

NAPA COUNTY AGREEMENT NO. 230080B

**REIMBURSEMENT AGREEMENT WITH PROPERTY OWNER
FOR COSTS ASSOCIATED WITH THE
NAPA RIVER RESTORATION PROJECT**

This Agreement is made and entered into this 12th day of July, 2022, by and between SPP Napa Vineyards LLC, a California limited liability company (“**SPP Napa**”) and Napa County, a political subdivision of the State of California (the “**County**”). The County and SPP Napa are sometimes referred to as "**Parties**" and may be individually referred to as "**Party**."

RECITALS

WHEREAS, SPP Napa is the owner of real property located at 5223 Big Ranch Rd., Napa, CA 94558, more specifically identified as Assessor’s Parcel Number 036-470-015-000; and

WHEREAS, SPP Napa is participating in the Napa River Restoration: Oakville to Oak Knoll Project, (the “Restoration Project”) which restored aquatic and riparian habitats through excavation of new floodplain benches along the Napa River; and

WHEREAS, the grading plan for the Restoration Project required the removal of utility poles and electrical service from within the proposed Restoration Project footprint; and

WHEREAS, to accomplish the restoration project, the County agreed to pay for costs associated with removal and relocation of the utility poles and electrical service to the nearest feasible location afforded by the newly graded topography, estimated to be \$50,000; and

WHEREAS, the County and SPP Napa agree that removal of the utility poles and electrical service is all that was necessary for the Restoration Project to proceed, and that relocation and reinstallation of the facilities can occur at a later date in a manner and location outside of the Restoration Project area to be determined by SPP Napa; and

WHEREAS, the County and SPP Napa agree that \$50,000.00 is a fair estimate of the cost of removal and relocation of the utility poles and electrical service; and

WHEREAS, the County agrees to provide a one-time payment to SPP Napa not to exceed \$50,000.00 following removal of the utility poles and electrical service from the Restoration Project site and upon receipt of documentation for actual costs incurred by SPP Napa in replacing the service in a location of their design;

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

TERMS

1. Scope of Work. PG&E has de-energized and removed its wires and pole(s) from the restoration site as shown in Exhibit A, attached hereto and hereby incorporated by reference, at no cost to the Parties. After the wires were de-energized, County removed the service drop and private poles owned by SPP Napa within the restoration site at no cost to SPP Napa, in conjunction with the restoration grading project. SPP Napa is responsible for re-establishing electrical service through a location outside the restoration site, in coordination with PG&E.

2. Funding. The County shall reimburse SPP Napa for the actual cost of re-establishing electrical service through another location on the parcel, up to a maximum of fifty thousand dollars (\$50,000.00). Any costs over \$50,000 are the sole responsibility of SPP Napa. SPP Napa shall provide the County with documentation of the actual costs incurred by SPP Napa to re-establish electrical service.

3. Payment Date. The County shall pay SPP Napa the amount determined in accordance with section 2 of this Agreement within sixty (60) days of receipt of satisfactory documentation of the actual costs incurred by SPP Napa.

4. Prevailing Wage Requirements. The work to be performed under this Agreement includes “public works” as defined in California Labor Code section 1720. SPP Napa shall ensure that any contractors it uses to perform the work, other than Pacific Gas & Electric Company, comply with all State prevailing wage requirements, including but not limited to, those set forth in Exhibit B attached hereto and hereby incorporated by reference.

5. Indemnity. The Parties shall indemnify and hold the other harmless from and against any and all claims, losses, costs, damages, expenses, liabilities, liens, actions, and causes of actions, including reasonable attorney's fees and costs, (“**claims**”) asserted against or incurred by either Party (an “**Indemnified Party**”) from any cause arising out of or relating directly or indirectly to the performance or breach of this Agreement by the other Party (or its agents, contractors, officers, or employees), other than claims arising from the negligence or willful misconduct of the Indemnified Party.

6. Attorney’s Fees. In the event that either Party commences legal action of any kind or character to either enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing Party in such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

7. Third Party Beneficiaries. Nothing contained in this Agreement shall be construed to create any rights in third parties and the Parties do not intend to create such rights.

8. Complete Agreement; Amendments. This is the complete and final Agreement between the Parties and supersedes all prior written or oral agreements between the Parties with respect to the removal and relocation of utility poles and electrical service to the parcel. Any amendments to this Agreement must be in writing and signed by both Parties.

9. Relationship of Parties. Neither Party is acting as the agent of the other in any respect hereunder and each Party is an independent contracting entity with respect to the terms, covenants, and conditions contained in this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership or joint venture between the Parties.

10. Successors-In-Interest. This Agreement and all rights and obligations contained herein shall be in effect whether or not any or all Parties to this Agreement have been succeeded by another entity, and all rights and obligations of the Parties signatory to this Agreement shall be vested and binding on their successors-in-interest.

11. Governing Law. This Agreement shall be deemed to be made under, and shall be construed in accordance with and governed by, the laws of the State of California without regard to the conflicts or choice of law provisions thereof.

12. Counterparts. This Agreement may be executed in counterparts. The counterparts so executed shall constitute one Agreement notwithstanding that the signatures of all Parties do not appear on the same page.

IN WITNESS WHEREOF, this Agreement is executed by the County of Napa, acting by and through the Chair of the Board of Supervisors, and by SPP Napa Vineyards LLC, through its duly authorized officer.

SPP NAPA:

SPP NAPA VINEYARDS LLC,
a California limited liability company

By: _____

Richard K. Schaefer
Richard K. Schaefer, VP Viticulture
SPP Napa Vineyards LLC

COUNTY:

NAPA COUNTY,
a political subdivision of the State of California

By: _____

RYAN GREGORY, Chair
Napa County Board of Supervisors

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <u>Thomas C. Zeleny</u> Deputy County Counsel</p> <p>Date: <u>June 27, 2022</u></p>	<p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS</p> <p>Date: _____ Processed By: _____ Deputy Clerk of the Board</p>	<p>ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors</p> <p>By: _____</p>
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Exhibit A
Project Description

[site map included on following page]

Exhibit B

CALIFORNIA PREVAILING WAGE REQUIREMENTS

Pursuant to California Labor Code sections 1720 and 1771, construction, alteration, demolition, installation, repair and maintenance work performed under this Agreement is subject to State prevailing wage laws. State prevailing wage laws require certain provisions be included in all contracts for public works. The Contractor and any subcontractors shall comply with State prevailing wage laws including but not limited to the requirements listed below.

1. Compliance with Prevailing Wage Requirements. Pursuant to California Labor Code sections 1720 through 1861, the Contractor and all subcontractors shall ensure that all workers who perform work under this Agreement are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design, site assessment, feasibility study, and other preconstruction phases of construction, including but not limited to inspection and land surveying work, regardless of whether any further construction work is conducted, and work performed during the post-construction phases of construction, including but not limited to all cleanup work at the jobsite.

1.1. Copies of such prevailing rate of per diem wages are on file at the Napa County Public Works Department and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. The Contractor and all subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.

1.2. The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of this Agreement. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Agreement in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this Agreement, each successive predetermined wage rate shall apply to this Agreement on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Agreement, such wage rate shall apply to the balance of the Agreement.

2. Penalties for Violations. The Contractor and all subcontractors shall comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed. This shall be in addition to any other applicable penalties allowed under California Labor Code sections 1720 through 1861.

3. Payroll Records. The Contractor and all subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. The Contractor shall require all subcontractors to also comply with section 1776. The Contractor and all subcontractors shall furnish records specified in section 1776 on a monthly basis, both to the County and directly to the Labor Commissioner in the manner required by California Labor Code section 1771.4. The Contractor shall ensure its subcontractors prepare and submit payroll records to the County and the DIR as required by this section.

3.1. If the Contractor or a subcontractor is exempt from the DIR registration requirement pursuant to section 9.4 below, then the Contractor or such subcontractor is not required to furnish payroll records directly to the Labor Commissioner but shall retain the records for at least three years after completion of the work, pursuant to California Labor Code section 1771.4(a)(4).

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

4. Apprentices. The Contractor and all subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. The Contractor is responsible for compliance with this section for all apprenticeable occupations pursuant to California Labor Code section 1777.5(n).

5. Working Hours. The Contractor and all subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specify penalties to be imposed on contractors and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.

6. Required Provisions for Subcontracts. The Contractor shall include, at a minimum, a copy of the following provisions in any contract they enter into with a subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.

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

“I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Agreement.”

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

9. Contractor and Subcontractor Registration Requirements. The Contractor and all subcontractors shall not be qualified to bid on, be listed in a bid or proposal, subject to the requirements of California Public Contract Code section 4104, or engage in the performance of any contract for public work, unless currently registered and qualified to perform public work pursuant to California Labor Code section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by California Business and Professions Code section 7029.1 or California Public Contract Code sections 10164 or 20103.5, provided the Contractor is registered to perform public work pursuant to section 1725.5 at the time the contract is awarded.

9.1. A Contractor's inadvertent error in listing a subcontractor who is not registered pursuant to California Labor Code section 1725.5 in response to a solicitation shall not be grounds for filing a protest or grounds for considering the bid or proposal non-responsive provided that any of the following apply: (1) the subcontractor is registered prior to the proposal due date; (2) within 24 hours after the proposal due date, the subcontractor is registered and has paid the penalty registration fee specified in California Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered subcontractor pursuant to California Public Contract Code section 4107.

9.2. By submitting a bid or proposal to the County, the Contractor is certifying that the Contractor has verified that all subcontractors used on this project are registered with the DIR in compliance with California Labor Code sections 1771.1 and 1725.5. The Contractor shall provide proof of registration for themselves and all listed subcontractors to the County at the time of the bid or proposal due date or upon request.

9.3. The County may ask the Contractor for the most current list of subcontractors (regardless of tier), along with their DIR registration numbers, utilized on this project at any time during performance of this Agreement, and the Contractor shall provide the list within ten (10) working days of the County's request.

9.4. This section shall not apply to work performed on a public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars (\$15,000) or less when the project is for maintenance work, pursuant to California Labor Code sections 1725.5(f) and 1771.1(n).

10. Stop Order. Where a contractor or subcontractor engages in the performance of any public work contract without having been registered in violation of California Labor Code sections 1725.5 or 1771.1, the Labor Commissioner must issue and serve a stop order prohibiting the use of the unregistered contractor or subcontractor on ALL public works until the unregistered contractor or subcontractor is registered. Failure to observe a stop order is a misdemeanor.