

## CONSULTING SERVICES AGREEMENT

*(To be used only for Architectural, Engineering or Land Surveying Services.)*

1. Parties. The parties to this Consulting Services Agreement ("Agreement"), listed below, mutually agree and promise as follows:

(a) Agency: *(select one)*

- Contra Costa County for its Department named below
- Contra Costa County Flood Control and Water Conservation District
- Contra Costa Fire Protection District
- East Contra Costa Fire Protection District
- Housing Authority of the County of Contra Costa
- Contra Costa County Redevelopment Agency

(i) Department *(if applicable):* Public Works Department

(ii) Department Head means the individual named below or his or her designee *(select one):*

- Director of General Services
- Public Works Director/Chief Engineer
- Fire Chief
- Housing Authority Executive Director
- Deputy Director - Redevelopment

(iii) Agency Mailing Address: Design Division  
255 Glacier Drive  
Martinez, CA 94553  
Attn: Jason Chen

(b) Consultant's Name & Address: MGE Engineering, Inc.  
7415 Greenhaven Drive, Suite 100  
Sacramento, CA 95831  
Attn: H. Fred Huang

(i) Type of Business Entity: Corporation  
(e.g., individual, corporation, sole proprietorship, partnership, limited liability company)

If corporation, add State of incorporation: California

(ii) Federal Taxpayer I.D. or SSN: 68-0231292

(iii) License Number: C33121 (H. Fred Huang)

2. Project Name, Number, & Location: On-Call Structural Engineering Consulting Services  
Various Project Numbers  
Various Project Locations

3. Term. The effective date of this Agreement is November 10, 2009. It terminates on November 9, 2011 unless sooner terminated as provided herein.

4. Payment Limit. Payments under this Agreement cannot exceed: \$150,000.

5. Legal Authority. This Agreement is entered into under and subject to Government Code Section 4525 or Section 31000, or:

- Health and Safety Code Section 13861 (*Fire Protection Districts*)
- Health and Safety Code Section 34314 (*Housing Authority*)
- Health and Safety Code Section 33125 (*Redevelopment Agency*)

6. Attachments. The following documents are attached to this Agreement and incorporated herein by reference, and all references to this Agreement include all of the terms in each of the attached documents:

- ✓ General Conditions (*always attached*)
- ✓ Special Conditions
- ✓ Appendix A: Scope of Services (*always attached*)
- ✓ Appendix B: Payment Provisions (*always attached*)
- ✓ Appendix C: Project Personnel (*always attached*)

7. Signatures. These signatures attest the parties' agreement hereto:

**CONSULTANT**

**SIGNATURE A**

Consultant's Name: MGE Engineering, Inc.,  
a California corporation.  
(Type of business entity)

By H. F. Huang  
(Signature of individual or officer)  
H. F. HUANG, CEO/President  
(Print name and title, if applicable)

**SIGNATURE B**

By H. F. Huang  
(Signature of individual or officer)  
H. F. HUANG, CFO/secretary  
(Print name and title, if applicable)

Note to Consultant: For corporations, two officers must sign the Agreement. The first signature (Signature A) must be that of the chairman of the board, president, or vice-president; the second signature (Signature B) must be that of the secretary, assistant secretary, chief financial officer, or assistant treasurer. (Civil Code Section 1190 and Corporations Code Section 313.) The acknowledgment below must be signed by a Notary Public.

**ACKNOWLEDGMENT**

State of California )  
County of Sacramento )

On 9-10-09, before me, Denise F. Mayo, Notary Public, personally appeared H. Fred Huang (insert name(s) and title(s) of the officer(s) signing on behalf of the Consultant), who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS MY HAND AND OFFICIAL SEAL

Denise F. Mayo  
Signature

(Notary's Seal)



**AGENCY**

(a) If Agreement is approved by Agency governing body (required if Payment Limit exceeds \$100,000):

AGENCY,

ATTEST: Clerk of the Board of Supervisors

By \_\_\_\_\_  
Board Chair/Designee

By \_\_\_\_\_  
Deputy

(b) If Agreement is approved by County Purchasing Agent:


AGENCY,


By \_\_\_\_\_  
County Purchasing Agent or Designee

**COUNTY APPROVALS**

RECOMMENDED BY DEPARTMENT

FORM APPROVED BY COUNTY COUNSEL

By   
Designee

By   
Deputy County Counsel

APPROVED: COUNTY ADMINISTRATOR

By \_\_\_\_\_  
Designee

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8. Employment/Scope of Service. Agency hereby employs Consultant, and Consultant accepts such employment, to perform the professional services as described in Appendix A (Scope of Services), upon the terms and in consideration of the payments stated herein.
9. Report Disclosure Section. Pursuant to Government Code Section 7550, Consultant shall include in all documents or written reports completed and submitted to Agency in accordance with this Agreement, a separate section listing the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of each such document or written report. This section only applies if the Payment Limit of this Agreement exceeds \$5,000. If multiple documents or written reports are the subject or product of this Agreement, the disclosure section may also contain a statement indicating that the total Agreement amount represents compensation for multiple documents or written reports.
10. Insurance. Consultant may not commence work under this Agreement until it has furnished evidence of the insurance required herein to the Department Head, and the Department Head has approved it, and may not continue to perform any work under this Agreement if the insurance required herein is no longer in effect.
- (a) Types and Amount of Insurance: Consultant shall, at no cost to Agency, obtain and maintain during the term hereof: (i) Workers' Compensation Insurance pursuant to state law, including, without limitation, California Labor Code section 3700; (ii) Professional Liability Insurance with a minimum coverage limit of \$1,000,000 for claims made in the aggregate annually and a maximum self-insured retention or self-insured retained limit of liability of \$25,000, for all damages or losses because of errors, omissions or malpractice arising out of the provision of professional services by Consultant and Consultant's subconsultants under this Agreement; and (iii) liability insurance with a minimum coverage limit of \$5,000,000 for claims made in the aggregate annually for all personal injury and property damage, to include liability assumed under this Agreement, the use of any licensed motor vehicle by Consultant or subconsultants, and naming Agency, its governing body, officers and employees as additional insureds.
- (b) Certificate of Insurance: Prior to the effective date of this Agreement, Consultant shall furnish to the Department Head certificates of insurance evidencing the coverage required herein and requiring 30 days' written notice to Agency of policy lapse, cancellation or material change in coverage. If Consultant renews the insurance policy(ies) or acquires a new insurance policy(ies) or amends the coverage through an endorsement to the policy(ies) at any time during the term of this Agreement, then Consultant shall provide current certificate(s) to the Department Head.
- (c) Warranty: Consultant represents and warrants that, as of the effective date of this Agreement, Consultant is not aware of any situation that has occurred that could reduce the limits of liability set forth above for claims made under this Agreement.
- (d) Labor Code Section 1861 Certification: In executing this Agreement, Consultant certifies as follows: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."
11. Payment. Agency shall pay Consultant for professional services performed as described in Appendix A at the rates shown in Appendix B, which include all overhead and incidental expenses, for which no additional compensation will be allowed. Notwithstanding the foregoing, Agency shall reimburse those incidental expenses specifically itemized in Appendix B, provided that Consultant submits copies of receipts and, if applicable, a detailed mileage log to the Department Head. In no event may the total amount paid to Consultant exceed the Payment Limit specified in Section 4. Payment Limit without Agency's prior written approval.
- (a) Billing Statements: Consultant shall submit billing statements in the manner and form prescribed by the Department Head detailing the work performed and listing, for each item of services, the employee categories, hours and rates. Except as otherwise provided in the Scope of Services, Consultant shall submit the billing statements no later than 30 days from the end of the month in which the services described in the billing statement were actually rendered. Except as provided in subsections (b) – (d) below, Agency will endeavor to pay Consultant within 30 days after receipt of each statement.
- (b) Documentation: Consultant shall furnish progress reports with each billing statement at no additional charge. Consultant shall include sufficient detail in each progress report, and shall furnish to the Department Head whatever additional information is

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necessary, to enable the Department Head to determine whether Consultant is performing all tasks described in the Scope of Services pursuant to the schedule set forth in the Scope of Services.

(c) Penalty for Late Submission: If Agency is unable to obtain reimbursement from the state or federal government as a result of Consultant's failure to submit to Agency a timely billing statement as set forth above, Agency will not be obligated to pay Consultant for the services included in the late billing statement.

(d) Right to Withhold: Agency may withhold payment to Consultant following written notice to Consultant that: (i) Consultant has failed to fully perform its obligations under this Agreement (including, without limitation, any failure to submit required deliverable items according to the schedule set forth in the Scope of Services); (ii) Consultant has neglected, failed, or refused to furnish information or cooperate with any inspection, review, or audit of its work or records; or (iii) Consultant has failed to sufficiently itemize or document its billing statement.

(e) Audit Exceptions: Consultant accepts responsibility for receiving, replying to, and/or complying with any audit exceptions by appropriate county, state or federal audit agencies resulting from its performance of this Agreement. Within 30 days of demand, Consultant shall pay Agency the full amount of Agency's obligation to the state and/or federal government resulting from any audit exceptions that are attributable to Consultant's failure to properly perform any of its obligations under this Agreement.

(f) Payment Retention: Agency may retain 10% of each billing statement as security for the fulfillment of this Agreement. After Consultant has completed all services as required under this Agreement, submitted final billing, and if the Department Head has determined that the services have been completed in accordance with this Agreement, Agency will release all withheld funds.

12. Extra Work. Any work or services in addition to the work or services described in the Scope of Services that Agency deems necessary to properly complete the work or services described in Scope of Services shall be performed by Consultant at the direction of Agency according to the rates or charges listed in Appendix B. In the event that no rate or charge is listed for a particular type of extra work, Consultant will be paid for the extra work at a rate to be mutually agreed on prior to the commencement of the extra work. In no event will Consultant be entitled to compensation for extra work unless, prior to commencement of the extra work, Agency has executed a written amendment describing the extra work and payment terms in accordance with Section 24. Amendments.
13. Time for Completion. Consultant shall complete all services covered by this Agreement no later than the end of the term as set forth above. Notwithstanding the foregoing, to the extent the Scope of Services provides for the phasing of services, Consultant shall complete all services for each phase of the project by the deadlines stated in the Scope of Services.
14. Termination by Agency. At its option, Agency may terminate this Agreement at any time by written notice to Consultant, whether or not Consultant is then in default. Upon such termination, Consultant shall, without delay, deliver to Agency all materials and records prepared or obtained in the performance of this Agreement, and Agency shall pay Consultant, without duplication, all amounts due for the services rendered up to the date of termination.
15. Abandonment by Consultant. If Consultant ceases performing services under this Agreement or otherwise abandons the project prior to completing all of the services described in this Agreement, Consultant shall, without delay, deliver to Agency all materials and records prepared or obtained in the performance of this Agreement. Agency shall pay Consultant the amount it determines to be the reasonable value of the services performed up to the time of cessation or abandonment, less a deduction for any damages or additional expenses which Agency incurs as a result of such cessation or abandonment.
16. Ownership of Documents. All materials and records of a finished nature, such as final plans, specifications, reports, and maps, prepared or obtained in the performance of this Agreement, shall be delivered to and become the property of Agency. Consultant shall retain, and make available to Agency in accordance with Section 17. Record Retention and Auditing, all materials of a preliminary nature, such as survey notes, sketches, preliminary plans, computations and other data, prepared or obtained in the performance of this Agreement.
17. Record Retention and Auditing. Except for materials and records delivered to Agency, Consultant shall retain all materials and records prepared or obtained in the performance of this Agreement, including financial records, for a period of at least five years after Consultant's receipt of the final payment under this Agreement. Upon request by Agency, Consultant shall promptly make such materials and records available to Agency, or to authorized representatives of the state and federal governments, at a

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convenient location within Contra Costa County designated by the Department Head, at no additional charge and without restriction or limitation on their use.

18. Independent Contractor Status. The parties intend that Consultant, in performing the services specified herein, is acting as an independent contractor and that Consultant will control the work and the manner in which it is performed. This Agreement is not intended and may not be construed to create the relationship between the parties of agent, servant, employee, partnership, joint venture or association. Additionally, Consultant is not entitled to participate in any pension plan, workers' compensation plan, health plan, insurance, bonus or similar benefits Agency provides to its employees. In the event that Agency exercises its right to terminate the Agreement, Consultant expressly agrees that it will have no recourse or right of appeal under any rules, regulations, ordinances or laws applicable to employees.
19. Breach. If Consultant fails to perform any of the services described in this Agreement in the manner and timeframe set forth in the Scope of Services or otherwise breaches this Agreement, Agency may pursue all remedies provided by law or equity. Disputes relating to the performance of this Agreement are not subject to non-judicial arbitration.
20. Compliance with Laws. In performing this Agreement, Consultant shall comply with all applicable laws, statutes, ordinances, rules and regulations, whether federal, state, or local in origin, including, but not limited to, licensing and purchasing practices, and wages, hours and conditions of employment, including nondiscrimination and prevailing wage rates and their payment in accordance with California Labor Code Section 1775. If any federal or state regulations or laws touching upon the subject of this Agreement are adopted or revised during the term hereof, this Agreement will be deemed amended and Consultant will comply with such federal or state requirements.
21. Assignment. Consultant may not assign or transfer this Agreement, in whole or in part, whether voluntarily, by operation of law or otherwise; provided, however, Consultant may, subject to any required state or federal approval, enter into subcontracts for the portion of the services for which Consultant does not have the facilities to perform so long as Consultant obtains the Department Head's written consent to such subcontracting prior to execution of this Agreement. The Department Head may withhold consent to any proposed subcontract in his or her sole and absolute discretion. Any purported assignment, transfer or subcontract that does not comply with the terms hereof is void.
22. Endorsement on Plans. Consultant shall endorse all plans, specifications, estimates, reports and other items described in Scope of Services prior to delivering them to Agency, and, where appropriate, indicate his or her registration number.
23. Works Made for Hire. All reports, original drawings, graphics, plans, studies, and other data and documents, in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement are "works made for hire" (as defined in the Copyright Act, 17 U.S.C.A., Sections 101 *et seq.*, as amended) for Agency, and Consultant unconditionally and irrevocably transfers and assigns to Agency all right, title, and interest, including all copyrights and other intellectual property rights, in or to the works made for hire. Unless required by law, Consultant shall not publish, transfer, discuss, or disclose any of the above-described works made for hire or any information gathered, discovered, or generated in any way through this Agreement, without Agency's prior express written consent. If any of the works made for hire is subject to copyright protection, Agency reserves the right to copyright such works and Consultant agrees not to copyright such works. If any works made for hire are copyrighted, Agency reserves a royalty-free, irrevocable license to reproduce, publish, and use the works made for hire, in whole or in part, without restriction or limitation, and to authorize others to do so.
24. Indemnification. Consistent with California Civil Code section 2782.8, Consultant shall, to the fullest extent permitted by law, indemnify, protect, defend and hold harmless Agency, and its employees, officials, and agents, from any and all demands, losses, claims, costs, liabilities, and expenses for any damage, injury, or death, including any and all administrative fines, penalties or costs imposed as a result of an administrative proceeding, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, its officers, employees, agents, contractors, subconsultants, or any persons under its direction or control. If requested by Agency, Consultant shall defend any such suits at its sole cost and expense. If Agency elects to provide its own defense, Consultant shall reimburse Agency for any expenditures, including reasonable attorneys' fees and costs. Consultant's obligations under this section exist regardless of concurrent negligence or willful misconduct on the part of Agency or any other person; provided, however, that Consultant will not be required to indemnify, including the cost to defend, Agency for the proportion of liability a court determines does not arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, its officers, employees, agents, contractors, subconsultants, or any persons under its direction or control. This indemnification clause will survive the termination or expiration of this Agreement.

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25. Endorsements. Consultant may not, in its capacity as a Consultant with Agency, (a) publicly endorse or oppose the use of any particular brand name or commercial product without the prior approval of Agency's governing body, (b) publicly attribute qualities or lack of qualities to a particular brand name or commercial product in the absence of a well-established and widely accepted scientific basis for such claims or without the prior approval of Agency's governing body or (c) participate or appear in any commercially-produced advertisements designed to promote a particular brand name or commercial product, even if Consultant is not publicly endorsing a product, as long as Consultant's presence in the advertisement can reasonably be interpreted as an endorsement of the product by or on behalf of Agency. Notwithstanding the foregoing, Consultant may express its views on products to other consultants, to Agency's governing body or its officers, or to others who may be authorized by Agency's governing body or by law to receive such views.
26. Project Personnel. In performing the services authorized under this Agreement, Consultant shall use the personnel listed in Appendix C. Consultant may only make changes in project personnel and authorized subconsultants with the Department Head's prior written consent, and Consultant shall notify the Department Head in writing at least thirty (30) days in advance of any proposed change. Any person proposed as a replacement shall possess training, experience, and credentials comparable to those of the person being replaced.
27. Inspection. Authorized representatives of Agency, the State of California and the United States Government may monitor, inspect, review and audit Consultant's performance, place of business and records pertaining to this Agreement.
28. Conflicts of Interest. Consultant covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Consultant further covenants that in the performance of this Agreement, Consultant will employ no person having any such interest. If requested to do so by Agency, Consultant shall complete a "Statement of Economic Interest" form and deliver it to the Department Head and shall require any other person doing work under this Agreement to complete a "Statement of Economic Interest" form and deliver it to the Department Head. Consultant covenants that Consultant, its employees and officials, are not now employed by Agency and have not been so employed by Agency within 12 months immediately preceding this Agreement; or, if so employed, did not then and do not now occupy a position that would create a conflict of interest under Government Code Section 1090. In addition to any indemnity provided by Consultant in this Agreement, Consultant shall indemnify, defend and hold Agency harmless from any and all claims, investigations, liabilities or damages resulting from or related to any and all alleged conflicts interest.
29. Nonrenewal. Consultant understands and agrees that there is no representation, implication, or understanding that the services provided by Consultant under this Agreement will be purchased by Agency under a new contract following expiration or termination of this Agreement, and Consultant waives all rights or claims to notice or hearing respecting any failure to continue purchasing all or any such services from Consultant.
30. Professional Competence; Licensure. Consultant represents and warrants that it is (i) professionally competent and able to provide the professional services described in this Agreement by reason of Consultant's personal knowledge and skill, and (ii) currently licensed, and will remain licensed in good standing at all times during the term of this Agreement, as one of the following: (a) an architect pursuant to Chapter 3 (commencing with Section 5500) of Division 3 of the California Business and Professions Code; (b) a landscape architect pursuant to Chapter 3.5 (commencing with Section 5615) of Division 3 of the California Business and Professions Code; (c) a professional engineer pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the California Business and Professions Code; or (d) a professional land surveyor pursuant to Chapter 15 (commencing with Section 8700) of Division 3 of the California Business and Professions Code.
31. Notices. All notices under this Agreement must be in writing, and, except as otherwise provided in the Scope of Services, sent by personal delivery (including overnight courier service) or by certified United States Mail, postage prepaid, to the parties at the addresses designated above, unless changed by written notice to the other party. Consultant shall address all notices to Agency to the Department Head. The effective date of the notice is the date of deposit in the mail or of other delivery, except that the effective date of notice to Agency is the date of receipt by the Department Head.
32. Amendments. This Agreement may be amended only by written agreement signed by both of the parties.
33. Disputes. Disagreements between Agency and Consultant concerning the meaning, requirements or performance of this Agreement are subject to final written determination of the Department Head or in accordance with the applicable procedures (if any) required by state or federal government.

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34. Choice of Law and Personal Jurisdiction. This Agreement is made in Contra Costa County and is governed by, and will be construed in accordance with, the laws of the State of California. The parties, to the fullest extent permitted by law, knowingly, intentionally, and voluntarily, with and upon the advice of competent counsel, submit to personal jurisdiction in the State of California over any suit, action or proceeding arising from or relating to the terms of this Agreement.
35. No Implied Waiver. No waiver of any provision of this Agreement by Agency is valid unless it is in writing and signed by Agency. Waiver by Agency at any time of any breach of this Agreement may not be deemed a waiver of or consent to a subsequent breach of the same or any other provision of this Agreement. If Consultant's action requires the consent or approval of Agency, that consent or approval on one occasion may not be deemed a consent to or approval of that action on any later occasion or a consent to or approval of any other action. Subject to Section 33. Disputes above, inspections, approvals or statements by any officer, agent or employee of Agency indicating Consultant's performance or any part thereof complies with the requirements of this Agreement, or acceptance of the whole or any part of Consultant's performance, or payments therefor, or any combination of these acts, does not relieve Consultant of its obligation to fulfill this Agreement as prescribed or prevent Agency from bringing an action for damages or enforcement arising from any failure to comply with any of the terms and conditions of this Agreement.
36. Successors and Assigns. Subject to Section 21. Assignment, this Agreement binds Consultant's successors, assigns, heirs, executors and personal representatives.
37. No Third-Party Beneficiaries. This Agreement is intended solely for the benefit of the parties hereto, and no third party has any right or interest in any provision of this Agreement or as a result of any action or inaction of any party in connection therewith.
38. Construction. The section headings and captions of this Agreement are, and the arrangement of this instrument is, for the sole convenience of the parties to this Agreement. The section headings, captions and arrangement of this instrument do not in any way affect, limit, amplify or modify the terms and provisions of this Agreement. This Agreement may not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it. The parties to this Agreement and their counsel have read and reviewed this Agreement and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party does not apply to the interpretation of this Agreement.
39. Severability. If any term or provision of this Agreement is, to any extent, held invalid or unenforceable, the remainder of this Agreement will not be affected thereby.
40. Entire Agreement. This Agreement, together with all of the attachments listed in Section 6. Attachments, contains all of the terms and conditions agreed upon by the parties regarding the subject matter of this Agreement, and supercedes all previous communications, representations, understandings and agreements, whether verbal, written, express or implied, between the parties.
41. Authorization. Consultant, or the representative(s) signing this Agreement on behalf of Consultant, represents and warrants that Consultant has full power and authority to enter into this Agreement and to perform the obligations set forth herein, and that the representatives signing this Agreement have the authority to execute this Agreement on behalf of Consultant and to bind Consultant to its contractual obligations hereunder.

The following provisions apply to projects using US DOT funds.

42. Disadvantaged Business Enterprise (DBE) Requirements (Federal aid projects only). Consultant shall comply with all applicable provisions of 49 CFR, Parts 23 and 26, and the Contra Costa County's Disadvantaged Business Enterprise (DBE) Program, which are incorporated into this Agreement by reference. In addition, in performing services under this Agreement, Consultant shall utilize all DBEs listed in Consultant's written response to Agency's request for qualifications or request for proposal and shall pay to the listed DBEs the estimated amounts listed in Appendix B attached to this Agreement. Consultant shall not substitute a listed DBE at any time or decrease the amount to be paid to a listed DBE without the advance, written consent of Agency. If a listed DBE is proposed to be replaced, Consultant shall make a good faith effort to replace the original DBE with another DBE and shall submit to Agency written documentation of such effort.
43. Federal Cost Principles and Procedures (Federal aid projects only). Consultant shall comply with the following provisions, which are incorporated into this Agreement by reference: (a) the cost principles for allowability of individual items of costs set forth in 48 CFR, Chapter 1, Part 31; (b) the administrative procedures set forth in 49 CFR, Part 18; and (c) the administrative procedures for non-profit organizations set forth in OMB Circular A-110, if applicable to Consultant. In the event that payment is made to



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Consultant for any costs that are determined by subsequent audit to be unallowable under 48 CFR, Chapter 1, Part 31, Consultant shall refund the payment to Agency within 30 days of written request from Agency. Should Consultant fail to do so, and should Agency file legal action to recover the refund, Consultant shall reimburse Agency for all attorneys' fees, costs, and other expenses incurred by Agency in connection with such action.

44. Prohibition of Expending Local Agency State or Federal Funds for Lobbying (Federal aid in excess of \$100,000 only). In executing this Agreement, Consultant makes the following certification, which certification is a material representation of fact relied upon by Agency in entering into this Agreement:

(a) Certification. To the best of Consultant's knowledge and belief:

- (i) No state, federal or local agency appropriated funds have been paid, or will be paid by or on behalf of Consultant to any person for influencing or attempting to influence an officer or employee of any state or federal agency, a member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a member of the Legislature or Congress, in connection with the awarding of any state or federal contract, the making of any state or federal grant, the making of any state or federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.
- (ii) If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress, in connection with this federal contract, grant, loan, or cooperative agreement, Consultant shall complete and submit Form - LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

(b) Penalty for Failure to File Disclosure Form. Submission of the disclosure form is a prerequisite for making or entering into this Agreement imposed by Title 31 U.S.C. Section 1352. Any person who fails to file the required disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(c) Applicability to Subconsultants. In executing this Agreement, Consultant also agrees to require that the language of this Section 44 be included in all contracts with subconsultants which exceed 100,000, and that all such subconsultants shall certify and disclose accordingly.

(Remainder of page intentionally left blank.)

## **Special Conditions** **(On-Call Structural Engineering Consulting Services)**

1. The Professional Liability Insurance requirement set forth in Section 10(a)(ii) of the Agreement is hereby deleted and replaced with the following language: Professional Liability Insurance with a minimum coverage limit of \$1,000,000 for claims made in the aggregate annually until Consultant's current Professional Liability Insurance policy expiration date of January 28, 2010, and thereafter a minimum coverage limit of \$2,000,000 for claims made in the aggregate annually, and a maximum self-insured retention or self-insured retained limit of liability of \$25,000, for all damages or losses because of errors, omissions or malpractice arising out of the provision of professional services by Consultant and Consultant's subconsultants under this Agreement.
2. Section 11(f) of the Agreement is hereby amended as follows: Payment Retention: For Peer Review, Bid Support, and Construction Management support tasks or phases, there will be no retention withheld. For all other Task Orders, Agency will retain 10% of each billing statement as security for the fulfillment of this Agreement.
3. Sections 42-44 of the Agreement applies when a Task Order is partially or fully funded by US DOT funds. As each Task Order Form is executed, the Task Order as described and sample attached in Appendix A, Scope of Services, shall identify if a task is partially or fully funded by US DOT funds. If a Task Order is not funded by any US DOT funds, then Section 42-44 is not applicable to that Task Order.
4. Consultant may request an increase in the hourly rates set forth on Attachment 1 to Appendix B, on an annual basis, in January of each calendar year during the term of this Agreement, beginning with January 2010. The proposed increase in hourly rates cannot exceed the actual increase in the hourly rates paid by Consultant to its staff. Consultant shall provide Agency with at least 30 days advance written notice of a proposed increase. Subject to approval by Agency's department head, the proposed increase will be effective 30 days following receipt of Consultant's request. An increase in the hourly rates shall not result in any increase in the Payment Limit specified in Section 4. Payment Limit of this Agreement.

## **Appendix A**

### **Scope of Services**

#### **(On-Call Structural Engineering Consulting Services)**

1. OVERVIEW AND GENERAL REQUIREMENTS

A. Agency is involved in the review, design, construction, and maintenance of various public works improvement projects throughout Contra Costa County. Projects range from simple maintenance-related projects, such as inspection and assessment of existing structures of various types, to more complex capital road, airport, and flood control channel improvement projects. In executing these projects, Agency, at times, requires additional temporary services from persons specially trained, experienced, expert and competent to perform professional design services, including structural engineering services. For that reason, Agency is entering into this Agreement with Consultant. Under this Agreement, Consultant will provide structural engineering services on an "on call" basis in support of a variety of road, airport and flood control projects throughout Contra Costa County. Examples of typical Agency projects and typical Consultant services covered by this Agreement are listed in Paragraphs 3 and 4 below.

B. As provided in Section 26. Project Personnel of this Agreement, subconsultants retained by Consultant must be authorized in advance, in writing, by Agency's Department Head. Consultant shall direct the tasks and activities of its authorized subconsultants and ensure that the tasks, activities and/or products required by this Agreement are completed in a timely manner and in accordance with the applicable standard of care for the given subconsultant. Notwithstanding the authorization for work to be performed by a particular subconsultant, is the Consultant's solely responsible for the performance of all services and delivery of all products under this Agreement.

C. Work shown or specified in reports, drawings, and specifications must comply with all requirements of the Contra Costa County Ordinance Code, applicable State and Federal codes and regulations, and the local fire district and utility companies or districts having jurisdiction over the project or area in which the project is located.

2. TASK ORDER PROCEDURES

A. TASK ORDERS

During the term of this Agreement, when Agency has a need for Consultant to provide structural engineering services, Agency will forward a proposed Task Order (Appendix A – Attachment 1) to Consultant. Within the timeframe requested by Agency, Consultant will provide Agency with a cost proposal for the services and deliverables specified in the Task Order, including a written estimate of the number of hours per staff person, any anticipated reimbursable expenses, and total dollar amount. Once Agency and Consultant agree to a cost breakdown and commencement date for the services and deliverables identified in the Task Order (with a payment limit for the Task Order that does not cause the total payments under this Agreement to exceed the Payment Limit set forth in Section 4. Payment Limit of this Agreement), Consultant and Agency (through its Department Head) will execute the final version of the Task Order.

B. AUTHORIZED REPRESENTATIVES

During the term of this Agreement, the Department Head, on behalf of Agency, and the individuals listed below, on behalf of Consultant, are authorized to execute Task Orders under this Agreement. Consultant may change the individuals authorized to execute Task Orders upon thirty (30) days advance written notice to Agency.

FOR CONSULTANT: H. Fred Huang

Robert Sennett

*Note: A Task Order is of no force or effect until it is signed by the Department Head. Consultant shall not commence work, and no expenditures are authorized, until the Department Head has executed a Task Order for the particular task and products at issue. Notwithstanding anything to the contrary, the Department Head is not authorized to execute a Task Order that causes the total payments under this Agreement to exceed the Payment Limit set forth in Section 4. Payment Limit of this Agreement.*

3. TYPICAL AGENCY PROJECTS

During the term of Agreement, Agency may call upon Consultant to provide services under this Agreement for the following types of projects:

- Pedestrian and vehicular bridge construction and repair
- Bridge related work, including but not limited to structural assessments, and roadway approaches
- Engineered soil stabilization improvements or repairs, including but not limited to, soil nail retaining walls, mechanical stabilized embankments, tie back walls, sheet pile walls, soldier pile walls, gravity walls, and cantilevered walls
- Flood control facilities, including but not limited to, box culverts, drop structures, and concrete channels
- Structural repair of landslide

4. TYPICAL CONSULTANT SERVICES

During the term of this Agreement, Consultant will perform, at Agency's written request, the following types of structural engineering services as furthered specified by Task Order:

- Perform alternative analysis, such as bridge type selection analysis and report, retaining structure type options, etc., including comparisons (cost to construct, public acceptance, ease of maintenance, longevity) of the alternates; and prepare written summary report of alternative analysis
- Coordinate with impacted utilities to determine conflicts and determine what utility relocation work is required and when the relocation work should be done relative to project construction
- Attend technical meetings and present design proposals at public forums
- Provide engineering support during project bidding and construction
- Perform peer review of plans and calculations for a variety of road, bridge, flood control, airport, and drainage infrastructure projects
- Perform quantity calculations, estimate unit bid prices and prepare list of bid items
- Prepare Design Exception Fact Sheets when necessary
- Provide necessary engineering and design information to Agency staff in support of environmental compliance and regulatory permitting
- Prepare construction plans and special provisions, with the following types of plan sheets, as applicable, and submit them to Agency for review at 35%, 65%, 95% and 100% completion, unless otherwise instructed by Agency
- Plans will include one or more of the following types of plan sheets, as specified by Agency:

- ❖ Title Sheet
  - ❖ Typical Cross Sections
  - ❖ Key Map and Line Index
  - ❖ Layout
  - ❖ Profile
  - ❖ Construction Details
  - ❖ Contour Grading Plans
  - ❖ Drainage Plans and Profiles
  - ❖ Construction Staging Plan
  - ❖ Traffic Control Plan
  - ❖ Demolition plan
  - ❖ Structure Plans and Details
- Provide final reproducible hardcopies and electronic files of plans (Microstation file format) and special provisions (Word file format)
  - Provide structural assessments of existing private structures
  - Perform independent design checks of bridge design and other structural design
  - Provide bridge and other structural assessments of public infrastructure
  - Prepare Project Study Reports
  - Work with Agency staff to develop and adhere to a Task Order work time schedule that meets the Agency's requirements
  - Provide necessary management oversight and quality assurance to meet Task Order specified end product(s) (deliverables) within agreed schedule and budget
  - Collect and review all relevant data necessary to perform Task Order
  - Determine construction staging and traffic control plans

5. PERFORMANCE STANDARDS

Consultant shall perform structural engineering design services in compliance with the latest editions of design standards, including without limitation, Federal Aviation Administration (FAA) design standards, California Department of Transportation (Caltrans) Highway Design Manual, Caltrans Bridge Design Aids, Caltrans Bridge Design Details, Caltrans Bridge Design Practice, Caltrans Bridge Design Specifications, Caltrans Bridge Memo to Designers, Caltrans Reference Sheets, Caltrans Bridge Standard Detail Sheets, Caltrans Seismic Design Criteria, Caltrans Structural Detailing Standards, American Association of State Highway Transportation Officials' (AASHTO) design standards/policies, American Concrete Institute Uniform Building Code, American Institute of Steel Construction design standards, Uniform Building Code, California Building Code, Agency design standards, and any additional standards referenced in the Task Order. Consultant shall comply with Caltrans' format standards for all products, such as preliminary and/or final plans (hardcopy and electronic, CADD files), technical specifications, calculations, and cost estimates as required by each Task Order. Cost considerations will not be deemed justification for breach of sound principles of engineering design. Consultant will remain solely responsible for the adequacy, fitness and correctness of design and all designing work in accordance with sound and accepted engineering principles despite Agency's approval or acceptance of reports, plans, specifications, and any other product prepared by Consultant under this Agreement.

6. PAYMENT DEMANDS

Consultant shall submit a written demand or invoice for the services provided under each Task Order either (i) upon completion of the services described in the Task Order if the services take less than one month to complete;

or (ii) monthly, if the services under a Task Order take more than one month to complete. In each case, Consultant shall describe the work performed and list, for each item of services, the employee categories, hours and rates (consistent with the rates shown on Appendix B). All payment demands and payments hereunder are subject to Section 11. Payment of this Agreement.

7. NON-EXCLUSIVE AGREEMENT

Consultant acknowledges that this Agreement is not exclusive and that Agency may, at any and all times during the term of this Agreement, obtain structural engineering and other types of services from any appropriate source.

8. TIME

Consultant understands and agrees that time is of the essence in this Agreement. Consultant shall perform the services authorized under each Task Order expeditiously and with adequate forces and shall complete the services within the time specified in each Task Order.

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## Appendix A - Attachment 1 Task Order

Pursuant to Paragraph 2 of Appendix A (Scope of Services) to that certain Consulting Services Agreement entered into as of October 6, 2009, between Agency and Consultant, and subject to all of the terms and conditions of the Consulting Services Agreement, Agency and Consultant agree as follows:

TASK ORDER NUMBER:

PROJECT NAME, NUMBER, LOCATION:

CONSULTANT'S NAME:

TASK/DELIVERABLES DESCRIPTION:

DETAILED SCOPE OF SERVICES: See Exhibit 1, attached hereto and incorporated herein.

COMMENCEMENT DATE FOR SERVICES:

SCHEDULE FOR SERVICES AND DELIVERABLES: See Exhibit 1.

DEADLINE FOR COMPLETION OF TASK SERVICES AND DELIVERABLES:

PAYMENT LIMIT: \$

AGENCY	CONSULTANT
By: _____ Department Head	By: _____ Authorized Representative
Date: _____	Date: _____

## Appendix B - Payment Provisions

- A. Payment for services will not exceed the billing rates set forth in Attachment 1 to this Appendix B and will be based on the actual hours worked (by Consultant and authorized subconsultants) and actual approved Other Direct Costs (described below) subject to the Payment Limit specified in Section 4. Payment Limit of this Agreement. In addition, payments for services (including payments to Consultant for authorized subconsultants) and Other Direct Costs will not exceed the following amounts for each phase or period indicated below unless approved in advance in writing by the Department Head:
1. On-call Services: \$150,000 (100% of Payment Limit)
- B. Payment to Consultant for subconsultants authorized in advance by Agency in accordance with Section 21. Assignment of this Agreement will be the amount equal to Consultant's direct costs, without handling mark ups. Consultant shall submit subconsultant invoices as part of Consultant's bill for services.
- C. Payments for the extra work specified in Section 12. Extra Work of this Agreement shall be computed separately and shall not exceed any limits specified in Agency's written amendment describing the extra work and payment terms for the extra work.
- D. Subject to the Payment Limit in Section 4. Payment Limit of the Agreement, Agency will reimburse the actual cost (without mark up) of documented expenditures by Consultant and its employees and authorized subconsultants for the Other Direct Costs listed below to the extent such Other Direct Costs were incurred to perform the services described in this Agreement: See Attachment 1 to Appendix B.
- E. All other expenses (*i.e.*, those not listed under Paragraph D above) are not reimbursable and are deemed covered by the hourly billing rates set forth in Attachment 1. When any of the items listed under Paragraph D above are provided for Consultant's own use and not at Agency's request, expenses therefor are not reimbursable and are deemed covered by the hourly billing rates set forth in Attachment 1. Agency will not pay for Consultant's and its subconsultants' time and expenses for transportation between Consultant's and its subconsultants' various offices. Costs for such transportation are deemed covered by the hourly billing rates set forth in Attachment 1.



Attachment 1 to Appendix B  
Payment Provisions/Staff Wage Rates

MGE Engineering, Inc.

Calendar Year 2009

Classification	Rate (\$/Hr.)
Project Manager / Project Engineer	\$210
Supervising Engineer	\$188
Senior Engineer	\$163
Associate Engineer	\$140
Assistant Engineer	\$120
CADD Technician	\$115
Admin Assistant	\$73
<b>Direct Costs:</b>	
Auto Mileage	\$0.55/mile or Federal Rate
Delivery & Reproduction	at cost

Note: The hourly rate includes overhead and fee.

**APPENDIX C**  
**Project Personnel Listing**

**MGE Engineering, Inc.**

<b>Classification</b>	<b>Name</b>
Project Manager / Project Engineer	R. Sennett
	K. Chen
Supervising Engineer	D. Huckabay
	J. Crovitz
	M. Salmon
Senior Engineer	D. Wang
	G. Xu
	D. Vang
	D. Brotchie
Associate Engineer	K. Li
	D. An
	P. Zhao
	L. Liu
Assistant Engineer	K. Wang
	M. Naqvi
	L. Vidaurry
CADD Technician	X. Sun
	C. Hua
	E. Snyder
Admin Assistant	N. Lin
	D. Mayo