

# **Master Professional Services Agreement (“PSA”)**

## **Federal and Local Funds**

### **AGREEMENT FOR AS-NEEDED PROFESSIONAL SERVICES**

This agreement (“Agreement”), dated as of **March 25, 2025** (“Effective Date”) is made by and between the County of Sonoma, a political subdivision of the State of California (“County”), and **NorBay Consulting** (“Consultant”).

#### **RECITALS**

WHEREAS, Consultant represents that it is a duly qualified and experienced in providing engineering and related services for public works projects, including for facilities planning, design, demolition, repairs, alterations, and/or new construction; and

WHEREAS, in the judgment of Sonoma County Public Infrastructure, it is necessary and desirable to contract for the services of Consultant, on an on-call status for as-needed projects as determined by County.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

#### **AGREEMENT**

##### **1. Scope of Services**

###### **1.1. Consultant's Specified Services.**

Consultant agrees to perform the services described in Exhibit A attached hereto and incorporated herein by this reference (“Scope of Work”). Upon County’s issuance of a Task Order pursuant to Article 2 hereunder, Consultant shall perform the services described in such Task Order, which shall identify a specific scope of services, expected results, project deliverables, project schedule, and any other Task Order-specific terms or conditions. All services shall be performed in compliance with all other terms and conditions herein. In the event of a conflict between the body of this Agreement and the Scope of Work, the provisions in this Agreement shall control.

No amount of services or Task Orders are guaranteed. Nothing herein grants Consultant any exclusive right to provide any services, and County reserves all right and discretion to obtain any and all services from other providers, including from other pre-qualified consultants who will be provided opportunity as to each Task Order.

###### **1.2. Cooperation With County.**

Consultant shall cooperate with County in the performance of all work hereunder.

###### **1.3. Performance Standard.**

Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant’s profession. County has relied upon the professional ability, training, and experience of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees to provide all services under this Agreement in

accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by County shall not operate as a waiver or release of Consultant's obligations under the Section. If County determines that any of Consultant's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require Consultant to meet with County to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

#### 1.4. Assigned Personnel.

Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time County, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from County.

Any and all persons identified in this Agreement or any exhibit hereto as the project manager, project team, or other professional performing work hereunder are deemed by County to be key personnel whose services were a material inducement to County to enter into this Agreement, and without whose services County would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of County. With respect to performance as to any particular Task Order, Consultant shall employ the key personnel designated in the Task Order, if any.

In the event that any of Consultant's personnel assigned to perform services under this Agreement becomes unavailable due to resignation, sickness or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

#### 1.5. Consultant's Reports or Meetings.

Consultant shall submit progress reports on each specific project in accordance with the corresponding Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for to determine if Consultant is performing to expectations and is on schedule, to provide communication of interim findings, and to sufficiently address any difficulties or special circumstances encountered, so remedies can be developed.

Consultant's Project Manager shall meet with County's Task Order Manager or designated project coordinator, as needed and as requested, to discuss progress on the project(s).

#### 1.6. Federal Requirements.

Work under this Agreement may be funded by federal, state, or other outside sources, including by the Federal Emergency Management Agency (FEMA). Federal, state, or other funding sources for any work will be identified in each Task Order and applicable requirements ("Funding Requirements") will be incorporated into said Task Orders. With regard to all such work, Consultant shall comply and acknowledges compliance with said Funding Requirements and with such other terms and conditions as County may specify in any individual Task Order. In the event of any conflict between the body of this Agreement and the Funding Requirements, the stricter standard shall apply.

Potential Funding Requirements include, but are not limited to, the terms and conditions in Exhibit B, which are subject to change as required by the respective funding program or applicable law or regulation.

As a condition of award of this Agreement, Consultant shall certify and complete the Certification set forth in Exhibits B-1.

## **2. Allowable Costs and Payments. Task Orders.**

### **2.1. Method of Payment.**

Consultant will be reimbursed for hours worked at the hourly rates specified in Exhibit C (“Fee Schedule”). The specified rates shall include direct salary costs, employee benefits, overhead, and fee. Unless expressly stated in the Fee Schedule or herein, rates are not subject to any increase or upward adjustment.

In addition, Consultant will be reimbursed for incurred (actual) direct costs (other than salary costs) that are identified in the Fee Schedule and in the executed Task Order.

### **2.2. Indirect Cost Rate.**

The indirect cost rate, if any, as stated in the Fee Schedule, shall be fixed for the duration of this Agreement.

### **2.3. Task Orders.**

- A. At County’s discretion, specific scopes or projects will be assigned to Consultant through issuance of Task Orders.
- B. After a project to be performed under this Agreement is identified by County, County will prepare and send Consultant a draft Task Order, less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a County’s Task Order Manager.. Consultant shall submit a proposal to perform the Task Order in accordance with the terms and conditions therein. All such proposals shall include a cost estimate or cost proposal, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. County reserves the right to reject or cancel any draft Task Order or any corresponding proposal or cost estimate. If County elects to proceed with the Task Order and Consultant’s proposal and cost estimate, a finalized Task Order to authorize and initiate the work or project shall be signed by both County and Consultant.
- C. Task Orders may be negotiated for a lump sum (Firm Fixed Price), cost plus fixed fee, or for specific rates of compensation, all of which must be based on the rates set forth in the Fee Schedule. Cost Proposals shall be all-inclusive for all expenses and costs of services for the corresponding Task Order, including all costs of labor, fuel, vehicles and equipment, and travel.
- D. Consultant shall be responsible for any future adjustments to prevailing wage rates including, but not limited to, base hourly rates and employer payments as determined by the Department of Industrial Relations. Consultant is responsible for paying the appropriate rate, including escalations that take place during the term of this Agreement.
- E. Consultant shall not commence performance of work or services until a Task Order has been executed and notification to proceed has been issued by County’s Task Order Manager. No payment will be made prior to approval or for any work performed prior to execution of a duly-issued Task Order.
- F. A Task Order is of no force or effect until returned to County and signed by an authorized

representative of County. No expenditures are authorized on a project or any scope, and work shall not commence, until a Task Order for that work has been executed by County.

- G. The period of performance for Task Orders shall be as specified in the Task Order.
- H. The total amount payable by County for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by contract amendment.
- I. If Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- J. All individual proposals and Cost Proposals for Task Orders shall be consistent with and be deemed to incorporate the terms and conditions of this Agreement, including hourly rates. If a Task Order is executed, Consultant shall provide the requested services pursuant to and incorporating all terms and conditions of this Agreement and in accordance with the executed Task Order. Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement. Notwithstanding, Task Orders may incorporate additional and supplemental terms, including for compliance with associated project grant funding conditions.

#### 2.4. Transportation & Subsistence.

Reimbursement for transportation and subsistence costs shall not exceed the lower of the rates specified in the approved Fee Schedule or State/federal rates, whichever is lower.

#### 2.5. Milestone Costs.

When milestone costs are included in an approved Task Order, Consultant shall obtain prior written approval for a revised milestone cost estimate from the County's Task Order Manager before exceeding such milestone.

#### 2.6. Progress Payments.

Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.

#### 2.7. Payment.

No payment will be made prior to approval of any work, nor for any work performed prior to an approved Task Order.

#### 2.8. Invoices.

Unless stated otherwise in a Task Order, Consultant shall submit its bills in arrears on a monthly basis in a form approved by County's Auditor and the Head of the County Department receiving the services. The bills shall show or include: (a) the task(s) performed; (b) the time in quarter hours devoted to the task(s); (c) the hourly rate or rates of the persons performing the task(s); and (d) copies of receipts for reimbursable materials/expenses, if any. Expenses not expressly authorized by the Agreement shall not be reimbursed, including a copy of all invoices paid to sub-consultants for work required included in the prime consultant's invoice. If requested, Consultant shall submit records or certifications as to compliance with all subcontractor and subconsultant payment requirements, including as required by Business & Professions Code section 7108.5 and Civil Code section 3321, as applicable.

2.9. Unless otherwise noted in this Agreement, payments shall be made within the normal course of County business after presentation of an invoice in a form approved by the County for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the County. Invoices shall be mailed to County's contact designated in Article 12 below. Contract Value.

The total amount payable by County for all Task Orders under this Agreement shall not exceed \$3,000,000. It is understood and agreed that there is no guarantee, either expressed or implied, that any Task Orders or this dollar amount will be authorized under this Agreement.

2.10. Salary Increases.

Unless expressly stated in the Fee Schedule, rates and salaries are not subject to increase or upward adjustment. Notwithstanding, for personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases which are the direct result of changes in the prevailing wage rates are reimbursable.

2.11. Taxes.

Pursuant to California Revenue and Taxation Code Section 18662, the County shall withhold seven percent of the income paid to Consultant for services performed within the State of California under this Agreement, for payment and reporting to the California Franchise Tax Board, if Consultant does not qualify as: (1) a corporation with its principal place of business in California, (2) a limited liability company or partnership with a permanent place of business in California, (3) a corporation, limited liability company or partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.

If Consultant does not qualify, County requires that a completed and signed Form 587 be provided by Consultant in order for payments to be made. If Consultant is qualified, then County requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, Consultant agrees to promptly notify the County of any changes in the facts. Forms should be sent to County pursuant to Article 12. To reduce the amount withheld, Consultant has the option to provide County with either a full or partial waiver from the State of California.

**3. Term of Agreement.**

- A. The term of this Agreement shall be from the Effective Date until March 18, 2028, unless extended by contract amendment or otherwise terminated in accordance with Article 4 below.
- B. Consultant shall commence work on Task Orders only after notification to proceed by County's Task Order Manager. The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this Agreement, the terms of the Agreement shall be extended in writing between the parties as appropriate to accommodate completion of the remaining scope of work.

**4. Termination.**

4.1. Termination for Convenience.

Notwithstanding any other provision of this Agreement, at any time and without need for cause, County shall have the right, in its sole discretion, to terminate this Agreement by giving 5 days written notice to Consultant.

#### 4.2. Termination for Cause.

Notwithstanding any other provision of this Agreement, should Consultant fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, County may immediately terminate this Agreement by giving Consultant written notice of such termination, stating the reason for termination.

#### 4.3. Delivery of Work Product and Final Payment Upon Termination.

In the event of termination, Consultant, within 14 days following the date of termination, shall deliver to County all reports, original drawings, graphics, plans, studies, and other data or documents, in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement and shall submit to County an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.

#### 4.4. Payment Upon Termination.

Upon termination of this Agreement by County, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and reimbursable expenses properly incurred hereunder, an amount which bears the same ratio to the total payment specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total payment; provided, however, that if services which have been satisfactorily rendered are to be paid on a per-hour or per-day basis, Consultant shall be entitled to receive as full payment an amount equal to the number of hours or days actually worked prior to the termination times the applicable rate; and further provided, however, that if County terminates the Agreement for cause pursuant to Section 4.2, County shall deduct from such amount the amount of damage, if any, sustained by County by virtue of the breach of the Agreement by Consultant.

#### 4.5. Authority to Terminate.

The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the Purchasing Agent and the Director of Sonoma County Public Infrastructure Department, in consultation with County Counsel, shall have the authority to terminate this Agreement on behalf of the County.

### 5. Indemnification.

Consultant agrees to accept all responsibility for loss or damage to any person or entity, including County, and to indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to Consultant's or its agents', employees', contractors', subcontractors', subconsultants' or invitees' performance or obligations under this Agreement. Consultant agrees to provide a complete defense for any claim or action brought against County based upon a claim relating to such Consultant's or its agents', employees', subconsultants', subcontractors', or invitees' performance or obligations under this Agreement. Consultant's obligations under this Section apply whether or not there is concurrent negligence on County's part, but to the extent required by law, excluding liability due to County's conduct. County shall have the right to select its legal counsel at Consultant's expense, subject to Consultant's approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts. The above defense and indemnity obligations shall be limited, with respect to any design professional services provided and to the extent required by Civil Code Section 2782.8, to claims

that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the design professional.

**6. Insurance.**

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subconsultants, consultants, and other agents to maintain, insurance as described in Exhibit D, which is attached hereto and incorporated herein by this reference.

**7. Prosecution of Work.**

Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance shall be extended by a number of days equal to the number of days Consultant has been delayed.

**8. Extra or Changed Work.**

Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the Department Head in a form approved by County Counsel. In addition, the Department Head has authority to execute amendments hereto in accordance with Resolution No. 20-0092. The Board of Supervisors or Purchasing Agent must authorize all other extra or changed work. The parties expressly recognize that, pursuant to Sonoma County Code Section 1-11, County personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of the County.

**9. Representations of Consultant.**

**9.1. Standard of Care.**

County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by County shall not operate as a waiver or release.

**9.2. Status of Consultant.**

The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement pursuant to Article 4, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

### 9.3. Taxes.

Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold County harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In the event County is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish County with proof of payment of taxes on these earnings.

### 9.4. Conflict of Interest

- A. During the term of this Agreement, Consultant shall disclose any financial, business, or other relationship with County that may have an impact upon the outcome of this Agreement or any ensuing County construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this Agreement or any ensuing County construction project.
- B. Consultant certifies that it has disclosed to County any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this Agreement. Consultant agrees to advise County of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this Agreement. In addition, if requested to do so by County, Consultant shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with County disclosing Consultant's or such other person's financial interests.
- C. Consultant hereby certifies that neither Consultant, nor any firm affiliated with Consultant, will bid on any later scope predicated on deliverables for which a Task Order has been issued under this Agreement, including for any related construction, unless if and as permitted by applicable law. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.

Unless as otherwise expressly stated in the Scope of Work, Consultant's duties and services under Task Orders and this Agreement shall not include preparing or assisting the County with any portion of County's preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with County. County shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of any project related to an approved Task Order. Consultant's participation in the planning, discussions, or drawing of any project plans or specifications shall be limited to conceptual, preliminary, or initial plans or specifications. Consultant shall cooperate with County to ensure that all bidders for a subsequent contract on any subsequent phase of any related project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by Consultant under an associated Task Order and this Agreement.

- D. Except for subconsultants whose services are limited to providing surveying or materials testing information or unless as permitted by applicable law, no subconsultant who provides design services under this Agreement shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this Agreement.

### 9.5. Statutory Compliance / Living Wage Ordinance.

Consultant agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the



services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly acknowledges and agrees that this Agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

#### 9.6.Nondiscrimination.

Without limiting any other provision hereunder, Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation, gender expression, gender identity, genetic information, or other prohibited basis, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

#### 9.7.AIDS Discrimination.

Consultant agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

#### 9.8.Assignment of Rights.

Consultant assigns to County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to County in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as County may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of County. Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of County.

#### 9.9.Ownership and Disclosure of Work Product.

All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, subconsultants, and other agents in connection with this Agreement shall be the property of County. County shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Consultant shall promptly deliver to County all such documents, which have not already been provided to County in such form or format, as County deems appropriate. Such documents shall be and will remain the property of County without restriction or limitation. Consultant may retain copies of the above-described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of County.

#### 9.10. Authority.

The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Consultant.

9.11. Prevailing Wage. For all work constituting “public work” under the California Labor Code and applicable regulations, Consultant agrees:

A. Consultant may not be awarded any Task Order containing public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code §1725.5. Registration with the DIR must be maintained throughout the scope term of the Task Order, including any subsequent amendments. Consultant shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this Agreement are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer. These wage rates are made a specific part of this Agreement by reference pursuant to Labor Code § 1773.2 and will be applicable to work performed at a construction project site. Prevailing wages will be applicable to all inspection work performed at County construction sites, at County facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve County projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public. General Prevailing Wage Rate Determinations applicable to this project may also be obtained from the Department of Industrial Relations Internet site at <http://www.dir.ca.gov>.

B. Payroll Records.

1. Each Consultant and subconsultant shall keep accurate certified payroll records and supporting documents as mandated by Labor Code § 1776 and as defined in 8 CCR § 16000 showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Consultant or subconsultant in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following: (a) The information contained in the payroll record is true and correct' and (b) The employer has complied with the requirements of Labor Code § 1771, § 1811, and § 1815 for any work performed by his or her employees on the public works project.
2. The payroll records enumerated under paragraph (1) above shall be certified as correct by the Consultant under penalty of perjury. The payroll records and all supporting documents shall be made available for inspection and copying by County at all reasonable hours at the principal office of Consultant. Consultant shall provide copies of certified payrolls or permit inspection of its records as follows: (a) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative on request; (b) A certified copy of all payroll records enumerated in paragraph (1) above, shall be made available for inspection or furnished upon request to a representative of County, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to County, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by Consultant; (c) The public shall not be given access to certified payroll records by Consultant. Consultant is required to forward any requests for certified payrolls to County by both email and regular mail on the business day following receipt of the request.
3. Consultant shall submit a certified copy of the records enumerated in paragraph (1)

above, to the entity that requested the records within ten (10) calendar days after receipt of a written request.

4. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by County shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address, and social security number. The name and address of Consultant or subconsultant performing the work shall not be marked or obliterated.
5. Consultant shall inform County of the location of the records enumerated under paragraph (1) above, including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.
6. Consultant or subconsultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice requesting the records enumerated in paragraph (1) above. In the event Consultant or subconsultant fails to comply within the ten (10) day period, he or she shall, as a penalty to County, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such penalties may be withheld by County from payments then due. Consultant is not subject to a penalty assessment pursuant to this section due to the failure of a subconsultant to comply with this section.

C. When prevailing wage rates apply, Consultant is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by County.

D. Penalty.

1. Consultant and any of its subconsultants shall comply with Labor Code § 1774 and § 1775. Pursuant to Labor Code § 1775, Consultant and any subconsultant shall forfeit to County a penalty of not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of DIR for the work or craft in which the worker is employed for any public work done under this Agreement by Consultant or by its subconsultant in violation of the requirements of the Labor Code and in particular, Labor Code §§ 1770 to 1780, inclusive.
2. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of mistake, inadvertence, or neglect of Consultant or subconsultant in failing to pay the correct rate of prevailing wages, or the previous record of Consultant or subconsultant in meeting their respective prevailing wage obligations, or the willful failure by the Consultant or subconsultant to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rates of prevailing wages is not excusable if Consultant or subconsultant had knowledge of the obligations under the Labor Code. Consultant is responsible for paying the appropriate rate, including any escalations that take place during the term of this Agreement.
3. In addition to the penalty and pursuant to Labor Code § 1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by Consultant or subconsultant.

4. If a worker employed by a subconsultant on a public works project is not paid the general prevailing per diem wages by the subconsultant, the prime Consultant of the project is not liable for the penalties described above unless the prime Consultant had knowledge of that failure of the subconsultant to pay the specified prevailing rate of wages to those workers or unless the prime Consultant fails to comply with all of the following requirements: (a) The Agreement executed between the Consultant and the subconsultant for the performance of work on public works projects shall include a copy of the requirements in Labor Code §§ 1771, 1775, 1776, 1777.5, 1813, and 1815; (b) The Consultant shall monitor the payment of the specified general prevailing rate of per diem wages by the Subconsultant to the employees by periodic review of the certified payroll records of the subconsultant; (c) Upon becoming aware of the subconsultant's failure to pay the specified prevailing rate of wages to the subconsultant's workers, Consultant shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the Subconsultant for work performed on the public works project; (d) Prior to making final payment to the subconsultant for work performed on the public works project, the Consultant shall obtain an affidavit signed under penalty of perjury from the subconsultant that the Subconsultant had paid the specified general prevailing rate of per diem wages to the subconsultant's employees on the public works project and any amounts due pursuant to Labor Code § 1813.
  5. Pursuant to Labor Code § 1775, County shall notify Consultant on a public works project within fifteen (15) calendar days of receipt of a complaint that a Subconsultant has failed to pay workers the general prevailing rate of per diem wages.
  6. If County determines that employees of a Subconsultant were not paid the general prevailing rate of per diem wages and if County did not retain sufficient money under the Agreement to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, Consultant shall withhold an amount of moneys due the subconsultant sufficient to pay those employees the general prevailing rate of per diem wages if requested by County.
- E. Hours of Labor. Eight (8) hours labor constitutes a legal day's work. Consultant shall forfeit, as a penalty to County, twenty-five dollars (\$25) for each worker employed in the execution of the Agreement by Consultant or any of its subconsultants for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of the Labor Code, and in particular §§ 1810 to 1815 thereof, inclusive, except that work performed by employees in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day and forty (40) hours in any week, at not less than one and one-half (1.5) times the basic rate of pay, as provided in § 1815.
- F. Employment of Apprentices.
1. Where either this Agreement or any subcontract exceeds thirty thousand dollars (\$30,000), Consultant and any subconsultants under him or her shall comply with all applicable requirements of Labor Code §§ 1777.5, 1777.6 and 1777.7 in the employment of apprentices
  2. Consultant and subconsultants are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to

apprentice workers. Prior to commencement of work, Consultant and subconsultants are advised to contact the DIR Division of Apprenticeship Standards website at <https://www.dir.ca.gov/das/>, for additional information regarding the employment of apprentices and for the specific journey-to-apprentice ratios for the Agreement work. Consultant is responsible for all subconsultants' compliance with these requirements. Penalties are specified in Labor Code §1777.7.

9.12. Retention of Records/Audit.

Consultant and subconsultants shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Agreement, including but not limited to, the costs of administering the Agreement. Consultant, including any of its agents or contracted third-party accountants, shall make such workpapers and materials available at their respective offices at all reasonable times during the Agreement period and for four (4) years from the date of final payment under the Agreement. This Agreement may be subject to examination and audit, including by the federal government and, in accordance with Government Code section 8546.7, the California State Auditor.

9.13. Drawing and Specification Electronic Format. For all drawings and specifications deliverables, unless otherwise specified in the applicable Task Order, Consultant shall produce all plans, for all disciplines, using Autodesk's AutoCAD, latest release for Microsoft Windows or minimum AutoCAD 2011 release. All specification sections shall be produced using Microsoft Word, latest release for Microsoft Windows. Coordination of Consultant's and sub-consultants' drawings and specifications shall be performed by Consultant so that one complete set of drawings and specifications on disk is produced for use in bidding and construction of the project. At completion of any bidding phase, Consultant will complete a conforming set of construction documents integrating the addenda with plans and specifications prior to construction starting. Consultant shall submit to County a copy of Conformed Construction Documents on disk in each of the following formats.

Drawings:

- 1) AutoDesk AutoCAD latest release version or minimum AutoCAD 2011, with all XRef's bound into each primary drawing file. Include copies of any non AutoCAD standard plot style files and text style files used; and
- 2) Adobe Acrobat PDF – one file containing the entire set of drawings is preferred; however, for large projects separate file for each discipline will be acceptable.

Specifications:

- 1) Microsoft Word DOC format; and
- 2) Adobe Acrobat PDF Format

9.14. Subcontracting.

- A. Nothing contained in this Agreement or otherwise, shall create any contractual relation between County and any subconsultant(s), and no subcontract shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to County

for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. Consultant's obligation to pay its subconsultant(s) is an independent obligation from County's obligation to make payments to the Consultant.

- B. Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this Agreement shall be subcontracted without written authorization by County's Task Order Manager, except to the extent expressly identified in the Fee Schedule or any approved Task Order.
- C. Consultant shall pay its subconsultants within fifteen (15) calendar days from receipt of each payment made to Consultant by County.
- D. All subcontracts entered into as a result of this contract shall contain all the provisions stipulated in this contract to be applicable to subconsultants.
- E. Any substitution of subconsultant(s) must be approved in writing by County's Task Order Manager in advance of assigning work to the substitute subconsultant.

9.15. Equipment Purchase and Other Capital Expenditures.

- A.
- B. Prior authorization in writing by County shall be required for purchase or incurring of any item not expressly authorized in a Task Order. For all such purchases, three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified. Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.
- C. Any equipment purchased as a result of this Agreement is subject to the following: (1) Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, County shall receive a proper refund or credit at the conclusion of the Agreement, or if the Agreement is terminated, Consultant may either keep the equipment and credit County in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established County procedures; and credit County in an amount equal to the sales price. If Consultant elects to keep the equipment, fair market value shall be determined at Consultant expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by County and Consultant, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by County; and (2) For all federally-funded Task Orders, any equipment, material, or other property purchased is subject to the acquisition, use, and disposition requirements of 2 CFR Part 200, including any credit or buy-back options as to such property.

9.16. Rebates, Kickback or Other Unlawful Consideration.

Consultant warrants that this Agreement was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any County employee. For breach or violation of this warranty, County shall have the right in its discretion; to terminate the Agreement without liability; to pay only for the value of the work actually performed; or to deduct from the Agreement price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

9.17. Funding Requirements.

- A. It is mutually understood between the parties that this Agreement may have been executed before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the Agreement were executed after that determination was made.
- B. County has the option to terminate the Agreement pursuant to Article 4 should funding be unavailable or funding requirements preclude use of this Agreement or Task Orders hereunder.

9.18. Claims Filed By County's Construction Contractor.

- A. If claims are filed by County's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with County's administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.
- B. Consultant's personnel that County considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from County. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for Consultant's personnel services under this Agreement.
- C. Services of Consultant's personnel in connection with County's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this Agreement in order to resolve the construction claims.

9.19. Retention of Funds.

- A. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.
- B. No retainage will be withheld by the County from progress payments due the prime consultant. Retainage by the prime consultant or subconsultants is prohibited, and no retainage will be held by the prime consultant from progress due subconsultants. Any violation of this provision shall subject the violating prime consultant or subconsultants to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant or deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultants and subconsultants.

9.20. Contingent Fee.

Consultant warrants, by execution of this Agreement that no person or selling agency has been employed, or retained, to solicit or secure this Agreement upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by Consultant for the purpose of securing business. For breach or violation of this warranty, County has the right to annul this Agreement without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

### 9.21. Inspection of Work.

Consultant and any subconsultant shall permit County and all authorized entities to review and inspect the project activities and files at all reasonable times during the performance period of this Agreement including review and inspection on a daily basis.

## 10. Content Online Accessibility.

County policy requires that all documents that may be published to the Web meet accessibility standards to the greatest extent possible, and utilizing available existing technologies.

- 10.1. Standards. All consultants responsible for preparing content intended for use or publication on a County-managed or County-funded web site must comply with applicable Federal accessibility standards established by 36 C.F.R. Section 1194, pursuant to Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794(d)), the County's Web Standards & Guidelines located at <https://sonomacounty.ca.gov/Services/Web-Standards-and-Guidelines/>, and the County's Web Site Accessibility Policy located at <https://sonomacounty.ca.gov/CAO/Administrative-Policies/9-3-Website-Accessibility-Policy/>.
- 10.2. Alternate Format: When it is strictly impossible due to the unavailability of technologies required to produce an accessible document, Consultant shall identify the anticipated accessibility deficiency prior to commencement of any work to produce such deliverables. Consultant agrees to cooperate with County staff in the development of alternate document formats to maximize the facilitative features of the impacted document(s), e.g. embedding the document with alt-tags that describe complex data/tables.
- 10.3. Noncompliant Materials: Obligation to Cure. Remediation of any materials that do not comply with County's Web Site Accessibility Policy shall be the responsibility of Consultant. If County, in its sole and absolute discretion, determines that any deliverable intended for use or publication on any County-managed or County-funded Web site does not comply with County Accessibility Standards, County will promptly inform Consultant in writing. Upon such notice, Consultant shall, without charge to County, repair or replace the non-compliant materials within such period of time as specified by County in writing. If the required repair or replacement is not completed within the time specified, County shall have the right to do any or all of the following, without prejudice to County's right to pursue any and all other remedies at law or in equity:
  - a. Cancel any delivery or task order;
  - b. Terminate this Agreement pursuant to the provisions of Article 4; and/or
  - c. In the case of custom EIT developed by Consultant for County, County may have any necessary changes or repairs performed by itself or by another contractor. In such event, contractor shall be liable for all expenses incurred by County in connection with such changes or repairs.

## 11. Demand for Assurance.

Each party to this Agreement undertakes the obligation that the other's expectation of receiving due



performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits County's right to terminate this Agreement pursuant to Article 4.

## **12. Assignment and Delegation.**

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

## **13. Method and Place of Giving Notice, Submitting Bills and Making Payments.**

All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

### **To County:**

Sonoma County Public Infrastructure  
Attn: Task Order Manager  
400 Aviation Blvd, Suite 100, Santa Rosa, CA 95403  
(707) 565-2231  
[SPI-Capital-Projects@sonoma-county.org](mailto:SPI-Capital-Projects@sonoma-county.org)

### **To Consultant:**

NorBay Consulting  
Attn: Bob Gerhold  
2400 Las Gallinas Avenue, Suite 110  
San Rafael, California 94903  
415 507-9786  
Bob@norbayca.com

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this Article.

## **14. Miscellaneous Provisions.**

### **14.1. No Waiver of Breach.**

The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

### **14.2. Construction.**

To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Consultant and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

### **14.3. Consent.**

Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

### **14.4. No Third Party Beneficiaries.**

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

### **14.5. Applicable Law and Forum.**

This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

### **14.6. Captions.**

The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

### **14.7. Merger.**

This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

### **14.8. Survival of Terms.**

All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

### **14.9. Time of Essence.**

Time is and shall be of the essence of this Agreement and every provision hereof.

### **14.10 Counterpart; Electronic Signatures.** The parties agree that this Agreement may be executed in two or

more counterparts, each of which shall be deemed an original, and together which when executed by the requisite parties shall be deemed to be a complete original agreement. Counterparts may be delivered via facsimile, electronic mail (including PDF) or other transmission method, and any counterpart so delivered shall be deemed to have been duly and validly delivered, be valid and effective for all purposes, and shall have the same legal force and effect as an original document. This Agreement, and any counterpart, may be electronically signed by each or any of the parties through the use of any commercially available digital and/or electronic signature software or other electronic signature method in compliance with the U.S. federal ESIGN Act of 2000, California's Uniform Electronic Transactions Act (Cal. Civil Code § 1633.1 et seq.), or other applicable law. By its use of any electronic signature below, the signing party agrees to have conducted this transaction and to execution of this Agreement by electronic means.

**IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.**

**SIGNATURES FOLLOW ON NEXT PAGE -**

**- THIS SPACE LEFT INTENTIONALLY BLANK -**

CONSULTANT:

By: Bob Gerhold

Name: BOB GERHOLD

Title: Director

Date: 2/13/25

COUNTY OF SONOMA:

CERTIFICATES OF INSURANCE ON FILE:

By: \_\_\_\_\_  
Department Analyst

Date: \_\_\_\_\_

APPROVED AS TO SUBSTANCE:

By: \_\_\_\_\_  
Director of Sonoma County Public Infrastructure

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
County Counsel

Date: \_\_\_\_\_

**Exhibit A**  
**Scope of Services**

## **Scope of Work**

Each year, The County undertakes various projects, primarily involving government offices and justice/detention facilities. These projects include planning and feasibility studies, tenant improvements, modernization of building systems, ADA upgrades, and new construction. Delivery methods may vary based on Public Contract Code requirements. The County intends to contract architectural and engineering services from pre-qualified firms using Master Services Agreements. Anticipated services include:

The selected consulting firms will be required to provide a wide range of California state-licensed professional services. Anticipated services may include, but are not limited to:

- Preparation of condition assessment reports for buildings or building components and systems.
- Programming and space planning for client user groups.
- Accessibility evaluations.
- Preparation of construction cost estimates.
- Preparation of Schematic, Design Development, and Construction drawings and specifications. Work to be coordinated with County front-end documents, Green Building Policy, and design and space guidelines.
- Assistance during project bid phase, including preparation of bid documents, clarifications, and addenda and participation in pre-bid site visits and meetings as required.
- Construction administration and observation.

The County anticipates that Task Orders may require work to be performed by the selected consultant or their subconsultants, a specific scope of work will be released with each Task Order.

### **Civil Engineering**

Consultant shall be able to perform tasks associated with the design and analysis of civil engineering disciplines, including but not limited to reviewing and preparing engineering Plans (and details), Specifications, and Cost Estimates (PS&E) and associated calculations as deemed necessary to complete the job and in compliance with the current local, state, and federal required standards, laws, and regulations of such disciplines.

### **Structural Engineering**

Consultant shall be able to perform tasks associated with the design and analysis of structures, including but not limited to reviewing and preparing structural Plans (and details), Specifications, and Cost Estimates (PS&E) and structural calculations as deemed necessary to complete the job and in compliance with the current local, state, and federal required standards, laws, and regulations of such disciplines.

### **Mechanical, and Plumbing Engineering**

Consultant shall be able to perform tasks associated with the design and analysis of mechanical

and plumbing systems and equipment, including but not limited to reviewing and preparing mechanical and plumbing Plans (and details), Specifications, and Cost Estimates (PS&E) and calculations as deemed necessary to complete the job and in compliance with the current local, state, and federal required standards, laws, and regulations of such disciplines.

### **Electrical Engineering**

Consultant shall be able to perform tasks associated with the design and analysis of electrical systems and equipment, including but not limited to, reviewing and preparing electrical Plans (and details), Specifications, and Cost Estimates (PS&E) and calculations as deemed necessary to complete the job and in compliance with the current local, state, and federal required standards, laws, and regulations of such disciplines.

### **Environmental Engineering**

Consultant shall be able to perform tasks associated with the design and analysis of environmental systems and equipment, including but not limited to, reviewing and preparing environmental Plans (and details), Specifications, and Cost Estimates (PS&E), reports, assessments, and calculations as deemed necessary to complete the job and in compliance with the current local, state, and federal required standards, laws, and regulations of such disciplines.

### **Geotechnical Engineering**

Consultant shall be able to perform tasks associated with the design and analysis of geological systems and equipment, including but not limited to, reviewing and preparing geological Plans (and details), Specifications, and Cost Estimates (PS&E), reports, assessments, and calculations as deemed necessary to complete the job and in compliance with the current local, state, and federal required standards, laws, and regulations of such disciplines.

### **Other Services**

Specific task orders may require other services to complete the scope of work. These tasks may include:

- Estimator (all stages of project life cycle).
- Surveying.
- Special Inspections (welding, materials testing, radiographic testing, and other) that is listed on the Permit Sonoma Special Inspection Agency Recognition List.
- CAL-Green Inspectors.
- Hazardous Material Surveys
- Cultural Surveys

Consultants are not asked to provide subconsultants to cover all eventualities at this stage; however, they should be prepared to respond to the needs of specific Task Orders with a full team. Consultants and subconsultants should possess the applicable licenses and certifications needed to perform the specific task in the state of California.

**Exhibit B**

**FEMA Rider**



Exhibit “ ”  
FEDERAL REQUIREMENTS – FEMA PUBLIC ASSISTANCE  
Procurement Contracts (non-subawards)  
*Construction (TPW Caltrans Spec.) and Services Agreements*  
[Revise date 11-15-24]

**1. DEFINITIONS**

- 1.1 Government** means the United States of America and any executive department or agency thereof.
- 1.2 FEMA** means the Federal Emergency Management Agency.
- 1.3 Third Party Subcontract** means a subcontract at any tier entered into by Consultant or any subcontractor or contractor, financed in whole or in part with federal assistance derived from the Federal Emergency Management Agency.
- 1.4** For purposes of this Exhibit, **Consultant** may be referred to as “Contractor” or “contractor.”
- 1.5 Agreement** or “**Contract**” means that certain Agreement between the County of Sonoma (“County”) and Contractor, and to which this Exhibit is made a part.

**2. GENERAL REQUIREMENTS**

- 2.1** This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of this Agreement. Contractor must acknowledge their use of federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with federal funds.
- 2.2** Contractor shall at all times comply with all applicable federal laws, regulations, executive orders, Office of Budget and Management circulars, FEMA policies, procedures, directives, and program or grant conditions, as they may be amended or promulgated from time to time during the term of this Agreement, including but not limited to those requirements of 2 C.F.R.<sup>1</sup> 200.317 through 200.327 and Appendix II to 2 CFR Part 200—“Contract Provisions for Non-Federal Entity Contracts Under Federal Awards,” which is included herein by reference; and including the Age Discrimination Act of 1975; the Americans with Disabilities Act of 1990, the Civil Rights Act of 1964 (Title VI); the Civil Rights Act of 1968 (Title VIII); the Drug-Free Workplace Act of 1988; the Drug Abuse Office and Treatment Act of 1972; the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970; the Public Health Service Act of 1912; the Education Amendments of 1972 (Title IX); the Equal Opportunity in Education Act; the Energy Policy and Conservation Act; the False Claims Act; the Hotel and Motel Fire Safety Act of 1990; the National Environmental Policy Act; the Rehabilitation Act of 1973; the Whistleblower Protection Act (including 41 USC 4712); the Hatch Act (5 U.S.C.<sup>2</sup> 1501 et seq.); and all related and Department of Homeland Security-mandated federal regulations, including 44 CFR Part 7.
- 2.3** Whether or not expressly set forth herein, all contractual provisions required by FEMA (including as may be amended or modified from time to time) are hereby incorporated by reference. This agreement may be amended to further incorporate and expressly state new, revised, and or subsequent contractual provisions required by FEMA. In the event of any conflict between any provision of this Agreement, this Exhibit, or any FEMA term, condition, or requirement, the stricter standard shall apply. Contractor shall refer any inconsistency or perceived inconsistency between this Agreement and any federal requirement to County for guidance. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any requests that would cause County to be in violation of any FEMA term, condition, or requirement.

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<sup>1</sup> Code of Federal Regulations (“CFR”).

<sup>2</sup> United States Code (“USC”).

- 2.4 The Government shall enjoy the right to seek judicial enforcement of any law, regulation, condition, or provision stated herein.
- 2.5 Contractor shall ensure it has the necessary processes and systems in place to comply with applicable federal reporting requirements, including those contained in 2 CFR Part 170 as applicable.
- 2.6 Trafficking Victims Protection Act. -INTENTIONALLY OMITTED-.
- 2.7 Repair or Construction Activity. For all repair or construction activity done pursuant to this Agreement (if applicable), all such repair or construction shall be carried out in accordance with applicable standards of safety, decency, and sanitation and in conformity with applicable codes, specifications and standards, including those required pursuant to 44 CFR 206.400.
- 2.8 Contractor agrees to include the herein-stated clauses in each Third Party Subcontract such that all provisions will equally apply to the subcontractor. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject thereto.

### **3. ACCESS TO RECORDS**

- 3.1 Contractor shall provide County and the Department of Homeland Security access to, and the right to examine and copy, records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by federal regulations and other applicable laws or program guidance.
- 3.2 Contractor agrees to provide County, the State of California, the FEMA Administrator, 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. 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. 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 Agreement.
- 3.3 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 Agreement is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.
- 3.4 The Contractor agrees to maintain all books, records, accounts, and reports required under this Agreement for a period of not less than five years after the later of: (a) the date of termination or expiration of this Agreement or (b) the date all projects, programs, and close outs are completed, except in the event of audit, litigation, or settlement of claims arising from this Agreement, in which case, Contractor agrees to maintain same until the County, FEMA, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto. Contractor shall grant County the option of retention of the records, books, papers, and documents in unalterable, electronic form if Contractor elects to dispose of said documents following the mandatory retention period.
- 3.5 The requirements set forth above are all in addition to, and should not be considered to be in lieu of, any more stringent requirement set forth in the Agreement.

### **4. DEBARMENT AND SUSPENSION**

- 4.1 This Agreement 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 at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

- 4.2 Contractor must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- 4.3 Contractor represents, warrants, and certifies that it, and its principals, is and are not debarred, suspended, or otherwise excluded from or disqualified or ineligible for participation in Federal assistance programs or activities, including under Executive Order 12549, "Debarment and Suspension" or Executive Order 12689, and that it (and each of its principals) is not on the Excluded Parties List System in the System for Award Management (SAM) or on any comparable list of precluded persons, entities, or facilities. Contractor agrees that neither Contractor nor any of its third party subcontractors shall enter into any third party subcontracts for any of the work under this Agreement with a third party who is debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under executive Order 12549 or any federal regulation, including 2 CFR Part 180.
- 4.4 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 Government may pursue available remedies, including but not limited to suspension and/or debarment.
- 4.5 The bidder or proposer agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

## **5. NO OBLIGATION BY FEDERAL GOVERNMENT**

Contractor acknowledges and agrees that the federal government is not a party to this Agreement and is not subject to any obligations or liabilities to the County, Contractor, or any other party (whether or not a party to this Agreement) pertaining to any matter resulting from the Agreement.

## **6. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE** (all contracts meeting the definition of "federally assisted construction contract" under 41 CFR 60-1.3)

Contractor agrees to comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Part 60). 41 CFR 60-1.4 is hereby incorporated by reference.

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

- 6.1 The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- 6.2 The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

- 6.3 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.
- 6.4 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.
- 6.5 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.
- 6.6 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.
- 6.7 In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 6.8 The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) 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 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.

**7. NONDISCRIMINATION CLAUSE**

**7.1** Contractors and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition, age, marital status, denial of family care leave, or based on any other prohibited basis.

**7.2** Contractors, and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

**8. CONTRACT WORK HOURS AND SAFETY STANDARDS** (all contracts in excess of \$100,000 that involve the employment of mechanics, laborers (including watchmen and guards) (as defined by federal law and regulation), or construction work, but not to purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence)

Contractor and all subcontractors shall comply with the Contract Work Hours and Safety Standards Act, 40 USC 3701 through 3708 (including sections 3702 and 3704), as supplemented by Department of Labor regulations at 29 CFR Part 5, which are incorporated hereto. Contractor and all subcontractors shall compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is subject to conditions, as stated in the Act and regulations. No laborer or mechanic shall be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to health or safety.

**Compliance with the Contract Work Hours and Safety Standards Act.** In accordance with 29 CFR sections 5.5(d) and 5.5(e), all required contract clauses, appropriate wage determinations, and other provisions under 29 CFR Part 5 are hereby incorporated by reference and apply as a

matter of law. Accordingly, references in this Article 8 are to the following subsections in conformance with the sections and subsections of 29 CFR Section 5.5.

**29 CFR 5.5:**

(b)(1): **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 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)(2): **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchpersons and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$32 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1).

(b)(3): **Withholding for unpaid wages and liquidated damages-**

- (i) Withholding process. The County and the Government may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this paragraph (b) on this contract, 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 that is held by the same prime contractor (as defined in 29 CFR 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.
- (ii) Priority to withheld funds. The Department has priority to funds withheld or to be withheld in accordance with (a)(2)(i) or (b)(3)(i) of this section, or both, over claims to those funds by:
  - (A) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
  - (B) A contracting agency for its procurement costs;
  - (C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
  - (D) A contractor's assignee(s);
  - (E) A contractor's successor(s); or
  - (F) A claim asserted under the Prompt Payment Act, 31 USC 3901-3907.

(b)(4): **Anti-retaliation.** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge,

demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

- (i) Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in 29 CFR Part 5;
- (ii) Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or 29 CFR Part 5;
- (iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or 29 CFR Part 5; or
- (iv) Informing any other person about their rights under CWHSSA or 29 CFR Part 5.

(b)(5): **Required records.** Unless specified otherwise herein, Contractor and all subcontractors must maintain regular payrolls and other basic records during the course of the work and must preserve them for a period of at least 3 years after all the work on the prime contract is completed for all laborers and mechanics, including guards and watchpersons, working on the contract. Such records must contain the name; last known address, telephone number, and email address; and social security number of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid; daily and weekly number of hours actually worked; deductions made; and actual wages paid. Further, the records to be maintained under this paragraph must be made available by the contractor and subcontractors for inspection, copying, or transcription by authorized representatives of County, the Government, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview workers during working hours on the job.

(b)(6): **Subcontracts.** The contractor (and all subcontractors) shall insert in any subcontracts the clauses set forth in paragraphs (b)(1) through (6) of this section, and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in these paragraphs (b)(1) through (6). In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

Contractor (and all subcontractors) shall insert in any subcontracts the following clauses, and a clause requiring all subcontractors to include these clauses in any lower tier subcontracts:

**29 CFR 5.5:**

**(a)(1): Minimum wages.**

- (i) **Wage rates and fringe benefits.** All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. As provided in paragraphs (d) and (e) of this section (i.e., 29 CFR 5.5), the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act (40 U.S.C. 3141(2)(B)) on behalf of laborers or

mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(v) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph (a)(4) of this section. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (a)(1)(iii) of this section) and the Davis-Bacon poster (WH-1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

**(ii) Frequently recurring classifications.**

- (A) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in 29 CFR part 1, a wage determination may contain, pursuant to 29 CFR § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph (a)(1)(iii) of this section, provided that:
- (1) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;
  - (2) The classification is used in the area by the construction industry; and
  - (3) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.
- (B) The Administrator will establish wage rates for such classifications in accordance with paragraph (a)(1)(iii)(A)(3) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

**(iii) Conformance.**

- (A) The contracting officer must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:
- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
  - (2) The classification is used in the area by the construction industry; and
  - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (B) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.



- (C) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to [DBAconformance@dol.gov](mailto:DBAconformance@dol.gov). The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (D) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to [DBAconformance@dol.gov](mailto:DBAconformance@dol.gov), refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (E) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division under paragraphs (a)(1)(iii)(C) and (D) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph (a)(1)(iii)(C) or (D) of this section must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iv) **Fringe benefits not expressed as an hourly rate.** Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(v) **Unfunded plans.** If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in 29 CFR § 5.28, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(vi) **Interest.** In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

**(a)(2): Withholding —**

(i) **Withholding requirements.** The County and the Government may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in paragraph (a) of this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the

same prime contractor (as defined in 29 CFR § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work (or otherwise working in construction or development of the project under a development statute) all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in paragraph (a)(3)(iv) of this section, the County and the Government may on its own initiative and after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(ii) **Priority to withheld funds.** The Department has priority to funds withheld or to be withheld in accordance with paragraph (a)(2)(i) or (b)(3)(i) of this section, or both, over claims to those funds by:

- (A) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (B) A contracting agency for its procurement costs;
- (C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (D) A contractor's assignee(s);
- (E) A contractor's successor(s); or
- (F) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901–3907.

**(a)(3): Records and certified payrolls —**

(i) **Basic record requirements —**

- (A) **Length of record retention.** All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.
- (B) **Information required.** Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.
- (C) **Additional records relating to fringe benefits.** Whenever the Secretary of Labor has found under paragraph (a)(1)(v) of this section that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.
- (D) **Additional records relating to apprenticeship.** Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship

programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

(ii) **Certified payroll requirements** —

- (A) **Frequency and method of submission.** The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the Government if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the certified payrolls to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to the Government. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.
- (B) **Information required.** The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph (a)(3)(i)(B) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf> or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the sponsoring government agency (or the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records).
- (C) **Statement of Compliance.** Each certified payroll submitted must be accompanied by a “Statement of Compliance,” signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:
- (1) That the certified payroll for the payroll period contains the information required to be provided under paragraph (a)(3)(ii) of this section, the appropriate information and basic records are being maintained under paragraph (a)(3)(i) of this section, and such information and records are correct and complete;
  - (2) That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR part 3; and
  - (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.
- (D) **Use of Optional Form WH-347.** The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 will satisfy the requirement for submission of the “Statement of Compliance” required by paragraph (a)(3)(ii)(C) of this section.

- (E) **Signature.** The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.
  - (F) **Falsification.** The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 3729.
  - (G) **Length of certified payroll retention.** The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.
- (iii) **Contracts, subcontracts, and related documents.** The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.
  - (iv) **Required disclosures and access —**
    - (A) **Required record disclosures and access to workers.** The contractor or subcontractor must make the records required under paragraphs (a)(3)(i) through (iii) of this section, and any other documents that County, the Government, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by 29 CFR § 5.1, available for inspection, copying, or transcription by authorized representatives of County, the Government, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.
    - (B) **Sanctions for non-compliance with records and worker access requirements.** If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to 29 CFR § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under 29 CFR part 6 any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.
    - (C) **Required information disclosures.** Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address of each covered worker, and must provide them upon request to County, the Government if the agency is a party to the contract, or to the Wage and Hour Division of the Department of Labor. If the Federal agency is not such a party to the contract, the contractor, subcontractor, or both, must, upon request, provide the full Social Security number and last known address, telephone number, and email address of each covered worker to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to County, the Government, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

**(a)(4): Apprentices and equal employment opportunity —**

**(i) Apprentices —**

- (A) **Rate of pay.** Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (B) **Fringe benefits.** Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.
- (C) **Apprenticeship ratio.** The allowable ratio of apprentices to journeymen on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph (a)(4)(i)(D) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph (a)(4)(i)(A) of this section, must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.
- (D) **Reciprocity of ratios and wage rates.** Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

- (ii) **Equal employment opportunity.** The use of apprentices and journeymen under this part must be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

**(a)(5): Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

**(a)(6): Subcontracts.** The contractor or subcontractor must insert in any subcontracts the clauses contained in paragraphs (a)(1) through (11) of this section, along with the applicable wage determination(s) and such other clauses or contract modifications as County or the Government may by

appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate.

**(a)(7): Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**(a)(8): Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

**(a)(9): Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**(a)(10): Certification of eligibility.**

- (i) By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of 40 U.S.C. 3144(b) or 29 CFR § 5.12(a).
- (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of 40 U.S.C. 3144(b) or 29 CFR § 5.12(a).
- (iii) The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, 18 U.S.C. 1001.

**(a)(11): Anti-retaliation.** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

- (i) Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or 29 CFR part 1 or 3;
- (ii) Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or 29 CFR part 1 or 3;
- (iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or 29 CFR part 1 or 3; or
- (iv) Informing any other person about their rights under the DBA, Related Acts, this part, or 29 CFR part 1 or 3.

**9. NOTICE OF REPORTING REQUIREMENTS**

Contractor acknowledges that reporting requirements apply as a condition of the related FEMA funding. Contractor agrees to comply with all applicable reporting requirements, including those contained in any grant terms and conditions, notices of funding opportunity, or any program guidance associated with any FEMA funding related to this Agreement.

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

**10.1** Contractor agrees that FEMA reserves and shall have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for federal purposes:

**10.1.1** The copyright in any work developed with the assistance of funds provided under this Agreement;

**10.1.2** Any rights of copyright to which Contractor purchases ownership with the assistance of funds provided under this Agreement.

**10.2** Contractor grants to the County, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this Agreement 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 Agreement but not first produced in the performance of this Agreement, the Contractor will identify such data and grant to the County or acquire 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 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 Agreement, the Contractor will deliver to the County data first produced in the performance of this Agreement and data required by the Agreement but not first produced in the performance of this Agreement in formats acceptable by the County.

**10.3** Contractor shall affix the applicable copyright notices of 17 U.S.C. §§ 401 or 402 and an acknowledgement that the work was produced under a federal award (including the award number and federal awarding agency, i.e., FEMA) to any work first produced under federal financial assistance awards.

**11. RIGHTS TO INVENTIONS** (contracts meeting the definition of “funding agreements” (see 37 CFR Part 401) for experimental, research, or development projects)

-NOT APPLICABLE-

**12. CLEAN AIR AND WATER POLLUTION REQUIREMENTS** (all contracts and subcontracts, in excess \$150,000)

**12.1 Clean Air Act**

**12.1.1** Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. (42 USC 7401-7671q).

**12.1.2** Contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.

**12.1.3** Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

**12.2 Federal Water Pollution Control Act**

- 12.2.1** Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq. (33 USC 1251-1388).
- 12.2.2** Contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the State of California (if applicable), Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.
- 12.2.3** Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

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

For construction contracts, see Section 8 of the incorporated version of Caltrans Standard Specifications, as may be modified by County's applicable Notice to Bidders, Special Provisions, and Addenda.

For services contracts, see Article 4 of the "Standard Professional Services Agreement."

**14. TERMINATION FOR CAUSE/DEFAULT** (all contracts in excess of \$10,000)

Contractor's failure to perform or observe any term, covenant or condition of this Agreement shall constitute an event of default under this Agreement.

For construction contracts, see Section 8 of the incorporated version of Caltrans Standard Specifications, as may be modified by County's applicable Notice to Bidders, Special Provisions, and Addenda.

For services contracts, see Article 4 of the "Standard Professional Services Agreement."

**15. CHANGES**

For construction contracts, see Sections 4 and 8 of the incorporated version of Caltrans Standard Specifications, as may be modified by County's applicable Notice to Bidders, Special Provisions, and Addenda.

For services contracts, see Article 8 of the "Standard Professional Services Agreement."

**16. LOBBYING (Byrd Anti-Lobbying Amendment, 31 USC 1352 (as amended))** (all contracts and subcontracts, in excess of \$100,000)

**16.1** Contractors who apply or bid for an award of more than \$100,000 shall file the required certification. Contractor, and each tier to the tier above, certifies that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with the making or obtaining of any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the federal awarding agency.

**16.2** Contractor shall file the required certification, Exhibit [X]-1, *Certification Regarding Lobbying*, attached hereto and incorporated herein, and shall obtain such certifications for all subcontracts in excess of \$100,000.



**17. SOCIOECONOMIC CONTRACTING (MBE / WBE)**

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

**18. PROCUREMENT OF RECOVERED MATERIALS**

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

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

- Competitively within a timeframe providing for compliance with the contract performance schedule;
- Meeting contract performance requirements; or
- 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 (available at <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.

Contractor should, to the greatest extent practicable and consistent with 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. This may include purchasing compostable items and other products and services that reduce the use of single-use plastic products.

**19. PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES**

(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 the Federal Emergency Management Agency to:

- (i) 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;
- (ii) Enter, 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, 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 as part 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 arrangements;
- (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 equipment or services that:
  - i. Are not used as a substantial or essential component of any system; and
  - ii. 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 recipient or subrecipient, 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 wholesaler 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.

**20. DOMESTIC PREFERENCES FOR PROCUREMENTS**

Contractor should, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but 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* mean 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.

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

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

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

Contractor and its subcontractors must written permission from the federal Department of Homeland Security (DHS) prior to using the DHS seals, logos, crests, or reproductions of flags, or likenesses of DHS agency officials . This includes use of DHS component (e.g., FEMA, CISA, etc.) seals, logos, crests, or reproductions of flags, or likenesses of component officials. The contractor shall include this provision in all subcontracts.

**23. DAVIS-BACON ACT AND COPELAND ANTI-KICKBACK ACT (only prime construction, repair, or alteration contracts in excess of \$2,000, if required by federal funding program. Excludes contracts funded under the FEMA Public Assistance Program.)**

a. Compliance with the Davis –Bacon Act:

Contractor shall comply with the Davis-Bacon Act (40 USC 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 CFR Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction). In accordance with the statute, contractors must pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. This contract is awarded on condition that said prevailing wage determination is accepted. Contractor shall pay wages not less than once a week.

Without limitation to the foregoing, Contractor shall comply with the applicable provisions of 29 CFR 5.5(a) which are incorporated herein by reference and which are also set forth in Section 8, Contract Work Hours and Safety Standards, above.

b. Compliance with the Copeland “Anti-Kickback” Act:

(1) Contractor. The contractor (and all subcontractors) is expressly bound and 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. Contractor and all

subcontractors are prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

- (2) 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.
- (3) 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 29 C.F.R. § 5.12.

- 24. BONDS** (all construction or facility improvement contracts, or any subcontracts thereof, exceeding \$250,000)  
Unless otherwise excepted in writing by County, Contractor shall obtain and maintain bonds as follows:

**24.1** A performance bond for 100 percent of the Agreement price, and

**24.2** A payment bond for 100 percent of the Agreement price.

**25. CREATING GOOD JOBS**

Pursuant to FEMA Information Bulletin No. 520 (available at: [https://www.fema.gov/sites/default/files/documents/fema\\_gpd\\_ib-520.pdf](https://www.fema.gov/sites/default/files/documents/fema_gpd_ib-520.pdf)), Contractor will comply with all applicable federal labor and employment laws. To maximize cost efficiency and quality of work, Contractor commits to strong labor standards and protections for the project workforce by creating an effective plan for ensuring high-quality jobs and complying with federal labor and employment laws. Contractor acknowledges applicable minimum wage, overtime, prevailing wage, and health and safety requirements, and will incorporate Good Jobs Principles (available at: <https://www.dol.gov/sites/dolgov/files/goodjobs/Good-Jobs-Summit-Principles-Factsheet.pdf>) wherever appropriate and to the greatest extent practicable.

**26. BUY CLEAN**

County encourages the use of environmentally friendly construction practices in the performance of this Agreement. In particular, County encourages that the performance of this Agreement include considering the use of low-carbon materials which have substantially lower levels of embodied greenhouse-gas emissions associated with all relevant stages of production, use, and disposal, as compared to estimated industry averages of similar materials or products as demonstrated by their environmental product declaration.

**Exhibit "B"-1**  
**APPENDIX A, 44 C.F.R. PART 18 –CERTIFICATION REGARDING LOBBYING**  
*Certification for Contracts, Grants, Loans, and Cooperative Agreements*

The undersigned certifies, to the best of his or her 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 or organization 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 obtaining or 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, loans, 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.

By signing below, Contractor 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.

Bob Gerhold  
Contractor's  
Authorized Official - Signature

Director  
Title

2/19/25  
Date

**Exhibit C**

**Fee Schedule**

## **NORBAY CONSULTING FEE SCHEDULE**

Prepared for Ms. Soojin Park  
County of Sonoma – Capital Project Manager  
February 2025

### **LABOR RATES**

Type	Hourly Rate	Flat Rate
Site Visits for Environmental Consulting/Sampling (Single Contaminant)	N/A	750.00
Site Visit for Environmental Consulting/Sampling (Multiple Contaminants)	N/A	900.00
Project Monitoring	105.00	N/A
California Registered Geologist	290.00	N/A

### **ANALYTICAL RATES (ASBESTOS, MICROBIAL & METALS)**

Type	24-48 hour turnaround	>48 hour turnaround
Phase Contrast (Asbestos Air)	35.00	30.00
Transmission Electron (Asbestos Air)	175.00	140.00
Polarized Light (Asbestos Bulk)	35.00	30.00
Polarized Light (Over 3 Layers)	65.00	50.00
Point Count (NESHAPS)	110.00	95.00
Individual Metals – Paint Chips	45.00	35.00
Individual Metals – Dust Wipes	45.00	35.00
Lead Air Samples	40.00	30.00
Fiberglass Air Samples	N/A	40.00
Non-Viable Air Sample	130.00	80.00
Non-Viable Bulk Sample	130.00	80.00

**Exhibit D**

**Insurance**



**Exhibit D**

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain insurance as described below unless such insurance has been expressly waived by the attachment of a *Waiver of Insurance Requirements*. Any requirement for insurance to be maintained after completion of the work shall survive this Agreement.

County reserves the right to review any and all of the required insurance policies and/or endorsements, but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Consultant from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

**1. Workers Compensation and Employers Liability Insurance**

- a. Required if Consultant has employees as defined by the Labor Code of the State of California.
- b. Workers Compensation insurance with statutory limits as required by the Labor Code of the State of California.
- c. Employers Liability with minimum limits of \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.
- d. Required Evidence of Insurance: Certificate of Insurance.

If Consultant currently has no employees as defined by the Labor Code of the State of California, Consultant agrees to obtain the above-specified Workers Compensation and Employers Liability insurance should employees be engaged during the term of this Agreement or any extensions of the term.

**2. General Liability Insurance**

- a. Commercial General Liability Insurance on a standard occurrence form, no less broad than Insurance Services Office (ISO) form CG 00 01.
- b. Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Excess or Commercial Umbrella Liability Insurance. If Consultant maintains higher limits than the specified minimum limits, County requires and shall be entitled to coverage for the higher limits maintained by Consultant.
- c. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$100,000 it must be approved in advance by County. Consultant is responsible for any deductible or self-insured retention and shall fund it upon County's written request, regardless of whether Consultant has a claim against the insurance or is named as a party in any action involving the County.
- d. **County of Sonoma, its Officers, Agents and Employees, Attn: Sonoma County Public Infrastructure, 400 Aviation Blvd Suite 100, Santa Rosa, CA 95403** shall be endorsed as additional insureds for liability arising out of operations by or on behalf of the Consultant in the performance of this Agreement.
- e. The insurance provided to the additional insureds shall be primary to, and non-contributory with, any insurance or self-insurance program maintained by them.
- f. The policy definition of "insured contract" shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the "f" definition of insured contract in ISO form CG 00 01, or equivalent).

- g. The policy shall cover inter-insured suits between the additional insureds and Consultant and include a “separation of insureds” or “severability” clause which treats each insured separately.
- h. Required Evidence of Insurance:
  - i. Certificate of Insurance.

### 3. Automobile Liability Insurance

- a. Minimum Limit: \$1,000,000 combined single limit per accident. The required limits may be provided by a combination of Automobile Liability Insurance and Commercial Excess or Commercial Umbrella Liability Insurance.
- b. Insurance shall cover all owned autos. If Consultant currently owns no autos, Consultant agrees to obtain such insurance should any autos be acquired during the term of this Agreement or any extensions of the term.
- c. Insurance shall cover hired and non-owned autos.
- d. Required Evidence of Insurance: Certificate of Insurance.

### 4. Professional Liability/Errors and Omissions Insurance

- a. Minimum Limit: \$1,000,000 per claim or per occurrence.
- b. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$100,000 it must be approved in advance by County.
- c. If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of the work.
- d. Coverage applicable to the work performed under this Agreement shall be continued for two (2) years after completion of the work. Such continuation coverage may be provided by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the work under this Agreement.
- e. Required Evidence of Insurance: Certificate of Insurance specifying the limits and the claims-made retroactive date.

### 5. Standards for Insurance Companies

Insurers, other than the California State Compensation Insurance Fund, shall have an A.M. Best's rating of at least A:VII.

### 6. Documentation

- a. The Certificate of Insurance must include the following reference: **On-Call Engineering Master Professional Services Agreement Contract.**
- b. All required Evidence of Insurance shall be submitted prior to the execution of this Agreement. Consultant agrees to maintain current Evidence of Insurance on file with County for the entire term of this Agreement and any additional periods if specified in Sections 1 – 4 above.
- c. The name and address for Additional Insured endorsements and Certificates of Insurance is: **County of Sonoma, its Officers, Agents and Employees, Attn: Sonoma County Public Infrastructure, 400 Aviation Blvd Suite 100, Santa Rosa, CA 95403.**
- d. Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.
- e. Consultant shall provide immediate written notice if: (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased.
- f. Upon written request, certified copies of required insurance policies must be provided within thirty (30) days.

**7. Policy Obligations**

Consultant's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

**8. Material Breach**

If Consultant fails to maintain insurance which is required pursuant to this Agreement, it shall be deemed a material breach of this Agreement. County, at its sole option, may terminate this Agreement and obtain damages from Consultant resulting from said breach. Alternatively, County may purchase the required insurance, and without further notice to Consultant, County may deduct from sums due to Consultant any premium costs advanced by County for such insurance. These remedies shall be in addition to any other remedies available to County.