



TO: Mayor and Councilmembers

SUBMITTED BY: Luz "Nina" Buelna, Public Works Director

PREPARED BY: Autumn Glaeser, Assistant Public Works Director

SUBJECT: Professional Design Services Agreement with MNS Engineers, Inc.

for the Glen Annie Creek Culvert Project

RECOMMENDATION:

Authorize the City Manager to execute a Professional Design Services Agreement with MNS Engineers, Inc. in an amount not-to-exceed \$128,550 for Environmental and Design Services with a June 30, 2026, termination date.

BACKGROUND:

The Glen Annie Creek Culvert is located on Cathedral Oaks Road, approximately 200 feet west of its intersection with Glen Annie Road, as shown in Attachment 1. The culvert conveys creek flows beneath Cathedral Oaks Road, while the associated wing walls retain surrounding soil, support the roadway approach, and guide water flow to minimize erosion and protect the culvert's structural integrity.

Due to the high-intensity winter storms of 2022, sections of the creek embankment upstream of the Culvert became undermined, resulting in the collapse of the western wingwall onto the concrete culvert apron. The County of Santa Barbara initially started work on an emergency repair to the culvert but determined this facility was City owned and handed the project over to the City in late 2024 which was beyond the deadline to pursue emergency funding. The County did not include this repair effort in any FEMA funding requests.

In April 2025, the City completed interim repairs to stabilize the eroded embankment and install temporary erosion control measures upstream of the culvert. Attachment 2 includes photographs showing the culvert damage following the 2022 storms, the extent of embankment erosion, and the completed temporary repairs.

This culvert is within a Federal Emergency Management Agency (FEMA) Flood Hazard Zone. The Culvert is vulnerable without the bank protection provided by the concrete wingwall. Without permanent improvements, high-intensity storms present significant

Meeting Date: June 17, 2025

risks to the Culvert and Cathedral Oaks Road, one of three crucial cross-city routes for neighborhood access. The failure of the culvert would have several negative consequences, including flooding, roadway damage, and environmental impacts. Roadway damage, including closure, would cause disruptions to traffic, safe routes to schools, emergency services, and jeopardize the safety of the surrounding neighbors, including Dos Pueblos High School, which is located just downstream of the Culvert.

DISCUSSION:

On May 20, 2025, the City Council authorized the submission of an application for funding through the FEMA and the California Office of Emergency Services (Cal OES) Hazard Mitigation Grant Program, related to the Presidential Disaster Declaration DR-4856 for the Glen Annie Creek Culvert Project. The City qualifies as a sub-applicant for this funding opportunity, as it has a valid Local Hazard Mitigation Plan and is a signatory to the County's Multi-Jurisdictional Hazard Mitigation Plan. Approved applications will follow a cost-share arrangement, with 75% of the funding covered by federal funds and 25% by local contributions.

The City is seeking environmental and design services to assist with permanent repairs to strengthen the culvert structure. This work aims to reduce vulnerabilities and improve resiliency to protect this critical infrastructure. MNS Engineers, Inc. (MNS) has been selected from the City's pre-qualified consultant list approved by City Council on January 17, 2023. Public Works staff recommend approving the Professional Design Services Agreement with MNS for the Glen Annie Creek Culvert Project for a not-to-exceed amount of \$128,550, with a termination date of June 30, 2026 (Attachment 3).

FISCAL IMPACTS:

The Fiscal Year 2024/25 emergency response budget provides sufficient funds for this professional design services agreement. Table 1 outlines the estimated Project costs. The project's anticipated final design and construction cost are reflected in the two-year budget and five-year Capital Improvement Program (CIP).

Table 1: Project Costs

Project Components	Project Costs	Funding Source	Funding Amounts
Environmental	\$63,020	Emergency Response Fund (101-50-5200-	
Final Design	\$65,530	`	\$128,550
Construction	\$5,371,450	Unfunded	\$5,371,450
Total:	\$5,500,000	Total:	\$5,500,000

ENVIRONMENTAL REVIEW:

This Project requires compliance with the California Environmental Quality Act (CEQA) and environmental permitting. Environmental review and documentation will be

Meeting Date: June 17, 2025

conducted during the design phase and finalized upon the Project's construction contract award. The required environmental permits will be secured prior to the commencement of construction.

ALTERNATIVES:

The City Council may elect not to authorize the agreement. If they choose this option, it may delay the improvement of the culvert. Furthermore, ongoing erosion could lead to higher maintenance costs, potential failure of the culvert, and damage to parts of Cathedral Oaks Road.

LEGAL REVIEW BY: Isaac Rosen, City Attorney

APPROVED BY: Robert Nisbet, City Manager

ATTACHMENTS:

- 1. Glen Annie Creek Culvert Project Map
- 2. Glen Annie Creek Culvert Damage and Temporary Repair Photos
- **3.** Agreement for Professional Design Services Between the City of Goleta and MNS Engineers, Inc

ATTACHMENT 1

Glen Annie Creek Culvert Project Map



ATTACHMENT 2

Glen Annie Creek Culvert Damage and Temporary Repair Photos







ATTACHMENT 3

Agreement for Professional Design Services Between the City of Goleta and MNS Engineers, Inc

Project Name: Glen Annie Creek Culvert Project

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

corpc	This AGREEMENT FOR PROFESSIONAL DESIGN SERVICES (herein ed to as "AGREEMENT") is made and entered into this day of, 20, by and between the CITY OF GOLETA, a municipal ration (herein referred to as "CITY"), and MNS ENGINEERS, INC, a prnia Corporation (herein referred to as "CONSULTANT").
SECT	TION A. RECITALS
1.	The CITY has a need for professional environmental and design services for Glen Annie Creek Culvert Project; and
2.	The CITY does not have the personnel able and/or available to perform the services required under this AGREEMENT, and therefore, the CITY desires to contract for professional services to accomplish this work; and
3.	The CITY procured these services in compliance with Goleta Municipal Code Section 3.05.260; and
4.	The City Council, on this day of, 20, approved this AGREEMENT and authorized the City Manager to execute the

SECTION B. TERMS

AGREEMENT.

1. RETENTION AS CONSULTANT

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

2. <u>DESCRIPTION OF SERVICES</u>

The services to be performed by CONSULTANT are as follows:

Professional environmental, construction management, and design Services in conjunction with Glen Annie Creek Culvert Project shall

> City of Goleta Public Works Department and MNS ENGINEERS, INC Page 1 of 36

generally include permitting and design services more particularly set forth in the Scope of Work, attached as Exhibit "A," and incorporated herein.

CONSULTANT shall deliver to CITY the deliverables defined in Exhibit "A."

3. COMPENSATION AND PAYMENT

(a) Maximum and Rate. The total compensation payable to CONSULTANT by CITY for the services under this AGREEMENT SHALL NOT EXCEED the sum of \$128,550 (herein "not to exceed amount"), and shall be earned as the work progresses on the following basis:

Hourly at the hourly rates and with reimbursement to CONSULTANT for those expenses set forth in CONSULTANT's Schedule of Fees marked Exhibit "B," attached and incorporated herein. The rates and expenses set forth in that exhibit shall be binding upon CONSULTANT until June 30, 2026, after which any change in said rates and expenses must be approved in writing by CITY's Project Manager as described in Section 5 (CITY is to be given 60 days notice of any rate increase request), provided the not to exceed amount is the total compensation due CONSULTANT for all work described under this AGREEMENT.

(b) <u>Payment</u>. CONSULTANT shall provide CITY with written verification of the actual compensation earned, which written verification shall be in a form satisfactory to CITY's Project Manager, as described in Section 5. Invoices shall be made no more frequently than on a monthly basis, and describe the work performed (including a list of hours worked by personnel classification). All payments shall be made within 30 days after CITY's approval of the invoice.

4. EXTRA SERVICES

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

5. CITY PROJECT MANAGER AND SERVICES BY CITY

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

6. TERM, PROGRESS AND COMPLETION

The term of this AGREEMENT is from the date first written above to June 30, 2026 unless term of this AGREEMENT is extended, or the AGREEMENT is terminated as provided for herein.

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

7. OWNERSHIP OF DOCUMENTS

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

8. PERSONAL SERVICES/NO ASSIGNMENT/SUBCONTRACTOR

This AGREEMENT is for professional services which are personal to CITY. Gabriel Do-Reynoso is deemed to be specially experienced and is a key member of CONSULTANT's firm, and shall be directly involved in the performance of this work. This key person shall communicate with, and periodically report to, CITY on the progress of the work. Should any such individual be removed from assisting in this contracted work for any reason, CITY may terminate this AGREEMENT. This AGREEMENT may not be assigned or subcontracted without the City Manager's prior written consent.

9. HOLD HARMLESS AND INDEMNITY

- Indemnification and Defense for Professional Service. To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless the CITY and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all claims, losses, liabilities, damages, costs and expenses, including attorney's fees and costs, to the extent they arise out of, pertain to, or relate to the negligence. recklessness. willful misconduct of the CONSULTANT. CONSULTANT's duty to defend shall consist of reimbursement of defense costs incurred by CITY in direct proportion to the CONSULTANT's proportionate percentage of fault. CONSULTANT's percentage of fault shall be determined, as applicable, by a court of law, jury or arbitrator. In the event any loss, liability or damage is incurred by way of settlement or resolution without a court, jury or arbitrator having made a determination of the CONSULTANT's percentage of fault, the parties agree to mediation with a third party neutral to determine the CONSULTANT's proportionate percentage of fault for purposes of determining the amount of indemnity and defense cost reimbursement owed to the CITY.
- (b) For All Other Liabilities. Notwithstanding the foregoing and without diminishing any rights of CITY, for any liability, claim, demand, allegation against CITY arising out of, related to, or pertaining to any act or omission of CONSULTANT, but which is not a design professional service, CONSULTANT shall defend, indemnify, and hold harmless CITY, its officials, employees, and agents ("Indemnified Parties") from and against any and all damages, costs, expenses (including reasonable attorney fees and expert witness fees), judgments, settlements, and/or arbitration awards, whether for personal or bodily injury, property damage, or economic injury, and arising out of, related to, any concurrent or contributory negligence on the part of the CITY, except for the sole or active negligence of, or willful misconduct of the CITY.
- (c) No Waiver. CITY does not waive, nor shall be deemed to have waived, any indemnity, defense or hold harmless rights under this section because of the acceptance by CITY, or the deposit with CITY, of any insurance certificates or policies described in Section 10.

10. INSURANCE

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

Insurance shall include the following (or broader) coverage:

- a) Insurance Services Office Commercial Liability coverage "occurrence" form CG 00 01 or its exact equivalent with an edition date prior to 2004 and with minimum limits of \$1,000,000 per occurrence and \$2,000,000 general aggregate.
- b) Insurance Services Office form number CA 00 01 or equivalent covering Automobile Liability, including hired and non-owned automobile liability with a minimum limit of \$1,000,000 per accident. If the Service Provider owns no vehicles, this requirement may be satisfied by a non-owned and hired auto endorsement to Service Provider's commercial general liability policy.
- c) Workers' Compensation insurance complying with California worker's compensation laws, including statutory limits for workers' compensation and an Employer's Liability limit of \$1,000,000 per accident or disease.
- d) Professional liability insurance that covers the services to be performed in connection with this agreement, in the minimum amount of \$1,000,000 per claim.

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

- a) Except for professional liability insurance, CITY, its employees, officials, agents and member agencies shall be covered as additional insureds. Coverage shall apply to any and all liability arising out of the work performed or related to the contract. Additional insured status under the general liability requirement shall be provided on Insurance Services Office Form CG 20 10, with an edition date prior to 2004, or its equivalent. Additional insured status for completed operations shall be provided either in the additional insured form or through another endorsement such as CG 20 37, or its equivalent.
- b) General and automobile liability insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability. Coverage will not be limited to CITY's vicarious liability.
- c) Professional liability insurance policies inception date, continuity date, or retroactive date must be before the effective date of this agreement. CONSULTANT agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.

City of Goleta
Public Works Department and MNS ENGINEERS, INC
Page 5 of 36

- d) Except for professional liability insurance, liability coverage shall be primary and non-contributing with any insurance maintained by CITY.
- e) Evidence of coverage (including the workers' compensation and employer's liability policies) shall provide that coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except after 30 days' prior written notice has been given to CITY. Such provision shall not include any limitation of liability of the insurer for failure to provide such notice.
- f) No liability insurance coverage provided to comply with this AGREEMENT shall prohibit CONSULTANT, or CONSULTANT's employees, or agents, from waiving the right of recovery prior to a loss. CONSULTANT waives its right of recovery against CITY.
- g) CONSULTANT agrees to deposit with CITY within fifteen days of Notice to Proceed of the Contract certificates of insurance and required endorsements.
- h) There shall be no recourse against CITY for payment of premiums or other amounts with respect to the insurance required to be provided by CONSULTANT hereunder. Any failure, actual or alleged, on the part of CITY to monitor compliance with these requirements will not be deemed as a waiver of any rights on the part of CITY. CITY has no additional obligations by virtue of requiring the insurance set forth herein. In the event any policy of insurance required under this AGREEMENT does not comply with these requirements or is canceled and not replaced, CITY has the right but not the duty to obtain the insurance it deems necessary and any premium paid by CITY will be promptly reimbursed by CONSULTANT or CITY will withhold amounts sufficient to pay premium from CONSULTANT payments.
- i) CONSULTANT agrees to provide immediate notice to CITY of any claim or loss against CONSULTANT arising out of the work performed under this AGREEMENT. CITY assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve CITY.

11. RELATIONSHIP OF CONSULTANT TO CITY

The relationship of the CONSULTANT to CITY shall be that of an independent contractor and that in no event shall CONSULTANT be considered an officer, agent, servant or employee of CITY. CONSULTANT shall be solely

City of Goleta
Public Works Department and MNS ENGINEERS, INC
Page 6 of 36

responsible for any workers compensation insurance, withholding taxes, unemployment insurance, and any other employer obligations associated with the described work.

12. CORRECTIONS

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

13. TERMINATION BY CITY

CITY, by notifying CONSULTANT in writing, may upon 10 calendar days notice, terminate without cause any portion or all of the services agreed to be performed under this AGREEMENT. If termination is for cause, no notice period need be given. In the event of termination, CONSULTANT shall have the right and obligation to immediately assemble work in progress for the purpose of closing out the job. All compensation for actual work performed and charges outstanding at the time of termination shall be payable by CITY to CONSULTANT within 30 days following submission of a final statement by CONSULTANT unless termination is for cause. In such event, CONSULTANT shall be compensated only to the extent required by law.

14. ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE

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

15. <u>AUDIT OF RECORDS</u>

At any time during normal business hours and as often as it may deem necessary, CONSULTANT shall make available to a representative of CITY for examination of all its records with respect to all matters covered by this

City of Goleta
Public Works Department and MNS ENGINEERS, INC
Page 7 of 36

AGREEMENT and will permit CITY to audit, examine and/or reproduce such records. CONSULTANT will retain such financial records, time sheets, work progress reports, invoices, bills and project records for at least two years after termination or final payment under this AGREEMENT.

16. WAIVER; REMEDIES CUMULATIVE

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

17. CONFLICT OF INTEREST

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

18. CONSTRUCTION OF LANGUAGE OF AGREEMENT

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

19. MITIGATION OF DAMAGES

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

20. GOVERNING LAW

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

21. NONDISCRIMINATION

The City reaffirms its ongoing commitment to equality in the conduct of City business, and prohibits any policy, plan, program, custom or practice, including harassment, in the conduct of City business. No discrimination or discriminatory practice shall occur in either employment of persons for, or completion of, the work contemplated by this Agreement, when such discrimination is based on race, color, national origin, or ancestry; religion; sex; gender, gender identity, gender expression, or gender transitioning status; physical disability, mental disability, medical condition, or genetic information; marital or domestic partner status; citizenship status; age; sexual orientation; exercising a legally protected right to an employment leave of absence; status as a victim of domestic violence, sexual assault, or stalking; reproductive health decision-making, or any other classification protected under state or federal law. Among other possible violations of law, a violation of this section exposes CONSULTANT to the penalties provided for in Labor Code Section 1735.

22. TAXPAYER IDENTIFICATION NUMBER

CONSULTANT shall provide CITY with a complete Request for Taxpayer Identification Number and Certification, Form W-9 (Rev. October 2018), as issued by the Internal Revenue Service.

23. NON-APPROPRIATION OF FUNDS

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

24. MODIFICATION OF AGREEMENT

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

25. USE OF THE TERM "CITY"

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

26. PERMITS AND LICENSES

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

27. CAPTIONS

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

28. <u>AUTHORIZATION</u>

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

29. ENTIRE AGREEMENT BETWEEN PARTIES

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

30. PARTIAL INVALIDITY

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

31. NOTICES

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

TO CITY: Attention: Robert Nisbet, City Manager

City of Goleta

130 Cremona Drive, Suite B

Goleta, CA 93117

TO CONSULTANT: Attention: Gabriel Do-Reynoso, PE

MNS Engineers, Inc

201 N. Calle Cesar Chavez, Suite 300

Santa Barbara, CA 93103

32. COUNTERPARTS AND ELECTRONIC/FACSIMILE SIGNATURES

This Agreement may be executed in several counterparts, which may be facsimile or electronic copies. Each counterpart is fully effective as an original, and together constitutes one and the same instrument.

33. FEDERAL REQUIREMENTS

FEMA financial assistance will be used to fund all or a portion of this contract. The Consultant shall comply with all federal requirements including, but not limited to, the following:

- 1. 2 C.F.R. Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which is expressly incorporated herein by reference.
- 2. Federal Contract Provisions attached hereto as **Exhibit "C"** and incorporated herein by reference.

Subcontracts, if any, shall contain a provision making them subject to all of the provisions stipulated in the contract, including but not limited to, 2 C.F.R. Part 200 and the Federal Contract Provisions.

With respect to any conflict between such federal requirements and the terms of this contract and/or the provisions of state law and except as otherwise required under federal law or regulation, the more stringent requirement shall control.

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

CITY OF GOLETA	CONSULTANT
	Docusigned by: Jeff Edwards
Robert Nisbet, City Manager	Jeff Edwards, Vice President
ATTEST	
	Signed by:
	Miranda Patton
Deborah Lopez, City Clerk	Miranda Patton, PE, Secretary
APPROVED AS TO FORM:	
AFFRUVI IJ AG ILJ FURIVI.	

ISAAC ROSEN, CITY ATTORNEY

Signed by: Scott Shapsus
Scott Shapses, Deputy City Attorney

EXHIBIT A

SCOPE OF WORK

<u>Task 1 – Environmental Studies and Documentation and CEQA</u> <u>Compliance</u>

The environmental document associated with the proposed project is Categorical Exemption (CE) under CEQA. After we begin investigating the site and potential impacts anticipated by the project, MNS will reevaluate the CEQA compliance requirements for the project and determine if an Initial Study/Mitigated Negative Declaration (IS/MND) could be required based on the potential for impacts requiring mitigation. No National Environmental Policy Act (NEPA) review is anticipated as there is no federal nexus and no federal funds are anticipated with the project. Under these circumstances, a scope and fee for a revised CEQA approach or a NEPA document and/or additional studies would be provided under separate cover. Additional assumptions associated with the scope and cost estimate for CEQA compliance will be provided below.

Task 1.1 Background Review and Field Surveys

As an initial step, MNS will collect project site data, including land use designations, available local, state, and federal resource mapping, and all available environmental documents addressing the site and the immediately surrounding area. The data and mapping will be saved for use in developing the project description and will serve as the setting for technical analysis and fieldwork. Examples include:

- US Geological Survey topographic maps.
- US Department of Agriculture soil data.
- · Historic and current aerial photographs.
- USFWS National Wetland Inventory Maps.
- RWQCB Basin Plan.
- City of Goleta and County of Santa Barbara General Plans.
- Tree Ordinances.
- Available existing CEQA or NEPA documents that address the project area.

In addition, MNS Team Biologists will conduct a database search of the CDFW California Natural Diversity Database, the California Native Plant Society (CNPS) Electronic Inventory of Rare and Endangered Vascular Plants of California listings, and USFWS Information for Planning and Consultation online system and Critical Habitat mapper to preliminarily identify any special-status biological resources known to occur within the general vicinity of the project site.

Following the collection and review of the project site data and literature search results, the MNS team will conduct a field visit to document existing site conditions and take site photographs from specific locations in support of the environmental analysis. All field visits will be coordinated to include the minimum number of qualified staff necessary and scheduled with the City and County, as applicable, in advance of entering the site. The data collected will be used to prepare project location exhibits and describe existing site conditions and potential environmental constraints with the City. The data and photographs will be used in preparing the analysis in the technical reports and environmental document. MNS will confirm the CEQA strategy for the project with the City after data collection and initial project work has been completed.

Task 1.2 - Coordination and Meetings

The MNS Environmental Lead, Debra Leight, will be available to summarize the project site data, exhibits and photographs collected for the project and present the information to the City of Goleta and to the County of Santa Barbara through any coordination had with the County. City communication may include emails, telephone calls or meetings (in person or via Microsoft Teams) to initiate the scoping of the technical studies and CEQA/NEPA Documentation approach. MNS assumes that the CEQA document will be an IS/MND processed by the City, although depending on the results of the technical analyses, a CE with technical studies may apply. MNS will work with the City on a CEQA strategy after initial project work has been completed.

Task 1.3 – Cultural Resource Technical Report

Material Culture Consulting, Inc. (MCC) Archeologists will conduct a cultural resources record search for previous studies and recorded cultural sites within the project area. The records search will be requested from the Central Coast Information Center, located at University of California, Santa Barbara, including the project location and a one-mile search radius. Other background research into the prehistory, ethnography, and history of the project area will be undertaken as appropriate using existing reports prepared for projects in the surrounding area.

MCC will contact the Native American Heritage Commission (NAHC) in Sacramento to request a review of their Sacred Lands File and to obtain a list of culturally affiliated tribes and interested parties in the general region of the project. MCC will send information-gathering letters to each of the individuals and groups on the list. If MCC does not receive a response from any given party, MCC will make two follow-up attempts using the information provided by NAHC. The results of our outreach efforts will also be included as an appendix in the technical report. MCC assumes all formal consultation, pursuant to Assembly Bill 52 (AB 52), will be conducted by the City.

Following the literature review and receipt of the records search results, a pedestrian field survey of the project area will be conducted by qualified MCC team archeologists to identify cultural resources that may be visible on the surface and to assess current site conditions. MCC is aware that the damaged culvert is historic in age, being constructed in 1965. MCC will record the culvert as part of the field effort and will document the resource thoroughly for evaluation purposes. We assume that no additional cultural resources will be discovered during the course of survey. If resources are discovered, they must be documented using State of California Department of Parks and Recreation Form 523. In this case, we will communicate the discovery immediately so that appropriate steps can be taken, including cost augments for recordation.

MCC will prepare cultural resources technical report will include a project description, brief culture history context, summary of the CCIC record search, and NAHC and Native American outreach, figures, methods, and results. An important component of the report will include the formal evaluation of the culvert as per CEQA and its potential for inclusion on the California Register of Historical Resources (CRHR). As stated above, full results of the CCIC records search and Native American outreach will be included as appendices to the report. This evaluation shall be conducted by a qualified Archaeologist with extensive experience in the documentation and assessment of historic-period infrastructure features, including culverts, ditches, and road-related elements. While CEQA does not require evaluations to be conducted by individuals from a specific discipline, it does require that significance be assessed according to the criteria of the CRHR by individuals with appropriate expertise.

Assumptions:

- Project does not have a federal component nor will be overseen by Caltrans.
- Pedestrian field survey will be conducted by one archaeologist.
- Attendance at meetings will not be required.
- Cultural records search fees will not exceed \$500.00.
- No additional cultural resources will be identified within the project area.
- Evaluation of the culvert may be performed by an archaeologist skilled in the recordation and evaluation of built environment resources as per CEQA Guidelines §15064.5.
- All deliverables will be submitted in electronic PDF format.
- All deliverables will include two rounds of consolidated, minor editorial comments from the City.

Deliverables:

 Draft and Final Cultural Resources Technical Report (including record search, letters and other correspondences)

City of Goleta
Public Works Department and MNS ENGINEERS, INC
Page 15 of 36

Task 1.4 – CEQA Document – Categorical Exemption (CE)

1.4.1 Environmental Document, Notice of Exemption

The proposed project improvements will involve culvert repair that may not result in permanent impacts in the channel. Therefore, this scope of work provides the necessary work program to support a CE.

Public Resources Code section 15301 categorically exempts projects from CEQA analysis when the project involves "the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features involving no expansion of existing or former use," which we believe could apply to the culvert project. The exemption specifically applies to Section 15301(d) for the repair of a public structure.

MNS will prepare a Notice of Exemption (NOE) pursuant to CEQA Guidelines Section 15301 (Existing Facilities).

1.4.2 Technical Memorandum

We will complete the NOE form, as well as prepare a technical memorandum that outlines the proposed project components and compliance with the requirements of CEQA Guidelines Section 15301. We will submit a draft of the NOE and Technical Memo to the City for review. MNS will make revisions based on one compiled set of City comments, and then finalize the NOE. It is assumed the City will be responsible for payment of the filing fees, if any.

Deliverables:

Draft and Final NOE and Technical Memorandum

Assumptions:

- Environmental document assumed to be a Categorical Exemption (CE) under CEQA after review of project details and initial site reviews.
- No NEPA compliance is anticipated as the City plans to use local funding and there are no federal funds anticipated with the project.
- Assumes no Caltrans involvement or Caltrans required environmental documents will be prepared for the project.
- No in-person meetings anticipated by MNS Planners. Up to three calls with the City are anticipated.
- Comments anticipated to be submitted by the City only, and no sets of County and Caltrans comments are anticipated.
- MNS will provide document uploads onto the CEQANet website if provided permission by the City; otherwise, the City will provide the upload.

City of Goleta
Public Works Department and MNS ENGINEERS, INC
Page 16 of 36

Task 1.5 – Regulatory Permitting

Task 1.5.1 Application to USACE for Regional General Permit 63.

MNS will assist in the preparation of a Regional General Permit Application (RGP 63), which will qualify as a type of 404 Permit, to the USACE for the repair work on the culvert structure. This effort will involve a delineation of the bed and banks of Glen Annie Creek for submission to the USACE as a Water of the US and to CDFW and the Regional Water Quality Control Board as a Water of the State.

Task 1.5.1.1 Aquatic Resource Delineation

Assumptions:

- A one-day wetland delineation and up to 16 hours of coordination time with the USACE, CDFW, Santa Barabara County, and the City of Goleta.
- Any additional efforts would be covered under a separate scope of work.

Deliverables:

- Aquatic Resource Delineation
- Report
- Submission/Coordination with Agencies

Task 1.5.1.2 Regional General Permit

Assumptions:

- Up to 24 hours for permit preparation
- Up to 16 hours for coordination with USACE, Santa Barabara County, and the City of Goleta.
 - Any additional efforts would be covered under a separate scope of work.

Deliverables:

- Regional General Permit Coordination
- Submission

Task 1.5.2 Application to Regional Water Quality Control Board for 401 Permit MNS will assist in the preparation of a 401 permit application to the Regional Water Quality Control Board for the repair work on the culvert structure.

Assumptions:

 Up to 24 hours of permit preparation and up to 16 hours of coordination time with CDFW, Santa Barabara County, and the City of Goleta.

City of Goleta
Public Works Department and MNS ENGINEERS, INC
Page 17 of 36

Any additional efforts would be covered under a separate scope of work.

Deliverables:

- 401 Permit Coordination
- Submission

Task 1.5.3 LSAA Application and Coordination

MNS will coordinate and assist with ensuring that all repair work is covered by the routine maintenance LSAA through Santa Barbara County. MNS reached out to County staff Andrew Raaf, and their LSAA expires in 2025. They are willing to include this work in their renewal, but we prudent.

Assumptions:

- Up to 24 hours of permit preparation time
- Up to 16 hours of coordination time and associated reporting.
- Any additional efforts would be covered under a separate scope of work.

Deliverables:

- LSAA Coordination
- Reporting

Task 2 - Survey

MNS will survey the Glen Annie culvert. The topographic survey will include two days of survey with a two-person crew. The survey will include the Cathedral Oaks roadway curb, both upstream and downstream culverts, wingwalls, concrete inverts, cutoff walls, and approximately 30 feet beyond Glen Annie Creek.

The scope of work will include:

- 1. Topographic Survey
- 2. Research Right-of-Way
- 3. Drafting

Task 3 - Wingwall Repair (NW Collapsed Wingwall)

MNS will provide Plans, Specifications, and Estimate for the scope of work to remove and replace the existing collapsed wingwall at the northwest corner of the culvert. MNS will utilize the survey and as-built plans of the Glen Annie Creek culvert.

The scope of work will include:

- 1. Project Management
- 1.1. Site visits (2)
- 1.2. Meetings (3)
- 1.3. QA/QC
- 2. Plans
- 2.1. Warped Wingwall Design
- 2.2. Rock Slope Protection Design
- 2.3. Repair of Undermined Channel Concrete Invert
- 3. Specifications
- 4. Engineer's Estimate

Task 4 – Riprap (Upstream Cut-off Wall)

MNS will provide Plans, Specifications, and Estimate for the scope of work to install riprap at the upstream end of the culvert as noted in the Caltrans Bridge Inspection report. The existing condition may cause structural concerns with the existing culvert if the scour is allowed to continue. MNS will utilize the survey and as-built plans of the Glen Annie Creek culvert.

The scope of work will include:

- 1. Project Management
- 1.1. QA/QC
- 2. Plans
- 2.1. Riprap
- 3. Specifications
- 4. Engineer's Estimate

<u>Task 5 – Riprap (Downstream Cut-off Wall)</u>

MNS will provide Plans, Specifications, and Estimate for the scope of work to install riprap at the outlet end of the culvert as noted in the Caltrans Bridge Inspection report. The existing condition may cause structural concerns with the existing culvert if the scour is allowed to continue. MNS will utilize the survey and as-built plans of the Glen Annie Creek culvert.

The scope of work will include:

- 1. Project Management
- 1.1. QA/QC
- 2. Plans
- 2.1. Riprap
- 3. Specifications
- 4. Engineer's Estimate

City of Goleta
Public Works Department and MNS ENGINEERS, INC
Page 19 of 36

Task 6 - Concrete Steps (Downstream end of Culvert)

MNS will provide Plans, Specifications, and Estimate for the scope of work to install concrete step at the outlet end of the culvert. As noted in the Caltrans Bridge Inspection report there is a 3 foot drop from the downstream end of the culvert to the bottom the concrete creek invert. The existing condition raises concerns for steelhead trout migration. MNS will utilize the survey and as-built plans of the Glen Annie Creek culvert.

The scope of work will include:

- 1. Project Management
- 1.1. QA/QC
- 2. Plans
- 2.1. Concrete step(s)
- 3. Specifications
- 4. Engineer's Estimate

Task 7 – Repair Delaminated Portions of Culvert Walls(Upstream)

MNS will provide Plans, Specifications, and Estimate for the scope of work to repair upstream end of the culvert as noted in the Caltrans Bridge Inspection report. Delamination of the culvert walls was caused by the collapse of the northwest wingwall and by a large eucalyptus on the northeast wingwall. MNS will inspect the delaminated areas to determine the extent of repairs required.

The scope of work will include:

- 1. Project Management
- 1.1. QA/QC
- 2. Demolition Plans
- 2.1. Remove tree roots of the dead eucalyptus
- Plans
- 3.1. Backfill area of tree root removal
- 3.2. Concrete and reinforcement repair
- 4. Specifications
- 5. Engineer's Estimate

Task 8 – Vehicle Guardrail Downstream Culvert

MNS will provide Plans, Specifications, and Estimate for the scope of work to prepare plans for the installation of guardrail for the downstream culvert.

The scope of work will include:

1. Project Management

City of Goleta
Public Works Department and MNS ENGINEERS, INC
Page 20 of 36

- 1.1. QA/QC
- 2. Plans
- 3. Specifications
- 4. Engineer's Estimate

Note: MNS can assist under contract with staff reports, bid support, and PM/CM support as needed for all tasks listed above, but this ROM focuses on the design aspect only.

MNS will prepare a complete and coordinated plan set, specification document, and estimate incorporating all tasks selected by the City to be included in the design.

Cost Proposal Summary:

The tasks outlined above will be combined into one complete PS&E package ready for release for contractor bid.

MNS will provide this service on a time and materials basis as per our existing contracted fee schedule. Modifications to the scope after award will justify additional time for phases and MNS will notify the City prior to exceeding the Not To Exceed values below with justification as to the expenditures to complete the tasks. Please see attached MNS Cost Proposal for breakdown of cost estimate for this ROM.

Total Time & Materials Services (NTE): \$128,550

Assumptions:

- City of Goleta will provide any CAD, if available, of Glen Annie Culvert.
- City Staff and MNS will determine the extent of undermining of the existing upstream concrete channel invert near the area of the collapsed wingwall.
- City Staff and MNS will determine if there is any undermining of the downstream cut-off wall.
- City of Goleta will provide redline comments on PS&E submittal and return to MNS within two weeks after review for final submittal.

EXHIBIT B

SCHEDULE OF FEES

			DESIGN		PLANNING SURVEY														
8-May-25			JESTON					LAMILING					SURVET						
MNS Cost Proposal Glen Annie Creek Wingwall Repair Goleta, CA.		Senior Project Manager	Project Engineer	Assistant Engineer	Environmental Lead	Senior Environmental Planner	Associate Planner / G1S	Regulatory Lead	Regulatory Permitting	Editor	Biological Specialist	Principal Surveyor	Associate Project Surveyor	Party Chief	Chain Person	Supervising Cadd	Survey Assistant	al Resource Hours	al Resource Costs
		\$275	\$200	\$165	\$230	\$140	\$170	\$215	\$170	\$120	\$240	\$265	\$165	\$180	\$150	\$170	\$125	Total	Total
Task 1 1 - Environmental	Task 1																		
1.1 Background Review and Field Surveys	Task 1.1				1	4		3	8		3							19	\$3,515
1.2 Coordination and Meetings	Task 1.2				9			2			2							13	\$2,980
1.3 Cultural Resources Technical Report (by MCC)	Task 1.3																		\$11,385
1.4 CEQA Document – Categorical Exemption 1.4.1 Notice of Exemption	Task 1.4								2	-	-							20	\$3,280
1.4.1 Notice of Exemption 1.4.2 Technical Memorandum	Task 1.4.1 Task 1.4.2				1 4	6 20	8	2	2	6	3							20 50	\$8,200
1.4.2 Technical memorandum 1.5 Permitting and Agency Coordination	Task 1.4.2					20				0								50	p0,200
1.5.1.1 Aquatic Resource Delineation	Task 1.5.1.1							24		4	10							38	\$8,040
1.5.1.2 Regional General Permit	Task 1.5.1.2					4		24			12							40	\$8,600
1.5.2 401 Permit Coordination	Task 1.5.2					4		16	12		8							40	\$7,960
1.5.3 LSAA Coordination	Task 1.5.3							16	12		12							40	\$8,360
Other Direct Costs Task 1 Subtotal					15			91	36	18	54							260	\$700 \$63,020
Task 1 Subtotal					1.5	.38	8	91	36	18	54							260	\$63,020
2 - Survey	Task 2																		
2.1 Topo & RW (Fieldwork and drafting)	Task 2.1											6	4	16	16	12	4	58	\$10,070
Task 2 Subtotal												6	4	16	16	12	4	58	\$10,070
Task 3																			
3 - Civil Design Support - NW Wingwall	Task 3																		
3.1 Project Management	Task 3.1	5	4															9	\$2,175
3.2 Plans	Task 3.2 Task 3.3	2	15	10														25 20	\$4,650 \$3.870
3.3 Specifications 3.4 Engineer Estimate	Task 3.3	۷.	10 10	4														14	\$2,660
Task 3 Subtotal	Tusk 5.7	7	39	22														68	\$13,355
Task 4																			
4 - Civil Design Support - Riprap(Upstream Cutoff Wall)	Task 4																		
4.1 Project Management	Task 4.1	3	4															7	\$1,625
4.2 Plans	Task 4.2		8	10														18	\$3,250
4.3 Specifications	Task 4.3	1	5	4														10	\$1,935 \$1,200
4.4 Engineer Estimate Task 4 Subtotal	Task 4.4	4	6 23	14														6	\$8,010
Task 5			4.3															-41	\$6,010
5 - Civil Design Support - Riprap(Downstream Cutoff Wall)	Task 5																		
5.1 Project Management	Task 5.1	3	4															7	\$1,625
5.2 Plans	Task 5.2		8	10														18	\$3,250
5.3 Specifications	Task 5.3	1	5	4														10	\$1,935
5.4 Engineer Estimate Task 5 Subtotal	Task 5.4		6	1.4														6	\$1,200 \$8,010
Task 5 Subtotal Task 6				- 0															\$15,010
6 - Civil Design Support - Concrete Steps (Downstream)	Task 6																		
6.1 Project Management	Task 6.1	3	4															7	\$1,625
6.2 Plans	Task 6.2		10	8														18	\$3,320
6.3 Specifications	Task 6.3	1	4	3														8	\$1,570
6.4 Engineer Estimate	Task 6.4		6															6	\$1,200
Task 6 Subtotal Task 7		4	24	11														39	\$7,715
7 - Civil Design Support - Repair Delaminated Concrete Walls	Task 7																		_
7.1 Project Management	Task 7.1	4	5															9	\$2,100
7.2 Demolition Plan	Task 7.2		8	6														14	\$2,590
7.3 Plans	Task 7.3		10	8														18	\$3,320
7.4 Specifications	Task 7.4	2	4	3														9	\$1,845
7.5 Engineer Estimate	Task 7.5		6															6	\$1,200
Task 7 Subtotal Task 8		- 6	33	17														56	\$11,055
8 - Civil Design Support - Vehicle Guardrail (Downstream)	Task 8																		
8.1 Project Management	Task 8.1	3	4															7	\$1,625
8.2 Plans	Task 8.2		10	8														18	\$3,320
8.3 Specifications	Task 8.3	1	4	3														8	\$1,570
8.4 Engineer Estimate	Task 8.4		4															4	\$800
Task 8 Subtotal		4	22	11														37	\$7,315
TOTAL	Total Hours	29	164	89	15	38	8	91	36	18	54	6	4	16	16	12	4	600	\$128,550



PROJECT/PROGRAM MANAGEMENT

Principal-In-Charge	\$340
Senior Project/Program Manager	325
Project/Program Manager	275
Assistant Project/Program Manage	er 255
Senior Project Coordinator	195
Project Coordinator	165

ENGINEERING

Principal Engineer	\$303
Lead Engineer	270
Supervising Engineer	255
Senior Project Engineer	235
Project Engineer	210
Associate Engineer	190
Assistant Engineer	175

SURVEYING

Senior Project Surveyor 210 Project Surveyor 185 Associate Project Surveyor 175 Assistant Project Surveyor 160 Party Chief (PW) 190 Chainperson (PW) 160	Principal Surveyor	.\$280
Supervising Surveyor 230 Senior Project Surveyor 210 Project Surveyor 185 Associate Project Surveyor 175 Assistant Project Surveyor 160 Party Chief (PW) 190 Chainperson (PW) 160 One-Person Survey Crew (PW) 225	Lead Surveyor	270
Project Surveyor 185 Associate Project Surveyor 175 Assistant Project Surveyor 160 Party Chief (PW) 190 Chainperson (PW) 160	Supervising Surveyor	230
Associate Project Surveyor	Senior Project Surveyor	210
Assistant Project Surveyor	Project Surveyor	185
Party Chief (PW)	Associate Project Surveyor	175
Chainperson (PW)160	Assistant Project Surveyor	160
	Party Chief (PW)	190
One-Person Survey Crew (PW) 225	Chainperson (PW)	160
	One-Person Survey Crew (PW)	225

TECHNICAL SUPPORT

CADD Manager	\$210
Supervising Technician	_180
Senior Technician	_170
Engineering Technician	130

CONSTRUCTION MANAGEMENT

Principal Construction Manager.	\$330
Senior Construction Manager	290
Senior Resident Engineer	265
Resident Engineer	250
Structure Representative	245
Construction Manager	230
Assistant Resident Engineer	210
Sr. Construction Inspector (PW) .	185
Construction Inspector (PW)	177
Office Administrator	135
DI ANIAUNIC	

PLANNING

Planning Director	\$23
City Planner/Planning Manager	22
Principal Planner	20
Senior Planner	
Associate Planner	16
Assistant Planner	13
Planning Technician	11

ADMINISTRATIVE SUPPORT

Senior Management Analyst\$	195
Management Analyst	165
IT Technician	150
Graphics/Visualization Specialist	160
Administrative Assistant	105

GOVERNMENT SERVICES

City Engineer	\$265
Deputy City Engineer	
Assistant City Engineer	225
Plan Check Engineer	185
Permit Engineer	175
City Inspector	
Senior City Inspector (PW)	185
City Inspector (PW)	177
Principal Stormwater Specialist	190
Senior Stormwater Specialist	180
Stormwater Specialist	170
Stormwater Technician	150
Building Official	250
Senior Building Inspector	200
Building Inspector	175
Senior Grant Writer	190
Grant Writer	180
Associate Grant Writer	160
Assistant Grant Writer	145

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 fifteen percent (15%). Mileage will be charged at the current federal mileage reimbursement 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 and are subject to increases per DIR.

ANNUAL ESCALATION

Standard fee rates provided for each classification are subject to 5% annual escalation or the most recent US Bureau of Labor Statistics Consumer Price Index, whichever is higher.

OVERTIME

Overtime for non-exempt employees will be charged at 1.5 x hourly rate; overtime for exempt employees and other classifications will be charged at 1.x hourly rate.

EXHIBIT C

FEDERAL CONTRACT PROVISIONS

During the performance of this contract, **MNS ENGINEERS, INC** (the "Consultant") shall comply with all applicable federal laws and regulations including but not limited to the federal contract provisions in this Exhibit. In this Exhibit, the term "Agency" shall mean the local agency entering into this contract with the Consultant.

- 1. CONTRACTING WITH SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISE AND LABOR SURPLUS AREA FIRMS (2 C.F.R. § 200.321)
 - A. Consultant shall be subject to 2 C.F.R. § 200.321 and will take affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible and will not be discriminated against on the grounds of race, color, religious creed, sex, or national origin in consideration for an award.
 - B. Affirmative steps shall include:
 - i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
 - iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and
 - v. Using the services/assistance of the Small Business Administration (SBA), and the Minority Business Development Agency (MBDA) of the Department of Commerce.

Consultant shall submit evidence of compliance with the foregoing affirmative steps when requested by the Agency.

Notwithstanding the foregoing, the affirmative steps requirements detailed above do not apply in the case of a noncompetitive procurement made

under the emergency exception/exigency exception to competitive procurements.

2. COST PRINCIPLES (2 C.F.R. PART 200, SUBPART E)

A. If any indirect costs will be charged to the Agency under this contract, such costs must conform to the cost principles set forth under the Uniform Rules at 2 C.F.R. Part 200, subpart E ("Cost Principles"). In general, costs must (i) be necessary and reasonable; (ii) allocable to the grant award; (iii) conform to any limitations or exclusions set forth in the Cost Principles; (iv) be adequately documented; and (v) be determined in accordance with generally accepted accounting principles ("GAAP"), except, for state and local governments and Indian tribes only, as otherwise provided for in 2 C.F.R. Part 200, subpart E. 2 C.F.R. § 200.403. Costs that are determined unallowable pursuant to a federal audit are subject to repayment by Consultant.

3. ACCESS TO RECORDS & RECORD RETENTION (2 C.F.R. 200.336)

- A. Consultant shall comply with 2 C.F.R. § 200.336 and provide the Federal Agency, Inspectors General, the Comptroller General of the United States, Agency, and the State of California or any of their authorized representatives access, during normal business hours, to documents, papers, books and records which are directly pertinent to this contract for the purposes of making and responding to audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to the Consultant personnel for the purpose of interview and discussion related to the books and records.
- B. The Consultant agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- C. The Consultant agrees to provide the Federal Agency or its authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- 4. REQUIRED CONTRACT PROVISIONS IN ACCORDANCE WITH APPENDIX II TO PART 200 CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS (2 C.F.R. § 200.326)

City of Goleta
Public Works Department and MNS ENGINEERS, INC
Page 25 of 36

- A. Appendix II to Part 200 (A); Appendix II to Part 200 (B): Remedies for Breach; Termination for Cause/Convenience. If the contract is in excess of \$10,000 and the contract does not include provisions for both termination for cause and termination for convenience by the Agency, including the manner by which it will be effected and the basis for settlement, then the following termination clauses shall apply. If the contract is for more than the simplified acquisition threshold (see 2 C.F.R. § 200.88) at the time the contract is executed and does not provide for administrative, contractual, or legal remedies in instances where Contractor violates or breaches the terms of the contract, then the following termination clauses shall apply and have precedence over the contract. Otherwise, the following termination clauses shall not be applicable to the contract.
 - i. <u>Termination for Convenience.</u> The Agency may, by written notice to Consultant, terminate this contract for convenience, in whole or in part, at any time by giving written notice to Consultant of such termination, and specifying the effective date thereof ("Notice of Termination for Convenience"). If the termination is for the convenience of the Agency, the Agency shall compensate Provider for work or materials fully and adequately provided through the effective date of termination. No amount shall be paid for unperformed work or materials not provided, including anticipated profit. Consultant shall provide documentation deemed adequate by the Agency to show the work actually completed or materials provided by Consultant prior to the effective date of termination. This contract shall terminate on the effective date of the Notice of Termination.
 - ii. <u>Termination for Cause.</u> If Consultant fails to perform pursuant to the terms of this contract, the Agency shall provide written notice to Consultant specifying the default ("Notice of Default"). If Consultant does not cure such default within ten (10) calendar days of receipt of Notice of Default, the Agency may terminate this contract for cause. If Consultant fails to cure a default as set forth above, the Agency may, by written notice to Consultant, terminate this contract for cause, in whole or in part, and specifying the effective date thereof ("Notice of Termination for Cause"). If the termination is for cause, Consultant shall be compensated for that portion of the work or materials

City of Goleta
Public Works Department and MNS ENGINEERS, INC
Page 26 of 36

provided which has been fully and adequately completed and accepted by the Agency as of the date the Agency provides the Notice of Termination. In such case, the Agency shall have the right to take whatever steps it deems necessary to complete the project and correct Consultant's deficiencies and charge the cost thereof to Consultant, who shall be liable for the full cost of the Agency's corrective action, including reasonable overhead, profit and attorneys' fees.

- iii. Reimbursement; Damages. The Agency shall be entitled to reimbursement for any compensation paid in excess of work rendered or materials provided and shall be entitled to withhold compensation for defective work or other damages caused by Consultant performance of the work.
- Additional Termination Provisions. Upon receipt of a Notice İν. of Termination, either for cause or for convenience, Consultant shall promptly discontinue the work unless the Notice directs to the contrary. Consultant shall deliver to the Agency and transfer title (if necessary) to all provided materials and completed work, and work in progress including drafts, documents, plans, forms, maps, products, graphics, computer programs and reports. The rights and remedies of the parties provided in this Section are in addition to any other rights and remedies provided by law or under this contract. Consultant acknowledges the Agency's right to terminate this contract with or without cause as provided in this Section, and hereby waives any and all claims for damages that might arise from the Agency's termination of this contract. The Agency shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be entitled to payment for unperformed work or materials not provided and shall not be entitled to damages or compensation for termination of work or supply of materials. terminates this contract for cause, and it is later determined that the termination for cause was wrongful, the termination shall automatically be converted to and treated as a termination for convenience. In such event, Consultant shall be entitled to receive only the amounts payable under this Section, and Consultant specifically waives any claim for any

City of Goleta
Public Works Department and MNS ENGINEERS, INC
Page 27 of 36

other amounts or damages, including, but not limited to, any claim for consequential damages or lost profits. The rights and remedies of the Agency provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law, equity or under this contract including, but not limited to, the right to specific performance.

- B. Appendix II to Part 200 (C) Equal Employment Opportunity: Except as otherwise provided under 41 C.F.R. Part 60, Consultant shall comply with the following equal opportunity clause, in accordance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and implementation regulations at 41 C.F.R. Chapter 60:
 - i. Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Consultant will take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment upgrading, demotion, transfer, recruitment, or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Agency setting forth the provisions of this nondiscrimination clause.
 - ii. Consultant will, in all solicitations or advertisements for employees placed by or on behalf of Consultant, state that all qualified applicants will receive consideration for employment without regard to their race, color, religion, sex, or national origin.
 - iii. Consultant 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

City of Goleta
Public Works Department and MNS ENGINEERS, INC
Page 28 of 36

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 Consultant's legal duty to furnish information.

- iv. Consultant 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 by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- v. Consultant 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.
- vi. Consultant will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- vii. In the event of Consultant's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No.11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No.11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

City of Goleta
Public Works Department and MNS ENGINEERS, INC
Page 29 of 36

- viii. Consultant will include the provisions of paragraphs (i) through (viii) 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 No. 11246 of September 24,1965, so that such provisions will be binding upon each subcontractor or Consultant. Consultant will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event Consultant becomes involved in, or is threatened with, litigation with a subcontractor or Consultant as a result of such direction, Consultant may request the United States to enter into such litigation to protect the interests of the United States.
- C. Appendix II to Part 200 (D) Davis-Bacon Act; Copeland Act: Not applicable to this contract.
- D. <u>Appendix II to Part 200 (E) Contract Work Hours and Safety</u> Standards Act:
 - If this contract is in excess of \$100,000 and involves the employment of mechanics or laborers, Consultant shall comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Under 40 U.S.C. 3702, each contractor must be required to 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 permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- ii. 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.
- iii. In the event of any violation of the clause set forth in paragraph (ii) of this section the contractor and any subcontractor responsible therefore shall be liable for the wages. In addition, such contractor 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 watchmen and guards, employed in violation of the clause set forth in paragraph (ii) of this section, in the sum of \$10 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 (ii) of this section.
- iv. The Agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Consultant or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (iii) of this section.
- v. The Consultant or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (ii) through (v) of this Section and also a clause requiring the

City of Goleta
Public Works Department and MNS ENGINEERS, INC
Page 31 of 36

subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (ii) through (v) of this Section.

- E. Appendix II to Part 200 (F) Rights to Inventions Made Under a Contract or Agreement:
 - i. If the Federal award meets the definition of "funding agreement" under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by the Agency.
 - ii. The regulation at 37 C.F.R. § 401.2(a) currently defines "funding agreement" as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.
 - iii. This requirement does not apply to the Public Assistance, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of "funding agreement."

- F. Appendix II to Part 200 (G) Clean Air Act and Federal Water Pollution Control Act: If this contract is in excess of \$150,000, Consultant shall comply with all applicable standards, orders, or requirements issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).
 - i. Pursuant to the Clean Air Act, (1) Consultant 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., (2) Consultant agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Federal awarding agency and the appropriate Environmental Protection Agency Regional Office, and (3) Consultant agrees to include these requirements in each subcontract exceeding \$150,000.
 - ii. Pursuant to the Federal Water Pollution Control Act, (1) Consultant 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., (2) Consultant agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Federal awarding agency and the appropriate Environmental Protection Agency Regional Office, and (3) Consultant agrees to include these requirements in each subcontract exceeding \$150,000.
- G. Appendix II to Part 200 (H) Debarment and Suspension: A contract award (see 2 C.F.R. § 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 C.F.R. part 1986 Comp., p. 189) and 12689 (3 C.F.R. part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
 - i. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such Consultant is

City of Goleta
Public Works Department and MNS ENGINEERS, INC
Page 33 of 36

required to verify that none of the Consultant, its 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. § 180.935).

- ii. Consultant must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- iii. This certification is a material representation of fact relied upon by Agency. If it is later determined that Consultant did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Agency, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- iv. Consultant warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in any federal programs. Consultant also agrees to verify that all subcontractors performing work under this contract are not debarred, disqualified, or otherwise prohibited from participation in accordance with the requirements above. Consultant further agrees to notify the Agency in writing immediately if Consultant or its subcontractors are not in compliance during the term of this contract.
- H. Appendix II to Part 200 (I) Byrd Anti-Lobbying Act: If this contract is in excess of \$100,000, Consultant shall have submitted and filed the required certification pursuant to the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1353). If at any time during the contract term funding exceeds \$100,000.00, Consultant shall file with the Agency the Federal Standard Form LLL titled "Disclosure Form to Report Lobbying." Consultants that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal 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 obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-

City of Goleta
Public Works Department and MNS ENGINEERS, INC
Page 34 of 36

Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

I. Appendix II to Part 200 (J) – Procurement of Recovered Materials:

- Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. 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.
- ii. In the performance of this contract, the Consultant 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.
- iii. Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program.

5. MISCELLANEOUS PROVISIONS

- A. The Consultant shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA preapproval.
- B. This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The Consultant will comply with all

- applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.
- C. Consultant acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Consultant's actions pertaining to this contract.
- D. The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the Agency, Consultant, any subcontractors or any other party pertaining to any matter resulting from the contract.
- E. <u>General and Administrative Expenses And Profit For Time And Materials Contracts/Amendments.</u>
 - i. General and administrative expenses shall be negotiated and must conform to the Cost Principles.
 - ii. Profit shall be negotiated as a separate element of the cost. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the Consultant, the Consultant's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
 - iii. Any agreement, amendment or change order for work performed on a time and materials basis shall include a ceiling price that Consultant exceeds at its own risk.