

**NAPA BERRYESSA RESORT IMPROVEMENT DISTRICT
AGREEMENT NO. 220325B**

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 2022, by and between the NAPA BERRYESSA RESORT IMPROVEMENT DISTRICT, a special district of the State of California, hereinafter referred to as “DISTRICT,” and Geocon Consultants, Inc., a California corporation whose business address is 2480 Hilborn Road, Suite 240, Fairfield, CA 94534, hereinafter referred to as “CONSULTANT.” DISTRICT and CONSULTANT may be referred to below individually as “Party” and collectively as “Parties.”

RECITALS

WHEREAS, the DISTRICT’s Wastewater Pond No. 2 earthen banks experienced a slope failure in 2021 slumping several hundred cubic yards of material into the storage facility causing a bulge in its liner. Evaporation system piping around the pond suffered damage due to the soil collapse; and

WHEREAS, the DISTRICT performed temporary repairs to divert abutting bank storm water runoff and stabilize soils until a geotechnical consulting firm could be retained for investigations and design remedial construction methods to restore the storage pond to its original volume capacity addressing the mechanics and drainage problems that led to slope instability; and

WHEREAS, on January 28, 2022, DISTRICT issued a Request for Proposals (RFP) for an engineering consultant to provide services for the Wastewater Pond No. 2 Slope Stabilization Project; and

WHEREAS, the District Engineer and Associate Engineer evaluated and assigned scores to five (5) RFP submittals by engineering firm candidates that culminated in the selection of CONSULTANT based on their qualifications, project approach and interview performance; and

WHEREAS, DISTRICT wishes to obtain specialized services, as authorized by Government Code section 31000, in order to provide geotechnical investigations and design services related to the repair of the DISTRICT’s Wastewater Pond No. 2 site embankments, pond liner and evaporation system piping; and

NOW, THEREFORE, DISTRICT hereby engages the services of CONSULTANT, and CONSULTANT agrees to serve DISTRICT in accordance with the terms and conditions set forth herein:

TERMS

1. **Term of the Agreement.** The term of this Agreement shall be effective on the date approved by the Governing Board and shall expire one year after completion of the Scope of Services, unless terminated earlier in accordance with Paragraphs 9 (Termination for Cause), 10

(Other Termination) or 23(a) (Covenant of No Undisclosed Conflict); except that the obligations of the Parties under Paragraphs 7 (Insurance) and 8 (Indemnification) shall continue in full force and effect after said expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of the Agreement, and the obligations of CONSULTANT to DISTRICT shall also continue after said expiration date or early termination in relation to the obligations prescribed by Paragraphs 15 (Confidentiality), 20 (Taxes), 21 (Access to Records/Retention), and 24 (Standard of Care).

2. **Scope of Services.** CONSULTANT shall investigate underlying soils within the Wastewater Pond No. 2 failed slope, perform topographic survey coverage of the site project limits and prepare design plans and technical specifications suitable for soliciting construction bids, as further described in Exhibit "A" and Attachment 1 attached hereto and hereby incorporated by reference.

3. **Compensation.**

(a) **Rates.** In consideration of CONSULTANT's fulfillment of the scope of services, DISTRICT shall pay CONSULTANT at the hourly rates set forth in Attachment 1 to Exhibit A.

(b) **Expenses.** Travel and other expenses will be reimbursed by DISTRICT upon submission of an invoice in accordance with Paragraph 4 at the rates and/or in accordance with the provisions set forth in Attachment 1 to Exhibit "A."

(c) **Maximum Amount.** Notwithstanding subparagraphs (a) and (b), the maximum payments under this Agreement shall not exceed a total of One Hundred Twenty Seven Thousand Nine Hundred Forty Dollars and Sixty Cents (\$127,940.60) for professional services including all transportation expenses and tax; however, that such amount shall not be construed as a guaranteed sum, and compensation shall be based upon services actually rendered and reimbursable expenses actually incurred.

4. **Method of Payment.**

(a) **Invoices.** All payments for compensation and reimbursement for expenses shall be made only upon presentation by CONSULTANT to DISTRICT of an itemized billing invoice in a form acceptable to the Napa County Auditor which indicates, at a minimum, CONSULTANT's name, address, Social Security or Taxpayer Identification Number, itemization of the hours worked or, where compensation is on a per-task basis, a description of the tasks completed during the billing period, the person(s) actually performing the services and the position(s) held by such person(s), and the approved hourly or task rate.

(b) **Expenses.** If the Agreement provides for expense reimbursement, requests for reimbursement shall describe the nature and cost of the expense, the date incurred. With the exception of per diem reimbursements, receipts must be attached.

(c) CONSULTANT shall submit invoices not more than monthly to the District Engineer who, after review and approval as to form and content, shall submit the invoice to the Napa County Auditor no later than fifteen (15) calendar days following receipt. A sample invoice showing the level of detail required is attached as Exhibit "C."

(d) **Legal Status.** So that DISTRICT may properly comply with its reporting obligations under federal and state laws pertaining to taxation, if CONSULTANT is or becomes a corporation during the term of this Agreement, proof that such status is currently recognized by and complies with the laws of both the state of incorporation or organization and the State of

California, if different, shall be provided to the District Engineer upon request in a form satisfactory to the Napa County Auditor. Such proof shall include, but need not be limited to, a copy of any annual or other periodic filings or registrations required by the state of origin or California, the current address for service of process on the corporation or limited liability partnership, and the name of any agent designated for service of process by CONSULTANT within the State of California.

5. **Independent Contractor.** CONSULTANT shall perform this Agreement as an independent contractor. CONSULTANT and the officers, agents and employees of CONSULTANT are not, and shall not be deemed, DISTRICT employees for any purpose, including workers' compensation and employee benefits. CONSULTANT shall, at CONSULTANT's own risk and expense, determine the method and manner by which duties imposed on CONSULTANT by this Agreement shall be performed; provided, however, that DISTRICT may monitor the work performed by CONSULTANT. DISTRICT shall not deduct or withhold any amounts whatsoever from the compensation paid to CONSULTANT, including, but not limited to amounts required to be withheld for state and federal taxes, unless required to do so by court order. As between the Parties to this Agreement, CONSULTANT shall be solely responsible for all such payments.

6. **Specific Performance.** It is agreed that CONSULTANT, including the agents or employees of CONSULTANT, shall be the sole providers of the services required by this Agreement. Because the services to be performed by CONSULTANT under the terms of this Agreement are of a special, unique, unusual, extraordinary, and intellectual or time-sensitive character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action of law, DISTRICT, in addition to any other rights or remedies which DISTRICT may possess, shall be entitled to injunctive and other equitable relief to prevent a breach of this Agreement by CONSULTANT.

7. **Insurance.** CONSULTANT shall obtain and maintain in full force and effect throughout the term of this Agreement, and thereafter as to matters occurring during the term of this Agreement, the following insurance coverage:

(a) **Workers' Compensation Insurance.** To the extent required by law during the term of this Agreement, CONSULTANT shall provide workers' compensation insurance for the performance of any of CONSULTANT's duties under this Agreement, including but not limited to, coverage for workers' compensation and employer's liability and a waiver of subrogation, and shall provide DISTRICT with certification of all such coverages upon request by DISTRICT's Risk Manager.

(b) **Liability Insurance.** CONSULTANT shall obtain and maintain in full force and effect during the term of this Agreement the following liability insurance coverages, issued by a company admitted to do business in California and having an A.M. Best rating of A:VII or better, or equivalent self-insurance:

(1) **General Liability.** Commercial General Liability [CGL] insurance coverage (personal injury and property damage) of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence, covering liability or claims for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of CONSULTANT or any officer, agent, or employee of CONSULTANT

under this Agreement. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

(2) **Professional Liability/Errors and Omissions.** Professional Liability [or errors and omissions] insurance for all activities of CONSULTANT arising out of or in connection with this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) per claim.

(3) **Comprehensive Automobile Liability Insurance.** Comprehensive automobile liability insurance (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with CONSULTANT's business of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence. Coverage shall be business auto insurance coverage using Insurance Services Office (ISO) form number CA 0001 06 92 including symbol 1 (any Auto) or the exact equivalent. If CONSULTANT owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the General Liability Insurance described in subparagraph (b)(1) above. If CONSULTANT or CONSULTANT's employees, officers, or agents will use personal automobiles in any way in the performance of this Agreement, CONSULTANT shall provide evidence of personal auto liability coverage for each such person upon request.

(c) **Certificates of Coverage.** All insurance coverages referenced in paragraph 7(b), above, shall be evidenced by one or more certificates of coverage or, with the consent of DISTRICT's Risk Manager, demonstrated by other evidence of coverage acceptable to DISTRICT's Risk Manager, which shall be filed by CONSULTANT with the DISTRICT prior to commencement of performance of any of CONSULTANT's duties.

(1) The certificate(s) or other evidence of coverage shall reference this Agreement by its DISTRICT number or title and department; shall be kept current during the term of this Agreement; shall provide that DISTRICT shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.

(2) **Waiver of Subrogation and Additional Insured Endorsements.** For the commercial general liability insurance coverage referenced in paragraph 7(b)(1) and, for the comprehensive automobile liability insurance coverage referenced in paragraph 7(b)(3) where the vehicles are covered by a commercial policy rather than a personal policy, CONSULTANT shall also file with the evidence of coverage an endorsement from the insurance provider naming DISTRICT, its officers and employees as additional insureds and waiving subrogation. For the Workers' Compensation insurance coverage, CONSULTANT shall file with the evidence of coverage an endorsement waiving subrogation.

(3) The certificate or other evidence of coverage shall provide that if the same policy applies to activities of CONSULTANT not covered by this Agreement, then the limits in the applicable certificate relating to the additional insured coverage of DISTRICT shall pertain only to liability for activities of CONSULTANT under this Agreement, and that the insurance provided is primary coverage to DISTRICT with respect to any insurance or self-insurance programs maintained by DISTRICT. The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85,

or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94.

(4) Upon request by DISTRICT's Risk Manager, CONSULTANT shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

(d) **Deductibles/Retentions**. Any deductibles or self-insured retentions shall be declared to, and be subject to approval by, DISTRICT's Risk Manager, which approval shall not be denied unless the DISTRICT's Risk Manager determines that the deductibles or self-insured retentions are unreasonably large in relation to compensation payable under this Agreement and the risks of liability associated with the activities required of CONSULTANT by this Agreement. At the option of and upon request by DISTRICT's Risk Manager if the Risk Manager determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects DISTRICT, its officers and employees or CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

(e) **Inclusion in Subcontracts**. CONSULTANT agrees to require all subcontractors and any other entity or person who is involved in providing services under this Agreement to comply with the Workers' Compensation and General Liability insurance requirements set forth in this Paragraph 7.

8. **Hold Harmless/Defense/Indemnification.**

(a) **In General**. Except as otherwise prohibited by Civil Code section 2782.8, CONSULTANT shall indemnify (including reimbursement of reasonable defense costs) and hold harmless the DISTRICT and its officers or employees from and against liability, losses, injuries, damages or expenses including litigation costs and reasonable attorney's fees incurred in connection therewith, brought for or on account of, personal injury (including death), including but not limited to DISTRICT employees, and the public, or damage to the property of any person or entity, which arise out of, pertain to, or relate to performance of services hereunder to the extent caused by the negligence, recklessness, or willful misconduct of CONSULTANT, its officers, employees, contractors and subcontractors. The cost of defense charged to CONSULTANT shall not exceed CONSULTANT's proportionate percentage of fault except as otherwise provided by Civil Code section 2782.8. Each Party shall notify the other Party immediately in writing of any claim or damage related to activities performed under this Agreement. The Parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either Party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

(b) **Employee Character and Fitness**. CONSULTANT accepts responsibility for determining and approving the character and fitness of its employees (including subcontractors) to provide the services required of CONSULTANT under this Agreement, including completion of a satisfactory criminal/background check and period rechecks to the extent permitted by law. Notwithstanding anything to the contrary in this Paragraph, CONSULTANT shall hold DISTRICT and its officers and employees harmless from any liability for injuries or damages resulting from a breach of this provision or CONSULTANT's actions in this regard.

9. **Termination for Cause.** If either Party shall fail to fulfill in a timely and proper manner that Party's obligations under this Agreement or otherwise breach this Agreement and fail to cure such failure or breach within ten (10) days of receipt of written notice from the other Party describing the nature of the breach, the non-defaulting Party may, in addition to any other remedies it may have, terminate this Agreement by giving five (5) days prior written notice to the defaulting Party in the manner set forth in Paragraph 13 (Notices). The DISTRICT's Purchasing Agent or designee pursuant to Napa County Code section 2.36.050 is hereby authorized to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of DISTRICT for cause.

10. **Other Termination.** This Agreement may be terminated by either Party for any reason and at any time by giving prior written notice of such termination to the other Party specifying the effective date thereof at least thirty (30) days prior to the effective date, as long as the date the notice is given and the effective date of the termination are in the same fiscal year; provided, however, that no such termination may be effected by DISTRICT unless an opportunity for consultation is provided prior to the effective date of the termination. DISTRICT hereby authorizes the Napa County Executive Officer to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of DISTRICT for the convenience of DISTRICT.

11. **Disposition of, Title to and Payment for Work upon Expiration or Termination.**

(a) Upon expiration of this Agreement or termination for cause under Paragraph 9 or termination for convenience of a Party under Paragraph 10:

(1) To the extent CONSULTANT has provided services through Software and Applications materials licensed to DISTRICT, DISTRICT shall promptly return the Software and Application materials to CONSULTANT. In addition, to the extent CONSULTANT maintains DISTRICT data on those portions of digital software hosted by CONSULTANT and not controlled by DISTRICT ("DISTRICT data"), CONSULTANT shall promptly return DISTRICT data to DISTRICT Information Technology Department (ITS) in a format designated by ITS and shall subsequently purge DISTRICT data from CONSULTANT's systems upon confirmation from DISTRICT that the copy of the data provided to DISTRICT is comprehensive of the data previously hosted by CONSULTANT.

(2) All finished or unfinished documents and other materials, if any, and all rights therein shall become, at the option of DISTRICT, the property of and shall be promptly returned to DISTRICT, although CONSULTANT may retain a copy of such work for its personal records only, except as otherwise provided under Paragraph 15 (Confidentiality) of this Agreement. Unless otherwise expressly provided in this Agreement, any copyrightable or patentable work created by CONSULTANT under this Agreement shall be deemed a "work made for hire" for purposes of copyright or patent law and only DISTRICT shall be entitled to claim or apply for the copyright or patent thereof. Notwithstanding the foregoing and to the extent services under this Agreement involve the development of previously patented inventions or copyrighted software, then upon expiration or termination of this Agreement, title to, ownership of, and all applicable patents, copyrights and trade secrets in the products developed or improved under this Agreement, shall remain with CONSULTANT or any other person or entity if such person previously owned or held such patents, copyrights, and trade secrets, and such persons shall retain complete rights to market such product; provided, however, that DISTRICT shall receive, at no

additional cost, a perpetual license to use such products for its own use or the use of any consortium or joint powers agency to which DISTRICT is a party. If the product involves a source code, CONSULTANT shall either provide a copy of the source code to DISTRICT or shall place the source code in an escrow account, at CONSULTANT's expense, from which the source code may be withdrawn and used by DISTRICT for the sole purpose of maintaining and updating the system dependent upon such code when such use is necessary to prevent loss of service to DISTRICT.

(b) CONSULTANT shall be entitled to receive compensation for any satisfactory work completed prior to expiration or receipt of the notice of termination or commenced prior to receipt of the notice of termination and completed satisfactorily prior to the effective date of the termination; except that CONSULTANT shall not be relieved of liability to DISTRICT for damages sustained by DISTRICT by virtue of any breach of the Agreement by CONSULTANT whether or not the Agreement expired or otherwise terminated, and DISTRICT may withhold any payments not yet made to CONSULTANT for purpose of setoff until such time as the exact amount of damages due to DISTRICT from CONSULTANT is determined.

12. **No Waiver.** The waiver by either Party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

13. **Notices.** All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any mailed notice, demand, request, consent, approval or communication that either Party desires to give the other Party shall be addressed to the other Party at the address set forth below. Either Party may change its address by notifying the other Party of the change of address. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

DISTRICT

Napa Berryessa Resort Improvement District
Christopher M. Silke, P.E.
District Engineer
1195 Third Street, Suite 101
Napa, CA 94559

CONSULTANT

Geocon Consultants, Inc.
Shane Rodacker, P.E.
Principal
2480 Hilborn Road, Suite 240
Fairfield, CA 94534

14. **Compliance with DISTRICT Policies on Waste, Harassment, Drug/Alcohol-Free Workplace, and Computer Use.** CONSULTANT hereby agrees to comply, and require its employees and subcontractors to comply, with the following policies, copies of which are on file with the Clerk of the Board of Supervisors and incorporated by reference herein. CONSULTANT also agrees that it shall not engage in any activities, or permit its officers and employees to do so, during the performance of any of the services required under this Agreement, which would interfere with compliance or induce violation of these policies by DISTRICT employees or contractors.

(a) Waste Source Reduction and Recycled Product Content Procurement Policy adopted by resolution of the Board of Supervisors on March 26, 1991.

(b) County of Napa “Policy for Maintaining a Harassment and Discrimination Free Work Environment” revised effective August 23, 2005.

(c) County of Napa Drug and Alcohol Policy adopted by resolution of the Board of Supervisors on June 25, 1991.

(d) Napa County Information Technology Use and Security Policy adopted by resolution of the Board of Supervisors on April 17, 2001. To this end, all employees and subcontractors of CONSULTANT whose performance of services under this Agreement requires access to any portion of the DISTRICT computer network shall sign and have on file with DISTRICT’s ITS Department prior to receiving such access the certification attached to said Policy.

(e) Napa County Workplace Violence Policy, adopted by the BOS effective May 23, 1995 and subsequently revised effective November 2, 2004, which is located in the County of Napa Policy Manual Part I, Section 37U.

15. Prevailing Wage Requirements. The scope of services includes “public works” as defined in the California Labor Code. CONSULTANT shall comply with all State prevailing wage requirements, including but not limited to, those set forth in Exhibit B.

16. No Assignments or Subcontracts.

(a) **In General.** A consideration of this Agreement is the personal reputation of CONSULTANT; therefore, CONSULTANT shall not assign any interest in this Agreement or subcontract any of the services CONSULTANT is to perform hereunder without the prior written consent of DISTRICT, which shall not be unreasonably withheld. The inability of the assignee to provide personnel equivalent in experience, expertise, and numbers to those provided by CONSULTANT, or to perform any of the remaining services required under this Agreement within the same time frame required of CONSULTANT shall be deemed to be reasonable grounds for DISTRICT to withhold its consent to assignment. For purposes of this subparagraph, the consent of DISTRICT may be given by the District Engineer.

(b) **Effect of Change in Status.** If CONSULTANT changes its status during the term of this Agreement from or to that of a corporation, limited liability partnership, limited liability company, general partnership, or sole proprietorship, such change in organizational status shall be viewed as an attempted assignment of this Agreement by CONSULTANT. Failure of CONSULTANT to obtain approval of such assignment under this Paragraph shall be viewed as a material breach of this Agreement.

17. Amendment/Modification. Except as specifically provided herein, this Agreement may be modified or amended only in writing and with the prior written consent of both Parties. In particular, only DISTRICT, through its Purchasing Agent or designee (as long as the total contract term, including all renewals, does not exceed three (3) years and the annual aggregate compensation paid to CONSULTANT by DISTRICT under this agreement will not exceed \$73,400), or through its Governing Board (in all other instances), in the form of an amendment of this Agreement, may authorize extra and/or changed work if beyond the scope of services in section 2 of this Agreement. Failure of CONSULTANT to secure such authorization in writing in advance of performing any of the extra or changed work shall constitute a waiver of any and all rights to adjustment in the contract price or contract time and no compensation shall be paid for such extra work.

18. **Interpretation; Venue.**

(a) **Interpretation.** The headings used herein are for reference only. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California without regard to the choice of law or conflicts.

(b) **Venue.** This Agreement is made in Napa County, California. The venue for any legal action in state court filed by either Party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Napa, a unified court. The venue for any legal action in federal court filed by either Party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation or similar legal proceedings under this Agreement shall be Napa County, California; however, nothing in this sentence shall obligate either Party to submit to mediation or arbitration any dispute arising under this Agreement.

19. **Compliance with Laws.** CONSULTANT shall observe and comply with all applicable Federal, State and local laws, ordinances, and codes. Such laws shall include, but not be limited to, the following, except where prohibited by law:

(a) **Non-Discrimination.** During the performance of this Agreement, CONSULTANT and its subcontractors shall not deny the benefits thereof to any person on the basis of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age, mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS), or political affiliation or belief, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age (over 40), mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS), use of family care leave, or political affiliation or belief. CONSULTANT shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, CONSULTANT shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Agreement subcontracts to CONSULTANT services or works required of DISTRICT by the State of California pursuant to agreement between DISTRICT and the State, the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are expressly incorporated into this Agreement by reference and made a part hereof as if set forth in full, and CONSULTANT and any of its subcontractors shall give written notice of their obligations thereunder to labor organizations with which they have collective bargaining or other agreements.

(b) **Documentation of Right to Work.** CONSULTANT agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of CONSULTANT performing any services under this Agreement have a legal

right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. CONSULTANT shall make the required documentation available upon request to DISTRICT for inspection.

(c) **Inclusion in Subcontracts.** To the extent any of the services required of CONSULTANT under this Agreement are subcontracted to a third party, CONSULTANT shall include all of the provisions of this Paragraph 19 in all such subcontracts as obligations of the subcontractor.

20. **Taxes.** CONSULTANT agrees to file federal and state tax returns or applicable withholding documents and to pay all applicable taxes or make all required withholdings on amounts paid pursuant to this Agreement and shall be solely liable and responsible to make such withholdings and/or pay such taxes and other obligations including, without limitation, state and federal income and FICA taxes. CONSULTANT agrees to indemnify and hold DISTRICT harmless from any liability it may incur to the United States or the State of California as a consequence of CONSULTANT's failure to pay or withhold, when due, all such taxes and obligations. In the event that DISTRICT is audited for compliance regarding any withholding or other applicable taxes or amounts, CONSULTANT agrees to furnish DISTRICT with proof of payment of taxes or withholdings on those earnings.

21. **Access to Records/Retention.** DISTRICT, any federal or state grantor agency funding all or part of the compensation payable hereunder, the State Controller, the Comptroller General of the United States, or the duly authorized representatives of any of the above, shall have access to any books, documents, papers and records of CONSULTANT which are directly pertinent to the subject matter of this Agreement for the purpose of making audit, examination, excerpts and transcriptions. Except where longer retention is required by any federal or state law, CONSULTANT shall maintain all required records for at least seven (7) years after DISTRICT makes final payment for any of the work authorized hereunder and all pending matters are closed, whichever is later.

22. **Authority to Contract.** CONSULTANT and DISTRICT each represent hereby that they are legally permitted and otherwise have the authority to enter into and perform this Agreement.

23. **Conflict of Interest.**

(a) **Covenant of No Undisclosed Conflict.** The Parties to the Agreement acknowledge that they are aware of the provisions of Government Code section 1090, et seq., and section 87100, et seq., relating to conflict of interest of public officers and employees. CONSULTANT hereby represents that it presently has no interest not disclosed to DISTRICT and shall not acquire any interest, direct or indirect, which would conflict in any material manner or degree with the performance of its services or confidentiality obligation hereunder, except as such as DISTRICT may consent to in writing prior to the acquisition by CONSULTANT of such conflict. CONSULTANT further represents that it is unaware of any financial or economic interest of any public officer or employee of DISTRICT relating to this Agreement. CONSULTANT agrees that if such financial interest does exist at the inception of this Agreement, DISTRICT may terminate this Agreement immediately upon giving written notice without further obligation by DISTRICT to CONSULTANT under this Agreement.

(b) **Statements of Economic Interest.** CONSULTANT acknowledges and understands that DISTRICT has developed and approved a Conflict of Interest Code as required by state law which requires CONSULTANT to file with the Elections Division of the Napa County Assessor-Clerk Recorder “assuming office”, “annual”, and “leaving office” Statements of Economic Interest as a “consultant”, as defined in section 18701(a)(2) of Title 2 of the California Code of Regulations, unless it has been determined in writing that CONSULTANT has been hired to perform a range of duties so limited in scope as to not be required to fully comply with such disclosure obligation. By executing this Agreement, the District Engineer is confirming the Scope of Services does not trigger a requirement for CONSULTANT to file a statement of economic interests.

24. **Standard of Care.** CONSULTANT represents that the professional services rendered under this Agreement shall be performed in accordance with the standards customarily adhered to by an experienced and competent professional engineering firm using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California. CONSULTANT shall correct any professional services falling below this standard at its sole cost and expense, if notified by DISTRICT within one year after completion of such services. This standard of care is in addition to any other remedies that may be available to COUNTY in law or equity.

25. **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.

26. **Severability.** If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

27. **Entirety of Contract.** This Agreement, including any documents expressly incorporated by reference whether or not attached hereto, constitutes the entire agreement between the Parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the Parties with respect to the subject matter hereof.

28. **Counterparts.** This Agreement may be executed in counterparts, which when taken together, shall constitute a single signed original as though all parties had executed the same page.

IN WITNESS WHEREOF, this Agreement is executed by the Napa Berryessa Resort Improvement District, acting by and through the Chair of the Governing Board, and by the Consultant through its duly authorized officers.

GEOCON CONSULTANTS, INC.

By _____
SHANE RODACKER, Principal

By _____
JEREMY J. ZORNE, Principal

NAPA BERRYESSA RESORT IMPROVEMENT
DISTRICT, a Special District of the State of California

By _____
RYAN GREGORY, Chair of the Governing
Board of Napa Berryessa Resort Improvement District

APPROVED AS TO FORM Office of County Counsel By: <u>Thomas C. Zeleny</u> Interim County Counsel Date: <u>April 17, 2022</u>	APPROVED BY THE BOARD OF SUPERVISORS, AS THE GOVERNING BOARD OF THE NAPA BERRYESSA RESORT IMPROVEMENT DISTRICT Date: _____ Processed By: _____ _____ Deputy Secretary of the District	ATTEST: NEHA HOSKINS Secretary of the District By: _____
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EXHIBIT “A”

SCOPE OF WORK AND COMPENSATION

I. SCOPE OF SERVICES. CONSULTANT shall provide site reconnaissance, design level topographic survey of the project limits, exploratory borings, laboratory testing, geotechnical analysis of the soil mechanics that includes software modeling of the slopes, compose a Technical Memorandum with slope / liner / evaporation system repair recommendations, prepare design plans and technical specifications for construction scope of work and support the DISTRICT with bid solicitation and construction administration services. Refer to CONSULTANT’S Scope of Work and Fee Estimate proposal dated March 4, 2022 attached hereto and incorporated by reference as Attachment 1, for itemization of the task order and activity / deliverable descriptions.

II.COMPLIANCE WITH GOVERNMENT CODE SECTION 7550. As required by Government Code section 7550, each document or report prepared by CONSULTANT for or under the direction of DISTRICT pursuant to this Agreement shall contain the numbers and dollar amounts of the Agreement and all subcontracts under the Agreement relating to the preparation of the document or written report. The Agreement and subcontract dollar amounts shall be contained in a separate section of the document or written report. If multiple documents or written reports are the subject of the Agreement or subcontracts, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written reports.

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.

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.

3. 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.

4. 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.

4.1. 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).

4.2. 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.

5. 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).

6. 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.

7. 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.

8. 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.”

9. 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.

10. 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.

10.1. 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.

10.2. 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.

10.3. 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.

10.4. 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).

11. 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.



2. SCOPE OF SERVICES

BACKGROUND AND PROJECT DESCRIPTION

The Geocon team will prepare project plans, specifications and cost estimates for the repair of two distinct slope failure areas at the Napa Berryessa Resort Improvement District (NBRID) wastewater storage ponds at 21605 Steele Canyon Road in Berryessa Highlands. The pond facility was originally constructed from early 2013 to 2014 and included relatively deep cuts and fills to grade new Ponds 1 through 4.

Based on the NBRID RFP dated January 26, 2022 and information obtained during our recent site meeting, the primary slope failure occurred within the eastern slope of Pond 2 – a 4.8-million-gallon storage pond with a Hypalon liner. The slope failure reportedly occurred in 2021 and appears limited to an approximately 50-foot-wide section of the eastern pond slope. The failure created a slide debris mass that has damaged the pond liner and resulted in significant bulging beneath the liner, both on the eastern slope and at the pond bottom.

The eastern Pond 2 slope is approximately 30 to 35 feet high and was generally constructed via cuts from existing grade, per the original grading plans included in the RFP. However, the plans also indicate a small finger of fill at/near the slope failure area. The top of the failure generally coincides with the outside (eastern) edge of the unpaved access road that runs along the rim of Pond 2. An unlined drainage swale was constructed along the outside edge of the access road during original site grading. The swale was intended to collect run-off from the access road and ascending hillside to the east and release to an existing surface drainage course at the northern margin of the site.

A second slope failure occurred in an approximately 20-foot-high cut slope uphill from the access road at the southern rim of Pond 2. The failure apparently occurred over the winter of 2016-17. An unpaved road runs along the top of the cut slope and provides vehicular access to Pond 1, which is located several hundred feet to the east. The slope failure has not yet damaged the Pond 1 access road.

Geotechnical information relative to original site grading is limited to two field memoranda published by the contractor's geotechnical consultant; a geotechnical investigation with a subsurface exploration program was not performed. Various geologic references indicate the site is underlain by Cretaceous age marine deposits (sedimentary rock) and an inactive fault may traverse the site.

Our geotechnical investigation is intended to observe subsurface conditions in the two slope failure areas and provide geotechnical recommendations for slope repair, based on the conditions encountered in our study. Our field exploration plan includes soil borings to explore soil and geologic conditions at each of the subject slope areas, including potential seepage or subsurface drainage issues that may have contributed to the failures. Based on our initial observations at the site, there may also have been contributory surface drainage issues, particularly at the location of the failure within the eastern Pond 2 slope. Our investigation will include a field exploration program, laboratory testing, engineering analysis, and the preparation of a formal project geotechnical report.

A breakdown of our proposed services per the tasks outlined in the project RFP (Tasks 1 through 7) is provided below. In general, Tasks 1 through 4 will be performed by Geocon and Tasks 5 through 7 will be performed by Bennett Engineering Services (BEN|EN) through subconsultant agreement with Geocon. Based on the RFP addendum dated February 28, 2022, we understand that topographic survey information will be provided by NBRID. However, we have included an optional Subtask 1.1 to provide supplemental topographic survey, in the event that such information is necessary for project design. If needed, topographic surveying would be performed by UNICO Engineering, a DBE, SBE and MBE certified land surveying firm.

Task 1 - Site Reconnaissance, Buried Facility Location, and Project Site Survey (Geocon, BEN|EN)

- Perform a site reconnaissance to observe surficial geology, review project limits and site logistics, evaluate drill rig access and mark out boring locations for subsequent utility clearance.
- Obtain a no-fee encroachment permit from Napa County. We have assumed no other encroachment permits and/or required rights-of-entry will be required for our field explorations.

- Retain the services of a California C-57 licensed driller to perform soil borings with truck-mounted drill rigs and limited access drilling equipment.
- Obtain the required soil boring permits from Napa County Environmental Services. We have assumed that permit fees will be waived.
- Notify subscribing utility companies via Underground Service Alert (USA) a minimum of 48 hours (as required by law) prior to drilling operations.

Subtask 1.1 (OPTIONAL) - Design level (non-aerial) topographic surveys and base mapping (UNICO Engineering)

- Locate all features within the project limits including Pond 2, tops of banks, toes of banks, fences, access roads, visible utilities, slopes, embankments, limits of slide and erosion, trees, and drainage features. Previous survey control will be utilized for overall consistency. The topographic survey will include mapping, 1' contours, digital surface and point files. Durable control points will be established onsite for future surveys and construction control. A survey base map and points file will be provided in AutoCAD format.

Task 2 – Exploratory Soil Borings (Geocon)

- Perform up to six borings to depths of approximately 40 feet or less to observe subsurface conditions and obtain soil samples. Our borings will be performed with a truck-mounted rig, where boring locations are accessible. Limited access drilling equipment will be used at boring locations with logistical constraints.. We have assumed our borings can be completed within two working days, during normal business hours, Monday through Friday. We intend to utilize a truck-mounted drill on one of the planned days of drilling, and limited access drilling equipment on the other.
- Log the soils encountered in the borings in accordance with the Unified Soil Classification System.
- Obtain bulk and relatively undisturbed soil samples from our soil borings. Samples will be returned to our laboratory for further examination and testing.
- Upon completion, backfill our borings per permit requirements. Excess soil cuttings will be spread onsite near each borehole.

Task 3 – Laboratory Testing (Geocon)

- Perform laboratory tests on selected samples to evaluate pertinent geotechnical parameters. Laboratory testing assignments will depend on the soils conditions encountered in our soil borings but we anticipate testing for in-situ dry density and/or moisture content, maximum dry density and optimum moisture content, gradation (particle size distribution), plasticity, and shear strength. The results of our laboratory testing will be a basis for the geotechnical parameters selected for our analysis, including slope stability.

Task 4 – Geotechnical Analysis and Technical Memorandum (Geocon)

- Perform geotechnical engineering analysis to establish basis for recommendations to repair each slope failure. Our slope stability analysis will be performed using SLOPE/W. SLOPE/W is a state-of-the-art software program that computes the factor of safety of earth and rock slopes. SLOPE/W can effectively analyze both simple and complex problems for a variety of slip surface shapes, pore-water pressure conditions, soil properties, analysis methods and loading conditions. Slope stability will be analyzed for each planned repair, for both static and seismic conditions. SLOPE/W also performs sensitivity analyses to understand how variation of input parameters (typically shear strength) affects the calculated factor of safety for finished slope configurations.
- Prepare a formal report with the results of our investigation. The report will include (but not be limited to) the following:
 - Site vicinity map

- Site plan(s) showing boring locations
- Geologic map
- Geologic cross-sections
- Logs of the exploratory borings, including depth to groundwater (if encountered)
- Laboratory test results
- Summary of encountered soil and geologic conditions
- Geologic and seismic hazard evaluation (faulting, liquefaction)
- Seismic design criteria (2019 California Building Code)
- Slope stability analysis
- Anticipated excavation characteristics
- Soil stabilization measures
- Site preparation, grading and slope repair and erosion protection recommendations
- Suitability of onsite materials for use as engineered fill and import fill recommendations
- Utility trench excavation and backfill recommendations for repair of PVC pipe evaporation system

Task 5 – Engineered Plans and Specifications (BEN|EN)

Subtask 5.1 Project Management and Meetings

BEN|EN's Project Manager will submit project status updates and invoices to Geocon. BEN|EN will also coordinate design review meetings and document design decisions. This scope assumes four (4) meetings.

The BEN|EN team will visit the site for investigation of existing conditions and observation of existing utilities. One (1) site visit is assumed.

Deliverables:

- Progress reports with invoices
- Meeting agendas and minutes

Subtask 5.2 QA/QC Program

BEN|EN's Quality Control Program will be implemented with constructability reviews conducted by senior BEN|EN staff prior to submittal of the 90% and Final Bid Set deliverables.

Subtask 5.3 90% Plans, Specifications, and Estimate

The scope of the Napa Berryessa Resort Improvement District (NBRID/District) Wastewater Pond No. 2 Site Slope Stabilization Project generally includes:

- designing earthwork improvements repairing slide and wastewater pond liner damage
- addressing a slide plane problem in the cut bank slope of Wastewater Pond No. 2
- improving toe water collection and drainage along the easterly and southerly perimeter of Wastewater Pond No. 2
- restoring up to 300 feet of spray evaporation piping

BEN|EN will research and review existing topographic mapping, as-built plans, record maps, surveys, assessor maps, improvement plans, and other available documents for the project.

BEN|EN will prepare and submit 90% plans, specifications, and an opinion of probable construction cost (OPCC) to Geocon for review and comment. Design will be based on County of Napa standards and other applicable construction standards. Specifications will be

prepared in the Construction Specifications Institute (CSI) MasterFormat, current edition (six-digit numbering).

The design drawings anticipated include:

- Title Sheet – 1
- General Notes – 1
- Grading and Drainage Plan – 2
- Piping Plan – 1
- Drainage Details – 2
- Geotechnical Improvements – 2

Subtask 5.4 Bid Set Documents

BEN|EN will prepare and submit final plans, specifications, and an OPCC to Geocon that fully address all comments from the District's 90% PS&E review. Final bid documents will be stamped and signed by a licensed engineer registered in California. Final bid documents will be provided to the District representative in both PDF and printed formats. CAD files will be available upon request.

Deliverables:

- Bid set plans, specifications, and estimate
- Comment response matrix from 90% PS&E review

Task 6 – Bid Phase Assistance (Geocon, BEN|EN)

Subtask 6.1 Prebid Meeting

BEN|EN's Project Manager will attend the pre-bid meeting at the project site with Geocon representatives and potential bidders to address potential bidder questions.

Subtask 6.2 Bid Coordination

BEN|EN will respond to questions regarding the plans, specifications, and the estimate prior to the bid openings, and prepare addenda and letters of clarification as required to respond to potential bidders' Requests for Information (RFIs). BEN|EN will provide revised or supplemental project plans or exhibits as needed to be fully responsive to RFIs. One (1) Bid Addendum is assumed.

Task 7 – Construction Phase Services (Geocon, BEN|EN)

Subtask 7.1 Review Submittals and RFIs

BEN|EN will coordinate with a Construction Manager during project construction.

BEN|EN will prepare a list of submittals required to be submitted by the Contractor during construction. BEN|EN will review submittals for construction. Submittals will be logged in a matrix/spreadsheet and provided to Geocon. Five (5) submittals are assumed.

BEN|EN will review RFIs and contract change order (CCO) requests made by the Contractor. BEN|EN will provide responses and prepare revised plans or clarification exhibits to address concerns. RFIs will be logged in a matrix and provided to Geocon. One (1) CCO and three (3) RFIs are assumed.

Deliverables:

- Submittal tracking spreadsheet
- Submittal responses

Subtask 7.2 Construction Meetings

BEN|EN will attend site visits and construction meetings to clarify RFIs or other construction concerns related to design. It is assumed BEN|EN will attend the pre-construction meeting and two (2) construction meetings.

Subtask 7.3 As-built Drawings

BEN|EN will collect the final redline set of plans from the Contractor upon construction completion of the project and provide as-built drawings to Geocon in PDF and AutoCAD electronic formats.

Deliverables:

- As-built drawings (PDF and AutoCAD)

ASSUMPTIONS AND LIMITATIONS

In addition to the assumptions or limitations outlined above, we also assume the following:

- NBRID will coordinate site access/permission to enter the site.
- Work hour restrictions will not preclude eight consecutive hours of drilling each day, during normal daytime business hours.
- Prevailing wage requirements will apply to our drillers and to our field engineer or geologist obtaining samples during drilling operations.
- Site plans provided for our use will show the locations of all underground utility lines and structures. We will not be responsible for damage to any such lines or structures that are not shown accurately on the plans provided to us, or properly marked by utility companies.
- Planned boring locations are accessible with the drilling equipment indicated herein and return trips or special equipment will not be required.
- The scope of services detailed in this proposal does not include the evaluation or identification of environmental contamination.
- Property boundaries will not be required.
- Potholing will not be required.
- Length of PVC pipe needing replacement will not exceed 300 feet.
- Utility coordination is not necessary.
- District will provide front end specifications to BEN|EN.
- District will provide one set of comments for the 90% plans, specification, and estimate (PS&E) review.
- Sufficient topographic survey is provided to BEN|EN (in .DWG format) if optional survey task is not approved.
- One set of full-size plans, specifications, and estimate will be provided at both the 90% and Final design level.
- No permit support is necessary for this project (i.e. CEQA, encroachment, boring, etc.).
- Pre-bid meeting will be organized by others.
- One Bid Addendum is assumed.
- Construction management and inspection and geotechnical testing and observation are not included in the scope of services proposed herein.
- One (1) CCO and three (3) RFIs are assumed.
- BEN|EN and Geocon representatives will attend the pre-construction meeting and two construction meetings.

3. BUDGET

Task 1		Qty.	Units	Unit Rate	Extension
Geocon					
	Sr. Engineer	16	hours	\$ 175.00	\$ 2,800.00
	Project Engineer	14	hours	\$ 145.00	\$ 2,030.00
	Truck	2	days	\$ 125.00	\$ 250.00
BEN EN					
	Project Manager V	2	hours	\$ 225.00	\$ 450.00
	Engineer III	2	hours	\$ 185.00	\$ 370.00
	Engineer II	6	hours	\$ 168.00	\$ 1,008.00
	Labor Compliance Specialist	4	hours	\$ 110.00	\$ 440.00
	Misc. Expenses	1	ea.	\$ 110.00	\$ 110.00
	Topographic Survey (UNICO) - OPTIONAL	1	ea.	\$ 9,896.00	\$ 9,896.00
	Task 1 Subtotal:				\$ 5,080.00
	w/ optional survey				\$ 19,195.10
Task 2					
Geocon					
	Field Technician II (PW)	16	hours	\$ 135.00	\$ 2,160.00
	Field Technician II (PW) - OT	8	hours	\$ 202.50	\$ 1,620.00
	Field Technician II (PW) - Double Time	4	hours	\$ 270.00	\$ 1,080.00
	Driller	2	days	\$ 5,750.00	\$ 11,500.00
	Truck	2	ea.	\$ 125.00	\$ 250.00
	Misc. Supplies	1	ea.	\$ 150.00	\$ 150.00
	Task 2 Subtotal:				\$ 16,760.00
Task 3					
Geocon					
	Proctor	2	ea.	\$ 225.00	\$ 450.00
	Direct Shear	6	ea.	\$ 325.00	\$ 1,950.00
	Sieve Analyses	4	ea.	\$ 120.00	\$ 480.00
	Sieve Analyses - #200 Wash	4	ea.	\$ 90.00	\$ 360.00
	Moisture-Density	30	ea.	\$ 40.00	\$ 1,200.00
	Atterberg Limits	6	ea.	\$ 200.00	\$ 1,200.00
	Task 3 Subtotal:				\$ 5,640.00
Task 4					
Geocon					
	Sr. Engineer	24	hours	\$ 175.00	\$ 4,200.00
	Project Engineer	30	hours	\$ 145.00	\$ 4,350.00
	Sr. Draftsman	16	hours	\$ 100.00	\$ 1,600.00
	Task 4 Subtotal:				\$ 10,150.00



Task 5						
BEN EN						
	Project Manager V	60	hours	\$	225.00	\$ 13,500.00
	Engineer VI	4	hours	\$	215.00	\$ 860.00
	Engineer III	36	hours	\$	185.00	\$ 6,660.00
	Engineer II	86	hours	\$	168.00	\$ 14,448.00
	Project Controls Specialist	8	hours	\$	100.00	\$ 800.00
	Administrative	14	hours	\$	85.00	\$ 1,190.00
	Misc. Expenses	1	ea.	\$	1,880.00	\$ 1,880.00
Task 5 Subtotal:						\$ 45,238.70
Task 6						
Geocon						
	Sr. Engineer	8	hours	\$	175.00	\$ 1,400.00
	Project Engineer	16	hours	\$	145.00	\$ 2,320.00
	Truck	1	days	\$	125.00	\$ 125.00
BEN EN						
	Project Manager V	16	hours	\$	225.00	\$ 3,600.00
	Engineer III	8	hours	\$	185.00	\$ 1,480.00
	Engineer II	8	hours	\$	168.00	\$ 1,344.00
	Misc. Expenses	1	ea.	\$	320.00	\$ 320.00
Task 6 Subtotal:						\$ 11,600.60
Task 7						
Geocon						
	Sr. Engineer	8	hours	\$	175.00	\$ 1,400.00
	Project Engineer	16	hours	\$	145.00	\$ 2,320.00
	Truck	1	days	\$	125.00	\$ 125.00
BEN EN						
	Project Manager V	22	hours	\$	225.00	\$ 4,950.00
	Engineer III	10	hours	\$	185.00	\$ 1,850.00
	Engineer II	36	hours	\$	168.00	\$ 6,048.00
	Misc. Expenses	1	ea.	\$	640.00	\$ 640.00
Task 7 Subtotal:						\$ 19,356.20
Total Estimated Fee:						\$ 113,825.50
w/ optional Subtask 1.1 (Topo Survey):						\$ 127,940.60

*estimates herein reflect 15% mark-up on subconsultant fees



2022 SCHEDULE OF FEES

PROFESSIONAL SERVICES

Engineering Assistant/Laboratory Technician.....	\$85/hr.
Engineering Field Technician/Special Inspector I	85/125(PW)* /hr.
Engineering Field Technician/Special Inspector II	95/135(PW)* /hr.
Engineering Field Technician/Special Inspector III/Equipment Operator	105/145(PW)* /hr.
Word Processor/Technical Editor/Draftsman	85/hr.
Research Assistant/Technical Illustrator/Senior Draftsman.....	100/hr.
Project Coordinator/GIS Specialist	110/hr.
Staff Engineer/Geologist/Scientist/Field Supervisor	125/hr.
Senior Staff Engineer/Geologist/Scientist	135/hr.
Project Engineer/Geologist/Scientist/Construction Supervisor.....	145/hr.
Senior Project Engineer/Geologist/Scientist.....	160/hr.
Senior Engineer/Geologist/Scientist/Certified Industrial Hygienist.....	175/hr.
Associate Engineer/Geologist/Scientist.....	200/hr.
Principal Engineer/Geologist/Scientist/Litigation Support	240/hr.
Deposition or Court Appearance.....	400/hr.
Attorney Fees (General)	350/hr.
Overtime (>8 to 12 hrs.), Saturday, and Night Rate	1.5X Regular Hourly Rate
Overtime (>12 hrs.), Sunday, and Holiday Rate	2X Regular Hourly Rate
Minimum Professional Fee.....	\$500/Project
Minimum Field Services Fee (per day or call-out)	4 Hours

*Prevailing Wage (PW) per requirements of California Labor Code §720, et. Seq.

TRAVEL

Personnel	Regular Hourly Rate
Subsistence (Per Diem)	\$200/day
Vehicle Mileage	0.75/mile

EQUIPMENT & ANALYTICAL TESTS

Nuclear Gauge	Included in Technician Hourly Rate	Level D PPE/Decon Rinse Equipment	\$50/day
Pick-up Truck	\$125/day	pH/Conductivity/Temperature Meter	60/day
Equipment Truck	200/day	55-gallon drum	65/ea.
Direct-Push Rig/Operator	185/225(PW)* /hr.	TPHg (EPA 8015M)	90/ea.
Direct-Push Sample Liner	10/ea.	TPHd/mo (EPA 8015M)	80/ea.
Equipment Trailer	100/day	Fuel Oxygenate Compounds (EPA 8260B)	110/ea.
Wenner 4-Pin Earth Resistivity Meter	150/day	Volatile Organic Compounds (EPA 8260B)	150/ea.
Coring Machine (concrete, asphalt, masonry).....	200/day	Semi-Volatile Organic Compounds (EPA 8270)	300/ea.
Dynamic Cone Penetrometer	250/day	CAM 17 Metals (EPA 6010B)	170/ea.
Dilatometer (DMT) Test Equipment	800/day	Single Metal (EPA 6010B)	30/ea.
Generator or Air Compressor.....	150/day	STLC or TCLP Extraction	75/ea.
GPS Unit	160/day	Soil pH (EPA 9045C)	25/ea.
Drive-Tube Sampler or Hand-Auger	50/day	Organochlorine Pesticides (EPA 8081)	125/ea.
Soil Sample Tube (Brass or Stainless)	10/ea.	Naturally Occurring Asbestos (CARB 435)	90/ea.
Water Level Indicator	40/day	Asbestos PLM	20/ea.
Battery-Powered Pump	75/day	Asbestos 1,000-pt Count.....	80/ea.
Photo-Ionization Meter	150/day	48-hr/24-hr Turnaround Time	60%/100% surcharge

LABORATORY TESTS

COMPACTION CURVES

4-inch mold (D1557/D698).....	\$225/ea.
6-inch mold (D1557/D698).....	225/ea.
California Impact (CAL216).....	225/ea.
Check Point	100/ea.

SOIL AND AGGREGATE STABILITY

Resistance Value, R-Value (D2844/CAL301).....	\$300/ea.
R-Value, Treated (CAL301)	325/ea.
California Bearing Ratio (D1883).....	175/pt.
Stabilization Ability of Lime (C977)	180/ea.

SOIL AND AGGREGATE PROPERTIES

#200 Wash (D1140/C117)	\$90/ea.	Moisture Determination, tube sample (D2216)	\$20/ea.
Wet Sieve Analysis to #200 (D422/CAL202).....	120/ea.	Moisture Determination and Unit Weight (D2937)	40/ea.
Dry Sieve Analysis, 1.5"+ Aggregate (D6913).....	350/ea.	Atterberg Limits: Plasticity Index (D4318)	200/ea.
Hydrometer Analysis (D422)	165/ea.	Sand Equivalent (D2419/CAL217)	100/ea.
Sieve Analysis with Hydrometer (D422)	200/ea.	pH and Resistivity (CAL643)	120/ea.
Specific Gravity, Soil (T100)	100/ea.	Sulfate Content (CAL417)	90/ea.
Specific Gravity Coarse Aggregate (C127).....	60/ea.	Chloride Content (CAL422)	50/ea.
Specific Gravity Fine Aggregate (C128)	75/ea.	Organic Content (D2974).....	65/ea.
		Cut/Extract Shelby Tube	100/ea.

SHEAR STRENGTH

Unconfined Compression (D2166)	\$100/ea.
Direct Shear (3 pts.)(D3080)	325/ea.
Unconsolidated-Undrained Triaxial Shear (D2850)	125/pt.
Unconsolidated-Undrained Triaxial Staged (D2850)	175/ea.
Consolidated-Undrained Triaxial Shear (D4767)	300/pt.
Consolidated-Undrained Triaxial Staged (D4767)	375/ea.
Consolidated-Drained Triaxial Shear (EM1110)	400/pt.
Consolidated-Drained Triaxial Staged (EM1110).....	500/ea.

PERMEABILITY, CONSOLIDATION AND EXPANSION

Permeability, Flexible Wall (D5084)	\$300/ea.
Permeability, Rigid Wall (D5856).....	300/ea.
Consolidation (D2435)	60/pt.
Expansion Index (D4829/UBC 29-2)	225/ea.
Swell/Collapse (D4546)	165/pt.

AGGREGATE QUALITY

Sieve Analysis to #200 (C136)	\$120/ea.
L.A. Rattler Test (500 rev.) (C131).....	200/ea.
Durability Index (D3744/CAL229)	165/ea.
Fine Aggregate Angularity (CAL 234)	125/ea.
Flat and Elongated Particles (D4791/CAL 235)	150/ea.
Percent Crushed Particles (CAL205)	150/ea.

CONCRETE / MASONRY / REINFORCING STEEL

Compressive Strength, Cast Cylinders (C39)	\$30/ea.
Compressive Strength, Cores (C42)	60/ea.
Flexural Strength Beam (C78/C293)	80/ea.
Splitting Tensile Test (C496).....	80/ea.
DSA Masonry Shear (DSA-207)	75/ea.
Shotcrete Panel Coring and Comp. Strength (C1140) ..	80/ea.
Rebar Tensile / Bend (up to #11/#11 and Larger) ..	200/250/ea.
CMU Compressive Strength (C140)	100/ea.
Compressive Strength, Grout (C1019/UBC 21-19).....	30/ea.
Compressive Strength, Mortar (C109/UBC 21-15,16) ..	30/ea.
CMU Unit Wt., Dimen., Absorption (C140)	75/ea.
Compressive Strength, Masonry Prism (C1314)	250/ea.

HOT MIX ASPHALT

HMA Air Voids, Gyratory (T269)	\$525/ea.
Hamburg Wheel Tracker (T324)	1,000/ea.
Theoretical Max. Specific Gravity (D2041/CAL309)	175/ea.
Ignition/Sieve Analysis (C136/CAL202)	220/ea.
HMA Core Unit Weight (D1188/CAL308).....	100/ea.
% Asphalt, Ignition Method (D6307/CAL382)	125/ea.
% Asphalt, Ignition Calibration (D6307/CAL382).....	400/ea.
Tensile Strength Ratio (T283).....	1,000/ea.

***2X surcharge on rush turnaround for laboratory testing**

TERMS AND CONDITIONS

- Listed are typical charges for the services most frequently performed by Geocon. Prices for unlisted services as well as special quotations for programs involving volume work will be provided upon request. Laboratory test prices shown are for laboratory work only, and include reporting of routine results not calling for comments, recommendations or conclusions.
 - Sampling and testing is conducted in substantial conformance with the latest applicable or designated specifications of the American Society for Testing and Materials, Caltrans, American Association of State Highway and Transportation Officials, or other pertinent agencies.
 - Saturday, night work, and overtime hours are charged at time and one-half; Sundays and holidays at double time. Per diem may apply when location of work dictates.
 - Equipment and materials will be billed at cost plus 15%. Outside services including subcontractors and rental of special equipment are billed at cost plus 15%. Hourly services are billed portal to portal from closest office in accordance with the stated hourly rates herein, with a minimum four-hour charge.
 - Invoices will be submitted at four-week intervals. Terms of payment are met upon presentation of invoice. Invoices become delinquent thirty (30) days from invoice date and subject to one and one-half percent (1-1/2%) service charge per month, or the maximum rate allowed by law, whichever is lower. If Client objects to all or any portion of any invoice, Client will so notify Geocon in writing within fourteen (14) calendar days of the invoice date, identify the cause of disagreement, and pay that portion of the invoice not in dispute. The parties will immediately make every effort to settle the disputed portion of the invoice. Payment on delinquent invoices will first be applied to accrued interest and then to the principal amount. All time spent and expenses incurred (including any attorney's fees and costs) in connection with collection of any delinquent amount will be paid by Client to Geocon per Geocon's current fee schedule.
 - Client and Geocon shall allocate certain of the risks so that, to the fullest extent permitted by law, Geocon's (the term "Geocon" includes Geocon's partners, officers, directors, employees, agents, affiliates, subcontractors and subconsultants) total aggregate liability to Client is limited to the greater of **\$50,000** or the total compensation received from Client by Geocon for services rendered on this project, for any and all of Client's injuries, damages, claims, losses, expenses, or claim expenses arising out of this Agreement from any cause or causes, including attorneys' fees and costs which may be awarded to the prevailing party, and Client agrees to indemnify and hold harmless Geocon from and against all liabilities in excess of the monetary limit established above.
- Client and Geocon shall allocate certain of the other risks so that, to the fullest extent permitted by law, Client shall limit Geocon's total aggregate liability to all third parties, including contractors, subcontractors of all tiers, materialmen, and others involved in Client's project, as well as persons and other entities not involved in the project, to the greater of **\$100,000** or the total compensation received from Client by Geocon for services rendered on this project, for any and all injuries, damages, cause or causes, including attorneys' fees and costs which may be awarded to the prevailing party, and Client agrees to indemnify and hold harmless Geocon from and against all liabilities in excess of the monetary limit established above, including all liability incurred by Geocon for acts, errors, or omissions, pursuant to entering into agreements with third parties on behalf of Client in order to obtain access or entry onto property not owned by Client. Client agrees to notify all contractors and subcontractors of any limitation of Geocon's liability to them, and require them to abide by such limitation for damages suffered by any contractor or subcontractor arising from Geocon's actions or inactions. Neither the contractor nor any subcontractor assumes any liability for damages to others which may arise on account of Geocon's actions or inactions.