



Monterey County Board of Supervisors

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5066

Board Order

Agreement No.: A-14462, Harris & Associates, Inc.; Agreement No.: A-14463, MNS Engineers, Inc.; Agreement No.: A-14464, Quincy Engineering and Agreement No.: A-14465, Vali Cooper & Associates, a TRC Company

A motion was made by Supervisor Luis A. Alejo, seconded by Supervisor Chris Lopez to:

- a. Approve Professional Services Agreements with the following four (4) consultants: Harris & Associates, Inc.; MNS Engineers, Inc.; Quincy Engineering; and Vali Cooper & Associates, a TRC Company to provide on-call construction management services for various construction projects located in Monterey County, California under Request for Qualifications #10709, in an amount not to exceed \$750,000 each for a combined total of \$3,000,000, for a period of three (3) years beginning July 16, 2019 to July 15, 2022, with the option to extend each Agreement for two (2) additional one (1) year period(s); and
- b. Authorize the Contracts/Purchasing Officer or Contracts/Purchasing Supervisor to execute said Professional Services Agreements and up to three (3) future amendments to said Agreements where the amendments do not significantly alter the scope of work or change the approved amount of said Agreements.

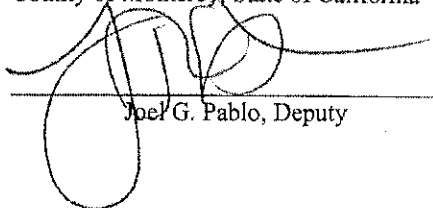
PASSED AND ADOPTED on this 23rd day of July 2019, by the following vote, to wit:

AYES: Supervisors Alejo, Phillips, Lopez, Parker and Adams
NOES: None
ABSENT: None

I, Valerie Ralph, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 82 for the meeting July 23, 2019.

Dated: July 23, 2019
File ID: A 19-292

Valerie Ralph, Clerk of the Board of Supervisors
County of Monterey, State of California



Joel G. Pablo, Deputy

**COUNTY OF MONTEREY AGREEMENT FOR PROFESSIONAL SERVICES
WITH SURVEYORS, ARCHITECTS, ENGINEERS & DESIGN PROFESSIONALS
(MORE THAN \$100,000)***

This Professional Services Agreement ("Agreement") is made by and between the County of Monterey, a political subdivision of the State of California (hereinafter "County") and:
MNS Engineers, Inc.
(hereinafter "CONTRACTOR").

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

1. **SERVICES TO BE PROVIDED.** The County hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in **Exhibit A** in conformity with the terms of this Agreement. The services are generally described as follows:

Provide on-call construction management services for various construction projects located in Monterey County (RFQ #10709)

2. **PAYMENTS BY COUNTY.** County shall pay the CONTRACTOR in accordance with the payment provisions set forth in **Exhibit A**, subject to the limitations set forth in this Agreement. The total amount payable by County to CONTRACTOR under this Agreement shall not exceed the sum of \$ 750,000.

3. **TERM OF AGREEMENT.** The term of this Agreement is from July 16, 2019 to July 15, 2022, unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and County and with County signing last, and CONTRACTOR may not commence work before County signs this Agreement.

4. **ADDITIONAL PROVISIONS/EXHIBITS.** The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

Exhibit A Scope of Services/Payment Provisions

Exhibit B Revision to Paragraph 8, Indemnification, of Agreement

Exhibit C Incorporation of Request for Qualifications (RFQ) #10709 and Statement of Qualification Documents, on file with the Resource Management Agency - Public Works, Parks & Facilities

5. **PERFORMANCE STANDARDS.**

5.01. CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of the County, or immediate family of an employee of the County.

5.02. CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.

*Approved by County Board of Supervisors on _____.

5.03. CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use County premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

6. PAYMENT CONDITIONS.

6.01. CONTRACTOR shall submit to the Contract Administrator an invoice on a form acceptable to County. If not otherwise specified, the CONTRACTOR may submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice as the County may require. The Contract Administrator or his or her designee shall certify the invoice; either in the requested amount or in such other amount as the County approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

6.02. CONTRACTOR shall not receive reimbursement for travel expenses unless set forth in this Agreement.

7. TERMINATION.

7.01. During the term of this Agreement, the County may terminate the Agreement for any reason by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.

7.02. The County may cancel and terminate this Agreement for good cause effective immediately upon written notice to CONTRACTOR. "Good cause" includes the failure of CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If County terminates this Agreement for good cause, the County may be relieved of the payment of any consideration to CONTRACTOR, and the County may proceed with the work in any manner, which County deems proper. The cost to the County shall be deducted from any sum due the CONTRACTOR under this Agreement.

8. INDEMNIFICATION.

8.01 For purposes of the following indemnification provisions ("Indemnification Agreement"), "design professional" has the same meaning as set forth in California Civil Code section 2782.8. ~~If any term, provision or application of this Indemnification Agreement is found to be invalid, in violation of public policy or unenforceable to any extent, such finding shall not invalidate any other term or provision of this Indemnification Agreement and such other terms and provisions shall continue in full force and effect. If there is any conflict between the terms, provisions or application of this Indemnification Agreement and the provisions of California Civil Code Sections 2782 or 2782.8, the broadest indemnity protection for the COUNTY under this Indemnity Agreement that is permitted by law shall be provided by CONTRACTOR.~~

Please refer to Exhibit B of Agreement.


Contractor's Initials

7/2/19
Date

8.02 Indemnification for Design Professional Services Claims:

CONTRACTOR shall indemnify, defend and hold harmless COUNTY, its governing board, directors, officers, employees, and agents against any claims that arise out of, or pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONTRACTOR, its employees, subcontractors, and agents in the performance of design professional services under this Agreement, excepting only liability arising from the sole negligence, active negligence or willful misconduct of the COUNTY, or defect in a design furnished by the COUNTY. Please refer to Exhibit B of Agreement.

MC 7/2/17
Contractor's Initials Date

8.03 Indemnification for All Other Claims or Loss:

For any claim, loss, injury, damage, expense or liability other than claims arising out of the CONTRACTOR's performance of design professional services under this Agreement, CONTRACTOR shall indemnify, defend and hold harmless COUNTY, its governing board, directors, officers, employees, and agents against any claim for loss, injury, damage, expense or liability resulting from or alleging injury to or death of any person or loss of use of or damage to property, arising from or related to the performance of services under this Agreement by CONTRACTOR, its employees, subcontractors or agents, excepting only liability arising from the sole negligence, active negligence or willful misconduct of the COUNTY, or defect in a design furnished by the COUNTY. Please refer to Exhibit B of Agreement.

MC 7/2/17
Contractor's Initials Date

9.0 INSURANCE.

9.01 Evidence of Coverage:

Prior to commencement of this Agreement, the Contractor shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition the Contractor upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to the County's, Contracts/Purchasing Department, unless otherwise directed. The Contractor shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and such, insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

9.02 Qualifying Insurers:

All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Purchasing Manager.

9.03 Insurance Coverage Requirements: Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broadform Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Modification (Justification attached; subject to approval).

Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Modification (Justification attached; subject to approval).

Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

Modification (Justification attached; subject to approval).

Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

Modification (Justification attached; subject to approval).

9.04 Other Insurance Requirements.

All insurance required by this Agreement shall be with a company acceptable to the County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this Agreement.

Each liability policy shall provide that the County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for Contractor and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed

operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR'S insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.

Prior to the execution of this Agreement by the County, CONTRACTOR shall file certificates of insurance with the County's contract administrator and County's Contracts/Purchasing Division, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

CONTRACTOR shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement, which entitles County, at its sole discretion, to terminate this Agreement immediately.

10. RECORDS AND CONFIDENTIALITY.

- 10.01 Confidentiality. CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the County or prepared in connection with the performance of this Agreement, unless County specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to County any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out CONTRACTOR's obligations under this Agreement.
- 10.02 County Records. When this Agreement expires or terminates, CONTRACTOR shall return to County any County records which CONTRACTOR used or received from County to perform services under this Agreement.
- 10.03 Maintenance of Records. CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three year period, then CONTRACTOR shall retain said records until such action is resolved.

- 10.04 Access to and Audit of Records. The County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of the County or as part of any audit of the County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.
- 10.05 Royalties and Inventions. County shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize others to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of County.
11. **NON-DISCRIMINATION.** During the performance of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in CONTRACTOR's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, fully comply with all federal, state, and local laws and regulations, which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.
12. **COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANT.** If this Agreement has been or will be funded with monies received by the County pursuant to a contract with the state or federal government in which the County is the grantee, CONTRACTOR will comply with all the provisions of said contract, to the extent applicable to CONTRACTOR as a subgrantee under said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, County will deliver a copy of said contract to CONTRACTOR, at no cost to CONTRACTOR.
13. **INDEPENDENT CONTRACTOR.** In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent contractor and not as an employee of the County. No offer or obligation of permanent employment with the County or particular County department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from County any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of CONTRACTOR's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold County harmless from any and all liability, which County may incur because of CONTRACTOR's failure to pay such taxes.

14. **NOTICES.** Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail to the County and CONTRACTOR'S contract administrators at the addresses listed below:

FOR COUNTY:	FOR CONTRACTOR:
<p>Dalia Mariscal-Martinez, Management Analyst II</p> <hr/> <p style="text-align: center;">Name and Title</p> <p>County of Monterey, Resource Management Agency 1441 Schilling Place, South 2nd Floor Salinas, California 93901-4527</p> <hr/> <p style="text-align: center;">Address</p> <p>(831) 755-8966</p> <hr/> <p style="text-align: center;">Phone</p>	<p><i>J.C. 7/12/19</i> Greg Chelini, P.E., President <i>VICE PRESIDENT</i></p> <hr/> <p style="text-align: center;">Name and Title</p> <p>MNS Engineers, Inc. 201 N. Calle Cesar Chavez, Suite 300 Santa Barbara, California 93103</p> <hr/> <p style="text-align: center;">Address</p> <p>(805) 692-6921</p> <hr/> <p style="text-align: center;">Phone</p>

15. **MISCELLANEOUS PROVISIONS.**

- 15.01 Conflict of Interest. CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly or indirectly conflict in any manner or to any degree with the full and complete performance of the professional services required to be rendered under this Agreement.
- 15.02 Amendment. This Agreement may be amended or modified only by an instrument in writing signed by the County and the CONTRACTOR.
- 15.03 Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by the County and the CONTRACTOR. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
- 15.04 Contractor. The term "CONTRACTOR" as used in this Agreement includes CONTRACTOR's officers, agents, and employees acting on CONTRACTOR's behalf in the performance of this Agreement.
- 15.05 Disputes. CONTRACTOR shall continue to perform under this Agreement during any dispute.
- 15.06 Assignment and Subcontracting. The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the County. None of the services covered by this Agreement shall be subcontracted without the prior written approval of the County. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.
- 15.07 Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of the County and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.

- 15.08 Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.
- 15.09 Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 15.10 Time is of the Essence. Time is of the essence in each and all of the provisions of this Agreement.
- 15.11 Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.
- 15.12 Non-exclusive Agreement. This Agreement is non-exclusive and both County and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.
- 15.13 Construction of Agreement. The County and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.
- 15.14 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.
- 15.15 Authority. Any individual executing this Agreement on behalf of the County or the CONTRACTOR represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.
- 15.16 Integration. This Agreement, including the exhibits, represent the entire Agreement between the County and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the County and the CONTRACTOR as of the effective date of this Agreement, which is the date that the County signs the Agreement.
- 15.17 Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

This space is left blank, intentionally.

IN WITNESS WHEREOF, County and CONTRACTOR have executed this Agreement as of the day and year written below.

COUNTY OF MONTEREY

By: _____
Purchasing Officer

Date: _____

By: _____
Department Head (if applicable)

Date: _____

By: _____
Board of Supervisors (if applicable)

Date: _____

Approved as to Form¹

By: _____
County Counsel

Date: _____

Approved as to Fiscal Provisions²

By: _____
Auditor/Controller

Date: _____

Approved as to Liability Provisions³

By: _____
Risk Management

Date: _____

CONTRACTOR

MNS Engineers, Inc.
Contractor's Business Name*

By: _____
(Signature of Chair, President, or Vice-President)*

Greg Cheloni, VICE PRESIDENT
Name and Title

Date: 7/2/19

By: _____
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)*

JEFF EDWARDS, ASSIT. SECRETARY
Name and Title

Date: 7.2.19

County Board of Supervisors' Agreement Number: _____

*INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

¹Approval by County Counsel is required for all Professional Service Agreements over \$100,000

²Approval by Auditor/Controller is required for all Professional Service Agreements

³Approval by Risk Management is required only if changes are made in paragraph 8 or 9

IN WITNESS WHEREOF, County and CONTRACTOR have executed this Agreement as of the day and year written below.

COUNTY OF MONTEREY

By: [Signature]
 Purchasing Officer
 Date: 7-29-19

By: _____
 Department Head (if applicable)
 Date: _____

By: _____
 Board of Supervisors (if applicable)
 Date: _____

Approved as to Form¹
 By: [Signature]
 County Counsel
 Date: 7-2-19

* AS REVISED PER EX A 4.1.3
 Approved as to Fiscal Provisions²
 By: [Signature]
 Auditor/Controller
 Date: 7-11-19

Approved as to Liability Provisions³
 By: _____
 Risk Management
 Date: _____

CONTRACTOR

MNS Engineers, Inc.
 Contractor's Business Name*

By: [Signature]
 (Signature of Chair, President, or Vice-President)*

Greg Cheloni, Vice President
 Name and Title
 Date: 7/2/19

By: [Signature]
 (Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)*
JEFF EDWARDS ASST. SECRETARY
 Name and Title
 Date: 7.2.19

County Board of Supervisors' Agreement Number: _____

*INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

¹Approval by County Counsel is required for all Professional Service Agreements over \$100,000
²Approval by Auditor/Controller is required for all Professional Service Agreements
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EXHIBIT A - SCOPE OF SERVICES/PAYMENT PROVISIONS

To Agreement by and between
County of Monterey, hereinafter referred to as "County"
and
MNS Engineers, Inc., hereinafter referred to as "CONTRACTOR"

A. SCOPE OF SERVICES

A.1 CONTRACTOR shall provide services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

CONTRACTOR shall provide construction management services for various construction projects located in Monterey County, California.

CONTRACTOR Minimum Work Performance Percentage: CONTRACTOR shall perform with its own organization Agreement work amounting to not less than fifty percent (50%) of the original total Agreement price.

The Construction Management effort shall include, but not be limited to, the following services and requirements:

A.1.1 Contract Administration: Provide overall coordination of construction management services, including supervision of contract administration, labor compliance, Disadvantaged Business Enterprises (DBE) programs, field observations and outside services. Attend regularly scheduled project meetings with the County or Contractor representatives to review the progress of the work, resolve field problems as they occur, and perform project related public relations with the public and outside agencies such as the United States Army Corps of Engineers (USACE) and the California Department of Fish and Wildlife (CDFW).

A.1.2 General Inspection: Provide daily inspections and supervision of the work of the construction contractor's operations as construction progresses, and promptly report and resolve problems regarding performance and/or conformity with the drawings and specifications, including contract administration and construction engineering of the assigned project. Assist the County Resident Engineer in managing construction operations. In accordance with the State Standard Specifications and Special Provisions, ensure that all utility work is coordinated with the appropriate utility company and that all the appropriate permits and inspections are obtained for all items of work.

A.1.3 Change Orders: In accordance with State Standard Specifications, the Special Provisions and the County format, prepare, process, and make recommendations on change orders. The County will approve all change orders—

which are acceptable to the County.

*mgs
7-11-19*

EXHIBIT A - SCOPE OF SERVICES/PAYMENT PROVISIONS

To Agreement by and between
County of Monterey, hereinafter referred to as "County"
and
MNS Engineers, Inc., hereinafter referred to as "CONTRACTOR"

A. SCOPE OF SERVICES

A.1 CONTRACTOR shall provide services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

CONTRACTOR shall provide construction management services for various construction projects located in Monterey County, California.

CONTRACTOR Minimum Work Performance Percentage: CONTRACTOR shall perform with its own organization Agreement work amounting to not less than fifty percent (50%) of the original total Agreement price.

The Construction Management effort shall include, but not be limited to, the following services and requirements:

A.1.1 **Contract Administration:** Provide overall coordination of construction management services, including supervision of contract administration, labor compliance, Disadvantaged Business Enterprises (DBE) programs, field observations and outside services. Attend regularly scheduled project meetings with the County or Contractor representatives to review the progress of the work, resolve field problems as they occur, and perform project related public relations with the public and outside agencies such as the United States Army Corps of Engineers (USACE) and the California Department of Fish and Wildlife (CDFW).

A.1.2 **General Inspection:** Provide daily inspections and supervision of the work of the construction contractor's operations as construction progresses, and promptly report and resolve problems regarding performance and/or conformity with the drawings and specifications, including contract administration and construction engineering of the assigned project. Assist the County Resident Engineer in managing construction operations. In accordance with the State Standard Specifications and Special Provisions, ensure that all utility work is coordinated with the appropriate utility company and that all the appropriate permits and inspections are obtained for all items of work.

A.1.3 **Change Orders:** In accordance with State Standard Specifications, the Special Provisions and the County format, prepare, process, and make recommendations on change orders. The County will approve all change orders

which are acceptable to the County.

MC, JE
Contractor's Initials
7/22/19, 7/22/19
Date

MOJ
7.11.19

EXHIBIT A - SCOPE OF SERVICES/PAYMENT PROVISIONS

A.1.4 Surveying: Coordinate and supervise construction surveying and staking. Construction staking is to be included in the services provided by the CONTRACTOR.

A.1.5 Material Testing: Coordinate, interpret, certify, and supervise all required soils and material tests in accordance with the Caltrans test methods and Standard Specifications. The CONTRACTOR shall provide the County with a Caltrans certified material testing company to provide materials testing services per Caltrans Standard Specifications.

A.1.6 Test Data: Review and approve copies of certificates of compliance, independent testing laboratory reports, and manufacturer's shop or mill tests to ensure conformance with contract specifications.

A.1.7 Plan Interpretation: With the assistance of the County Engineer, as needed, to interpret the intent of the plans and specifications to protect the County against defects and deficiencies in construction on the part of the construction contractor.

A.1.8 Pre-Construction Conference: Assist in the pre-construction meeting with the construction contractor and other project participants. This discussion affords all the parties of the contract a common understanding of the proposed work and problems, and possible solutions that may be expected during the life of the contract. Labor compliance, equal employment opportunity, safety requirements, water pollution requirements, agreements, and permits shall also be discussed. Respond to questions the construction contractor may have and address issues that need to be resolved before work commences.

A.1.9 Safety and Accidents: Assume the duties of the Project Safety Coordinator. Ensure the construction contractor complies with all safety orders, Federal and State, and permits through normal contract administration procedures. Document all incidents with photographs and written reports. Manage safety precautions through the construction contractor for the public in construction areas.

A.1.10 Approval Schedule: Prepare a schedule (using Microsoft Project) indicating all items that will be submitted by the construction contractor for review and approval requiring action by the County. Furnish appropriate forms, as necessary, and monitor the construction contractor's adherence to the schedule.

A.1.11 False Work and Shop Drawings: Keep records, provide timely engineering review, and prepare written recommendations certifying the adequacy of the construction contractor's submittal for false work as well as construction of false work. Coordinate, document, and make engineering recommendations in

EXHIBIT A - SCOPE OF SERVICES/PAYMENT PROVISIONS

writing on approval of shop drawings. Final submittal approvals shall be made in consultation with the County.

A.1.12 Progress Statements: Prepare and provide monthly progress statements meeting County requirements including the following: monthly estimates on all items of work with source documents to verify progress payments. Submit weekly copies of daily diaries to the County. Submit a copy of the baseline progress schedule and monthly updates as required by the Special Provisions.

A.1.13 Final Walk-through and Final Inspection: Conduct project walk-throughs prior to completion of construction. Minutes of this walk-through will be completed by the CONTRACTOR and a copy will be sent to the County. The final walk-through list of attendees will be coordinated with the County. The CONTRACTOR will complete a final inspection of the project and complete the required Final Report forms.

A.1.14 As-Built Plans: Provide the County with an electronic as-built plan file complete with redline changes or corrections. Such plans will be based upon information obtained from field measurements and observations made during project construction and approved contract change orders. The electronic signature and seal of the responsible Registered Resident Engineer or Construction Engineer will be placed in the file on Level 62 (refer to "Highway Design and Topography Information" on Page 2.5-2 of the *Caltrans CADD Users Manual*).

A.1.15 Contract Records: At the completion of the project, submit the original set of construction books to the County cataloged in accordance with Chapter 5, Section 5-102, "Organization of Project Documents," of the *Caltrans Construction Manual* and as directed by the County. These records shall include all correspondence, meeting minutes, photographs, agreements, hazardous waste material information and tests, labor compliance, contract administration forms, bridge work, diaries, contract item quantity documents, contract change orders, project status sheets, project record-estimate and project status, disputes, project completion documents, etc.

B. PAYMENT PROVISIONS

B.1 COMPENSATION/PAYMENT

County shall pay an amount not to exceed \$750,000 for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Services. CONTRACTOR'S compensation for services rendered shall be based on the rates as included in this Exhibit A and in accordance with the following terms.

EXHIBIT A - SCOPE OF SERVICES/PAYMENT PROVISIONS

CONTRACTOR warrants that the cost charged for services under the terms of this Agreement are not in excess of those charged to any other client for the same services performed by the same individuals.

B.2 CONTRACTOR'S BILLING PROCEDURES

Invoices under this Agreement shall be submitted monthly and promptly, and in accordance with Paragraph 6, "Payment Conditions", of the Agreement. All invoices shall reference the Multi-Year Agreement number (MYA #), Project name and associated Delivery Order (DO) number, and an original hardcopy shall be sent to the following address or via email to RMA-Finance-AP-GP@co.monterey.ca.us:

County of Monterey
Resource Management Agency (RMA) – Finance Division
1441 Schilling Place, South 2nd Floor
Salinas, California 93901-4527

Any questions pertaining to invoices under this Agreement should be directed to the RMA Finance Division at (831) 755-4800 or via email to: RMA-Finance-AP-GP@co.monterey.ca.us.

County may, in its sole discretion, terminate the Agreement or withhold payments claimed by CONTRACTOR for services rendered if CONTRACTOR fails to satisfactorily comply with any term or condition of this Agreement.

No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by County.

County shall not pay any claims for payment for services submitted more than twelve (12) months after the calendar month in which the services were completed.

DISALLOWED COSTS: CONTRACTOR is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.

EXHIBIT A - SCOPE OF SERVICES/PAYMENT PROVISIONS



2019 STANDARD SCHEDULE OF FEES

PROJECT/PROGRAM MANAGEMENT

Principal-In-Charge..... \$250
Senior Project/Program Manager.....235

CONSTRUCTION MANAGEMENT

Principal Construction Manager..... \$250
Senior Construction Manager.....225 - 235
Resident Engineer.....190 - 215
Structures Representative.....185 - 200
Construction Manager.....175 - 185
Assistant Resident Engineer.....160 - 170
Construction Inspector (PW).....150 - 155
Project Coordinator.....105 - 115

SURVEYING

Principal Surveyor \$230
Supervising Surveyor.....200
Senior Project Surveyor180
Project Surveyor.....160
Senior Land Title Analyst.....145
Associate Project Surveyor.....135
Assistant Project Surveyor125
Party Chief160
Chainperson140
One-Person Survey Crew.....180

DIRECT EXPENSES

Use of outside consultants as well as copies, blueprints, survey stakes, monuments, computer plots, telephone, travel (out of area) and all similar charges directly connected with the work will be charged at cost plus ten percent (10%). Mileage will be charged at the current federal mileage reimbursement rate. Expert Witness services will be charged at three (3) times listed rate and will include all time for research, deposition, court appearance and expert testimony.

ANNUAL ESCALATION

Standard fee rates provided for each classification are subject to an annual escalation increase of 3.5% starting January 1, 2020.

OVERTIME

Overtime for non-exempt employees and/or classifications denoted with an asterisk (*) will be charged at 1.5 x hourly rate; overtime for non-exempt employees and other classification will be charged at 1 x hourly rate.

PREVAILING WAGE RATES

Rates shown with Prevailing Wage "(PW)" annotation are used for field work on projects subject to federal or state prevailing wage law. PW rates are subject to adjustment to meet any DIR prevailing wage increases during the contract.

EXHIBIT B – REVISION TO PARAGRAPH 8, INDEMNIFICATION, OF AGREEMENT

8. INDEMNIFICATION.

8.01 For purposes of the following indemnification provisions (“Indemnification Agreement”), “design professional” has the same meaning as set forth in California Civil Code section 2782.8. If any term, provision or application of this Indemnification Agreement is found to be invalid, in violation of public policy or unenforceable to any extent, such finding shall not invalidate any other term or provision of this Indemnification Agreement and such other terms and provisions shall continue in full force and effect. If there is any conflict between the terms, provisions or application of this Indemnification Agreement and the provisions of California Civil Code Sections 2782 or 2782.8, the broadest indemnity protection for COUNTY under this Indemnity Agreement that is permitted by law shall be provided by CONTRACTOR.

8.02 Indemnification for Design Professional Services Claims:

CONTRACTOR shall indemnify, defend and hold harmless COUNTY, its governing board, directors, officers, employees, and agents against any claims that arise out of, or pertain to, or relate to the negligence, recklessness, or willful misconduct of CONTRACTOR, its employees, subcontractors, and agents in the performance of design professional services under this Agreement, excepting only liability arising from the sole negligence, active negligence or willful misconduct of COUNTY, or defect in a design furnished by COUNTY, but in no event shall the amount of such CONTRACTOR’s liability exceed such CONTRACTOR’s proportionate percentage of fault as determined by a court, arbitrator or mediator, or as set out in a settlement agreement. In the event one (1) or more defendants to any action involving such claim or claims against COUNTY is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, such CONTRACTOR shall meet and confer with the other parties to such action regarding unpaid defense costs.

8.03 Indemnification for All Other Claims or Loss:

For any claim, loss, injury, damage, expense or liability other than claims arising out of CONTRACTOR’s performance of design professional services under this Agreement, CONTRACTOR shall indemnify, defend and hold harmless COUNTY, its governing board, directors, officers, employees, and agents against any claim for loss, injury, damage, expense or liability resulting from or alleging injury to or death of any person or loss of use of or damage to property, arising from or related to the performance of services under this Agreement by CONTRACTOR, its employees, subcontractors or agents, excepting only liability arising from the sole negligence, active negligence or willful misconduct of COUNTY, or defect in a design furnished by COUNTY.

**EXHIBIT C – INCORPORATION OF REQUEST FOR QUALIFICATIONS (RFQ) #10709
AND STATEMENT OF QUALIFICATION DOCUMENTS**

The County invited submittals to Request for Qualifications (RFQ) through RFQ #10709, On-Call Construction Management Services for Various Construction Projects located in Monterey County, California. MNS Engineers, Inc. submitted a responsive and responsible Statement of Qualifications to perform the services listed in RFQ #10709.

RFQ #10709 and the Statement of Qualifications submitted by MNS Engineers, Inc., on file with the Resource Management Agency – Public Works, Parks and Facilities, are hereby incorporated into the Agreement by this reference.