escalation		\$ -	\$ 4,405.16	\$ -
<b>Subconsultant</b>				
	Cinquini & Passarino	\$ 25,445.00	\$ 22,445.00	\$ 3,000.00
	NCE	\$ 61,125.00	\$ -	\$ 61,125.00
Invoice Error Adjustment				
Grand Total		<b>\$ 498,083.37</b>	<b>\$ 444,233.58</b>	<b>\$ 149,386.33</b>



**EXHIBIT 10-H1 COST PROPOSAL** Page 2 of 3  
**COST-PLUS-FIXED FEE OR LUMP SUM OR FIRM FIXED PRICE CONTRACTS**  
(CALCULATIONS FOR ANTICIPATED SALARY INCREASES)

**1. Calculate Average Hourly Rate for 1st year of the contract (Direct Labor Subtotal divided by total hours)**

Direct Labor Subtotal per Cost Proposal	Total Hours per Cost Proposal	=	Avg Hourly Rate	5 Year Contract Duration
\$147,082.00	1903	=	\$77.29	Year 1 Avg Hourly Rate

**2. Calculate hourly rate for all years (Increase the Average Hourly Rate for a year by proposed escalation %)**

	Avg Hourly Rate	+	Proposed Escalation	=		
Year 1	\$77.29	+	4.0%	=	\$80.38	Year 2 Avg Hourly Rate
Year 2	\$80.38	+	4.0%	=	\$83.60	Year 3 Avg Hourly Rate
Year 3	\$83.60	+	4.0%	=	\$86.94	Year 4 Avg Hourly Rate
Year 4	\$86.94	+	4.0%	=	\$90.42	Year 5 Avg Hourly Rate
Year 5	\$90.42	+	4.0%	=	\$94.03	Year 6 Avg Hourly Rate
Year 6	\$94.03	+	4.0%	=	\$97.80	Year 7 Avg Hourly Rate

**3. Calculate estimated hours per year (Multiply estimate % each year by total hours)**

	Estimated % Completed Each Year	*	Total Hours per Cost Proposal	=	Total Hours per Year	
Year 1	100.00%	*	1903.0	=	1903.0	Estimated Hours Year 1
Year 2	0.00%	*	1903.0	=	0.0	Estimated Hours Year 2
Year 3	0.00%	*	1903.0	=	0.0	Estimated Hours Year 3
Year 4	0.00%	*	1903.0	=	0.0	Estimated Hours Year 4
Year 5	0.00%	*	1903.0	=	0.0	Estimated Hours Year 5
Year 6	0.00%	*	1903.0	=	0.0	Estimated Hours Year 6
Total	100%		Total	=	1903.0	

**4. Calculate Total Costs including Escalation (Multiply Average Hourly Rate by the number of hours)**

	Avg Hourly Rate (calculated above)	*	Estimated hours (calculated above)	=	Cost per Year	
Year 1	\$77.29	*	1903.0	=	\$147,082.00	Estimated Hours Year 1
Year 2	\$80.38	*	0.0	=	\$0.00	Estimated Hours Year 2
Year 3	\$83.60	*	0.0	=	\$0.00	Estimated Hours Year 3
Year 4	\$86.94	*	0.0	=	\$0.00	Estimated Hours Year 4
Year 5	\$90.42	*	0.0	=	\$0.00	Estimated Hours Year 5
Year 6	\$94.03	*	0.0	=	\$0.00	Estimated Hours Year 6
Total Direct Labor Cost with Escalation				=	\$147,082.00	
Direct Labor Subtotal before Escalation				=	\$147,082.00	
Estimated total of Direct Labor Salary Increase				=	<b>\$0.00</b>	Transfer to Page 1

**NOTES:**

1. This is not the only way to estimate salary increases. Other methods will be accepted if they clearly indicate the % increase, the # of years of the contract, and a breakdown of the labor to be performed each year.
2. An estimation that is based on direct labor multiplied by salary increase % multiplied by the # of years is not acceptable. (i.e. \$250,000 x 2% x 5 yrs = \$25,000 is not an acceptable methodology)
3. This assumes that one year will be worked at the rate on the cost proposal before salary increases are granted.
4. Calculations for anticipated salary escalation must be provided.

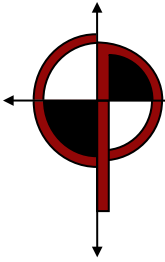


MGE Engineering  
FEE ESTIMATE PROPOSAL  
Wall Road 555 Landslide

		Principal in Charge	Project Manager	Supervisory Civil Engineer	Lead Civil Engineer	Senior Structure Engineer	Senior Structure Engineer	Assistant Civil Engineer	Junior Engineer	Structural CAD Technician	Civil CAD Technician					MGE Total Hours	MGE Cost Per Task
Billing Rate (\$/hour)		\$394.50	\$293.77	\$335.74	\$209.84	\$290.98	\$ 293.77	\$ 142.69	\$125.90	\$221.03	\$209.84						
		R. Sennett	M. McIlroy	J. Gomez	D. Lukashov	D. Yang	W. Sennett	Staff	Staff	Staff	Staff						
<b>Task 1</b>	<b>Project Management</b>																
1.1	Kick-Off Meeting		1				1									2	\$587.55
1.2	Anticipate 14 Progress Meetings and Meeting Minutes		12													12	\$3,525.29
1.3	Monthly Invoice and Progress Reports		14													14	\$4,112.84
	<b>Task 1 Total Hours</b>	0	27	0	0	0	1	0	0	0					0	28	\$8,225.68
<b>Task 2</b>	<b>Surveying/Topographic Mapping</b>																
	Topographic Survey										4					4	\$839.36
	<b>Task 2 Total Hours</b>	0	0	0	0	0	0	0	0	0	4	0	0	0	0	4	\$839.36
<b>Task 3</b>	<b>Geotechnical Engineering</b>																
	Planning and Permitting															0	\$0.00
	Traffic Control															0	\$0.00
	Geologic Reconnaissance															0	\$0.00
	Geotechnical Investigations															0	\$0.00
	Laboratory Testing															0	\$0.00
	Engineering and Geologic Analyses		12		30				30							72	\$13,597.55
	Preliminary Geotechnical Report															0	\$0.00
	Final Geotechnical Report		8		60				8		32					108	\$22,662.59
	<b>Task 3 Total Hours</b>	0	20	0	90	0	0	0	38	0	32	0	0	0	0	180	\$36,260.14
<b>Task 4</b>	<b>Preliminary Utility Conflict Identification</b>																
5.1	Utility "A" Letters				4											4	\$839.36
	<b>Task 4 Total Hours</b>	0	0	0	4	0	0	0	0	0	0	0	0	0	0	4	\$839.36
<b>Task 5</b>	<b>Preliminary Engineering</b>																
	Assess Available Information															0	\$0.00
	Field Review															0	\$0.00
	Type Selection Report															0	\$0.00
	Alternative Development															0	\$0.00
	Draft Type Selection Report															0	\$0.00
	Review & Respond to County & FEMA Review Comments															0	\$0.00
	Type Selection Meeting															0	\$0.00
	Final Type Selection Report															0	\$0.00
	<b>Task 5 Total Hours</b>	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	\$0.00
<b>Task 6</b>	<b>Final Design and Engineering Services</b>																
6.1	<b>65% PS&amp;E (Plans, Draft Special Provisions, &amp; Construction Cost Estimate)</b>															0	\$0.00
	Roadway and Civil Design		4		8			100			200					312	\$59,090.59
	Structures Design		2				204			240						446	\$113,564.73
	Contract Item List & Draft Special Provisions						22	9								31	\$7,747.25
	Construction Quantities & Cost Estimate						10	4								14	\$3,508.50
	QC/Constructability Review	4	2	4												10	\$3,508.50
	65% PS&E Submittal	2	4	1	2		8	4		8	8					37	\$9,087.42
	<b>Task 6.1 Hours</b>	6	12	5	10	0	244	117	0	248	208	0	0	0	0	850	\$196,506.99
6.2	<b>90% PS&amp;E (Plans, Special Provisions, &amp; Construction Cost Estimate)</b>															0	\$0.00
	Review and Respond to County Review Comments		1		1			2	2							6	\$1,376.54
	Roadway and Civil Design		2		20			40			40					102	\$18,885.49
	Structures Design & Independent Design Check					80	80			60						220	\$60,041.86
	90% Special Provisions		4	4	4		12	6								30	\$7,738.85
	Check Quantities and Update Cost Estimate				4		4	4								12	\$2,585.21
	Working Day Schedule			1	4											5	\$1,175.10
	QC/Constructability Review		4	6												10	\$3,189.55
	90% PS&E Submittal		4		2		6	4		8	8					32	\$7,375.13
	<b>Task 6.2 Hours</b>	0	15	11	35	80	104	56	0	68	48	0	0	0	0	417	\$102,367.74
6.3	<b>Final PS&amp;E (Plans, Special Provisions, &amp; Construction Cost Estimate)</b>															0	\$0.00
	Review and Respond to County Review Comments							1	4							5	\$864.54
	Finalize PS&E	2	8		4		40	24		32	16					126	\$29,584.47
	Prepare Resident Engineer File						2	1								3	\$730.24
	QC Review	2	4	2												8	\$2,635.57
	Final PS&E Submittal		4		2		8	4		8	8					34	\$8,124.96
	<b>Task 6.3 Hours</b>	4	16	2	4	2	51	33	0	40	24	0	0	0	0	176	\$41,939.77
<b>Task 7</b>	<b>Bid Assistance and Construction Support Services</b>																
	Bidding Assistance				1			1								2	\$503.61
	Construction Support		14		8			40	16							78	\$19,825.57
	As-Built Drawings		1					4	4		6	4				19	\$4,205.17
	<b>Task 7 Hours</b>	0	15	0	9	0	45	20	0	6	4				0	99	\$24,534.35
	<b>Total Project Hours/Costs</b>	10	105	18	152	82	445	226	38	362	320	0	0	0	0	1758	\$411,513.37

Notes:

Escalation \$0.00  
ODCs \$86,570.00  
\$498,083.37



▲ BOUNDARY      ▲ TOPOGRAPHIC      ▲ CONSTRUCTION  
▲ RAILROAD      ▲ INFRASTRUCTURE      ▲ HYDROGRAPHIC

**Exhibit 'C'**  
**HOURLY FEE SCHEDULE**  
MARCH 1, 2026 TO FEBRUARY 28, 2027

**OFFICE AND PROFESSIONAL**

Professional Land Surveyor (4 HOUR MINIMUM) TRIALS, TESTIMONY & DEPOSITIONS	\$510.00 per hour
Professional Land Surveyor CONSULTATION, LEGAL RESEARCH & COURT EXHIBITS	\$320.00 per hour
Principal Professional Land Surveyor	\$320.00 per hour
Professional Land Surveyor	\$200.00 to \$235.00 per hour
Staff Surveyor	\$150.00 to \$220.00 per hour
Survey Technician	\$150.00 to \$185.00 per hour
Chief Hydrographer Surveyor	\$270.00 per hour
Assistant Hydrographer	\$190.00 per hour
GIS Specialist	\$165.00 per hour
Remote Pilot INCLUDES MISSION PLANNING, MILEAGE & MATERIAL	\$310.00 per hour
Administrative Assistance WORD PROCESSING, CLERICAL AND DELIVERIES	\$125.00 to \$190.00 per hour

**FIELD CREWS**

THE FOLLOWING INCLUDES VEHICLES, EQUIPMENT, MILEAGE & MATERIAL

1 Person Field Party	\$228.00 per hour
2 Person Field Party FIELD CREW CONSISTS OF PARTY CHIEF & CHAINMAN	\$365.00 per hour
3 Person Field Party FIELD CREWS CONSIST OF PARTY CHIEF, 2 CHAINMEN OR CHAINMAN & FLAGPERSON.	\$502.00 per hour

**SUPPLEMENTAL ITEMS**

Outside Contract Work	Cost plus 15%
Overtime Work	1.2 x base rate
Over 8 Hours on Saturday, all day on Sundays or Holiday	1.4 x base crew rate
Night Work ( <i>shifts starting after 4 PM or before 5 AM</i> )	10% additional over base rates
Travel Time for 2-Person Crew ( <i>beyond 1 hour of travel outside an 8 hour workday</i> )	\$164.00 per hour
GEDO Scan Equipment	\$1,200.00 per day
UAS Equipment	\$750.00 per day
Multibeam Survey Vessel Equipment	\$2,000 per day
Singlebeam Survey Vessel Equipment	\$1,500 per day

Schedule 2026/2027



SCHEDULE OF CHARGES 2026

PROFESSIONAL SERVICES

Principal .....	\$360/hour
Associate.....	\$290/hour
Senior II .....	\$240/hour
Senior I .....	\$230/hour
Project II .....	\$220/hour
Project I .....	\$205/hour
Staff II .....	\$195/hour
Staff I .....	\$180/hour

TECHNICAL SERVICES

Senior Construction Manager* .....	\$185/(\$210-PW)/hour
Construction Inspector* .....	\$165/(\$190-PW)/hour
Senior Designer.....	\$195/hour
CADD Designer.....	\$175/hour
CADD/GIS Technician.....	\$145/hour
Senior Field Scientist.....	\$155/hour
Field Scientist.....	\$135/hour
Senior Technician*.....	\$165/(\$190-PW)/hour
Field/Engineering Technician* .....	\$135/(\$160-PW)hour
Project Administrator .....	\$140/hour
Technical Editor .....	\$125/hour
Clerical .....	\$125/hour
Specialist.....	Varies by Project

CONTRACT LABOR

From time to time, NCE retains outside professional and technical labor on a temporary basis to meet peak workload demands. Such contract labor will be charged at regular Schedule charges.

LITIGATION SUPPORT

Engineer/Scientist.....	\$450/hour
Court Appearances & Depositions.....	\$625/hour

EQUIPMENT

Plotter Usage .....	(separate fee schedule)
Truck .....	\$140/day
Automobile .....	IRS Standard Mileage Rate+15%
Falling Weight Deflectometer Testing .....	\$5,150/Day
Coring .....	\$6,180/Day
Environmental Equipment.....	(separate fee schedule)

OUTSIDE SERVICES

Rental of equipment not ordinarily furnished by NCE and all other costs such as special printing, photographic work, travel by common carrier, subsistence, subcontractors, etc. .... cost + 15%

COMMUNICATION/ REPRODUCTION

In-house costs for postage, printing and copying .. project labor charges x 5%

TERMS

Billings are payable upon presentation and are past due 30 days from invoice date. A finance charge of 1.5% per month, or the maximum amount allowable by law, will be charged on past-due accounts. NCE makes no warranty, either expressed or implied, as to its findings, recommendations, specifications, or professional advice except that they are prepared and issued in accordance with generally accepted professional practice.

\*A surcharge of \$25/hour applied for technicians and construction inspectors to comply with Prevailing Wage (PW) per requirements of California Department of Industrial Relations.

## EXHIBIT C INSURANCE REQUIREMENTS

**C.1 Workers Compensation Insurance.** To the extent required by law during the term of this Agreement, Consultant shall provide workers compensation insurance for the performance of any of Consultant's duties under this Agreement as required by the State of California with statutory limits, and employer's liability insurance with a limit of no less than TWO MILLION DOLLARS (\$2,000,000) per accident for bodily injury or disease, all with a waiver of subrogation. Consultant shall provide County with certification of all such coverages upon request by County's Risk Manager.

**C.2 Liability Insurance.** Consultant shall obtain and maintain in full force and effect during the term of this Agreement the following occurrence-based 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:

**C.2.1 General Liability.** Commercial general liability (CGL) insurance coverage (personal injury and property damage) of not less than TWO MILLION DOLLARS (\$2,000,000) 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 Consultant or any officer, agent, or employee of Consultant under this Agreement. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

**C.2.2 Professional Liability/Errors and Omissions.** Professional liability (or errors and omissions) insurance for all activities of Consultant arising out of or in connection with this Agreement in an amount not less than TWO MILLION DOLLARS (\$2,000,000) per claim. If the coverage includes an aggregate limit the aggregate limit shall be no less than twice the per occurrence limit.

**C.2.3 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 Consultant'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 Consultant owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the General Liability Insurance described in paragraph C.2.1, above. If Consultant or Consultant's employees, officers, or agents will use personal automobiles in any way in the performance of this Agreement, Consultant shall provide evidence of personal auto liability coverage for each such person upon request.

**C.3 Certificates of Coverage.** All insurance coverages referenced in paragraph C.2, 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 Consultant with the County Department administering this Agreement prior to commencement of the Scope of Services.

**C.3.1 Notice of Cancellation.** 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.

**C.3.2 Multiple Insureds.** The certificate(s) 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.

**C.3.3 Waiver of Subrogation and Additional Insured Endorsements.** For the commercial general liability insurance coverage referenced in subparagraph C.2.1 and, for the commercial automobile liability insurance coverage referenced in subparagraph C.2.3 where the vehicles are covered by a commercial policy rather than a personal policy, Consultant shall also file with the evidence of coverage an endorsement from the insurance provider naming Napa County, its officers, employees, agents, and volunteers as additional insureds and waiving subrogation. For the Workers Compensation insurance coverage, Consultant shall file an endorsement waiving subrogation with the evidence of coverage.

**C.3.4 Additional Requirements.** The certificate or other evidence of coverage shall provide that if the same policy applies to activities of Consultant 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 Consultant 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.

**C.4 Copies of Policies.** Upon request by County's Risk Manager, Consultant shall provide or arrange for the insurer to provide within thirty (30) days of the request, copies of the actual insurance policies or relevant portions thereof.

**C.5 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 Consultant 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 Consultant shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

**EXHIBIT D**  
**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 “public works” subject to State prevailing wage laws. State prevailing wage laws require certain provisions be included in all contracts for public works. Contractor and any subcontractors shall comply with State prevailing wage laws including but not limited to the requirements listed below.

**D.1 Payment of Prevailing Wages.** 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.

**D.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>. 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.

**D.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.

**D.2 Penalties for Violations.** 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 is in addition to any other applicable penalties allowed under the California Labor Code.

**D.3 Payroll Records.** Contractor 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. Contractor shall require all subcontractors to also comply with section 1776 to the extent they are performing public works. Contractor and all subcontractors shall furnish records specified in section 1776 on a monthly basis directly to the Labor Commissioner in the manner required by California Labor Code section 1771.4. Contractor and all subcontractors shall also furnish the records to County at County's request. Contractor shall ensure its subconsultants and subcontractors prepare and submit payroll records to the DIR and County as required by this paragraph.

**D.3.1** If Contractor and any subcontractors are exempt from the DIR registration requirement pursuant to paragraph D.9.3 below, then Contractor and any subcontractors are 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).

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

**D.4 Apprentices.** 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 on public works projects. Contractor is responsible for compliance for all apprenticeable occupations pursuant to California Labor Code section 1777.5(n), and could be penalized for violations of its subcontractors pursuant to California Labor Code section 1777.7.

**D.5 Working Hours.** Contractor and all subcontractors shall comply with California Labor Code sections 1810 through 1815. Contractor and all subcontractors shall restrict the time of service of any worker on a public works project to eight hours during any one calendar day and forty hours during any one calendar 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. Violations are subject to penalties of \$25 per worker per day pursuant to California Labor Code section 1813.

**D.6 Required Provisions for Subcontracts.** 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, 1813, and 1815.

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

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

**D.9 Registration Requirements.** Contractor and any subcontractors shall not 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.

**D.9.1** By signing the Agreement to which this is an Exhibit, 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.

**D.9.2** County may ask 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 Contractor shall provide the list within ten (10) working days of County’s request.

**D.9.3** The registration requirement does not apply 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 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).

**D.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 E  
FEDERAL PROVISIONS**

**CONSISTENT WITH FEMA CONTRACT PROVISION GUIDE DATED OCTOBER 2024**

**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 FEMA.

**II. FEMA FUNDING ACKNOWLEDGMENT**

Contractor acknowledges that FEMA financial assistance may be used to fund all or a portion of the Contract. The Contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

**III. 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/Task Order (“Contract”), 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 the 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.

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

The federal government is not a party to this Contract and is not subject to any obligations or liabilities to the County, Contractor, or any other party pertaining to any matter resulting from the Contract.

**V. ACCESS TO RECORDS**

- A.** The Contractor agrees to provide the County, FEMA, the Comptroller General of the United States or any of 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 provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- D.** In compliance with section 1225 of the Disaster Recovery Reform Act of 2018, the

County and the Contractor acknowledge and agree that no language in this Contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

- E. The requirements set for in paragraphs A, B, C, and D above are all in addition to, and should not be considered to be in lieu of, those requirements set forth in the Professional Services Agreement.

## **VI. DEBARMENT AND SUSPENSION**

- A. This Contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 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 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. Part 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 County. If it is later determined that the Contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to 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.

## **VII. 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, 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, 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 considerations for employment without regard to race, color, religion, sex, 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 as 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 portion of the sentence immediately preceding paragraph (A) and the provisions of paragraphs (A) through (G) 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 applicant 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 applicant so participating is a State, Territorial, 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 applicant 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 applicant 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 applicant 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 applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

**VIII. COMPLIANCE WITH THE COPELAND “ANTI-KICKBACK” ACT** (applicable to all contracts and subgrants for construction or repair above \$2,000, when the Davis-Bacon Act also applies)

Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated by reference into this Contract.

Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 2 C.F.R. § 5.12.

**IX. 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.

- 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 "Napa." In the drop-down menu for Construction Type, make the appropriate selection. Then, click Search.

**X. COMPLIANCE WITH THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT** (applicable to procurements over \$100,000 that involve the employment of mechanics, laborers, and construction work. These requirements *do not* apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.)

- A. **Overtime requirements:** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in any 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.
- B. **Violation; liability for unpaid wages; liquidated damages:** In the event of any violation of the provisions of paragraph A of this section the contractor and any subcontractor responsible therefore, shall be liable to any affected employee for their unpaid wages. In addition, 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 A of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to be employed on such work in excess of the standard workweek of forty hours without payment of overtime wages required by the clause set forth in paragraph A of this section.

- C. 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 forth in paragraph C of this section.
- D. 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.

**XI. NOTICE OF REPORTING REQUIREMENTS**

- A.** Contractor acknowledges that they have read and understand the reporting requirements of FEMA stated in 44 CFR § 13.40 et seq., 13.50-13.52 and 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.

**XII. LICENSE AND DELIVERY OF WORKS SUBJECT TO COPYRIGHT AND DATA RIGHTS**

The Contractor grants to the County, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this Contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the Contract but not first produced in the performance of this Contract, the Contractor will identify such data and grant to the County or acquires on its behalf a license of the same scope as for data first produced in the performance of this Contract. Data, as used herein, shall include any work subject to copyright law under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this Contract, the Contractor will deliver to the County data first produced in performance of this Contract and data required by the Contract but not first produced in performance of this Contract in formats acceptable to the County.

**XIII. 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.

**XIV. 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. 44 CFR § 13.36(i)(13).
- B. The Contractor agrees to include paragraph A above in each third-party subcontract financed in whole or in part with Federal assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**XV. 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 \$100,000 in any year; 44 CFR §13.36(i)(12)).

- A. Contractor agrees to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).
- 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.
- 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.

**XVI. TERMINATION FOR CONVENIENCE OF COUNTY** (applicable to all contracts in excess of \$10,000; 44 CFR §13.36(i)(2))

See Paragraph 2.3 of the Agreement.

**XVII. TERMINATION FOR DEFAULT** (applicable to all contracts in excess of \$10,000; 44 CFR §13.36(i)(2))  
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 Paragraph 2.4 of the Agreement.

**XVIII. LOBBYING**

- 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 E2, 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. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**XIX. SOCIOECONOMIC CONTRACTING**

The Contractor is encouraged to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)(5) to ensure small businesses, minority businesses, women's business enterprises, veteran owned businesses, and labor surplus area firms are considered when possible.

**XX. INCORPORATION OF UNIFORM ADMINISTRATIVE REQUIREMENTS**

The preceding provisions include, in part, certain standard terms and conditions required by EPA, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by EPA, as set forth in 40 CFR Part 33, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all EPA 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 EPA terms and conditions.

**XXI. DOMESTIC PREFERENCE FOR PROCUREMENTS (2 C.F.R. § 200.322)**

As appropriate, and to the extent consistent with law, the Contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

For purposes of this clause:

*Produced* in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

*Manufactured products* means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

## **XXII. PROCUREMENT OF RECOVERED MATERIALS**

In the performance of this Contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired –

- A. Competitively within a timeframe providing for compliance with the Contract performance schedule;
- B. Meeting Contract performance requirements; or
- C. At a reasonable price.

Information about this requirement, along with the list of EPA-designated items, is available at Comprehensive Procurement Guideline (CPG) Program | US EPA:

<https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>

The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

The Contractor should, to the greatest extent practicable and consistent with the law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable.

## **XXIII. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.**

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

## **XXIV. 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. The Contractor shall include this provision in any subcontracts.

**XXV. PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES (2 C.F.R. § 200.216)**

**A. Definitions.** As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause –

**B. Prohibitions.**

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph “C” of this clause applies, the Contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from FEMA to:

- i. Procure or obtain any equipment, system, or services that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- ii. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- iii. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system; or
- iv. Provide, as part of its performance of this Contract, subcontract, or other contractual instrument, any equipment, system, or service 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.

**C. Exceptions.**

(1) This clause does not prohibit contractors from providing –

- i. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection agreements; or
- ii. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to:

- i. Covered telecommunications or services that:
  - (a) Are *not used* as a substantial or essential component of any system; *and*
  - (b) Are *not used* as critical technology of any system.
- ii. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

**D. Reporting requirement.**

- (1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph D(2) of this clause to the County, unless elsewhere in this Contract are established procedures for reporting the information.
  - (2) The Contractor shall report the following information pursuant to paragraph D(1) of this clause:
    - i. Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesale number); item description; and any readily available information about mitigation actions undertaken or recommended.
    - ii. Within 10 business days of submitting the information in paragraph D(2)I of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.
- E. Subcontracts.** The Contractor shall insert the substance of this clause, including this paragraph E, in all subcontracts and other contractual instruments.

## Attachment E1

### **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 the Contractor nor their 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 proposal, 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, they 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 they 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 they know that the certification is erroneous. A participant may decide the method and frequency by which they determine 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.



6-5-2026

Contractor Signature

Date

**Attachment E2**

**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, MGE Engineering, Inc., 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

6-5-2026

Date