

NAPA COUNTY AGREEMENT NO.
PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into as of this 25th day of January, 2022, by and between NAPA COUNTY, a political subdivision of the State of California, hereinafter referred to as “COUNTY”, and MGE ENGINEERING, INC., a California corporation, whose mailing address is 7415 Greenhaven Drive, Suite 100, Sacramento, CA 95831, hereinafter referred to as “CONTRACTOR”;

RECITALS

WHEREAS, COUNTY wishes to obtain specialized services, as authorized by Government Code section 31000, in order to provide engineering and design services for the Redwood Road 5.76 slide repair, hereinafter referred to as “Project”; and

WHEREAS, CONTRACTOR is willing to provide such specialized services to COUNTY under the terms and conditions set forth herein;

TERMS

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

1. **Term of the Agreement.** The term of this Agreement shall commence on the date first above written and shall expire on June 30, 2025, 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 CONTRACTOR to COUNTY shall also continue after said expiration date or early termination in relation to the obligations prescribed by Paragraphs 15 (Confidentiality), 20 (Taxes) and 21 (Access to Records/Retention).
2. **Scope of Services.** CONTRACTOR shall provide COUNTY those services set forth in Exhibit “A”, attached hereto, in addition to the RFP and CONTRACTOR’s proposal, incorporated by reference herein.
3. **Compensation.**
 - (a) **Rates.** In consideration of CONTRACTOR’s fulfillment of the promised work, COUNTY shall pay CONTRACTOR at the rates set forth in Exhibit “B”, attached hereto and incorporated by reference herein.

(b) Expenses. Travel, direct costs, and other expenses will be reimbursed by COUNTY upon submission of an invoice in accordance with Paragraph 4 at the rates and/or in accordance with the "Direct Cost" allocation and limits set forth in Exhibit "B."

(c) Maximum Amount. Notwithstanding subparagraphs (a) and (b), the maximum payments under this Agreement shall be a total of FOUR HUNDRED NINETEEN THOUSAND, EIGHT HUNDRED SEVENTY-SEVEN DOLLARS (\$419,877) for professional services described in Exhibit A and FORTY-EIGHT THOUSAND, THREE HUNDRED SIXTY-NINE DOLLARS (\$48,369) for expenses, for a total not to exceed amount of FOUR HUNDRED SIXTY-EIGHT THOUSAND, TWO HUNDRED FORTY-SIX DOLLARS (\$468,246); provided, however, that such amounts shall not be construed as guaranteed sums, and compensation shall be based upon services actually rendered and reimbursable expenses actually incurred.

4. **Method of Payment.**

(a) Professional Services. All payments for compensation and reimbursement for expenses shall be made only upon presentation by CONTRACTOR to COUNTY of an itemized billing invoice in a form acceptable to the Napa County Auditor which indicates, at a minimum, CONTRACTOR's name, address, Social Security or Taxpayer Identification Number, itemization of the hours worked, a detailed description of the tasks completed during the billing period, the names of person(s) 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) Fixed Price. If the Agreement provides for a fixed price, if CONTRACTOR presents interim invoices, CONTRACTOR must state the percentage of work completed, which must be verified by COUNTY, i.e., 35% design, 95% design, draft report, et cetera, at which time CONTRACTOR shall be paid the equivalent percentage of the fixed price.

(d) CONTRACTOR shall submit invoices not more often than once per month to the Director of Public Works 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".

(e) Legal status. So that COUNTY may properly comply with its reporting obligations under federal and state laws pertaining to taxation, if CONTRACTOR 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 Director of Public Works 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 CONTRACTOR within the State of California.

5. **Independent Contractor.** CONTRACTOR shall perform this Agreement as an independent contractor. CONTRACTOR and the officers, agents and employees of CONTRACTOR are not, and shall not be deemed, COUNTY employees for any purpose,

including workers' compensation and employee benefits. CONTRACTOR shall, at CONTRACTOR's own risk and expense, determine the method and manner by which duties imposed on CONTRACTOR by this Agreement shall be performed; provided, however, that COUNTY may monitor the work performed by CONTRACTOR. COUNTY shall not deduct or withhold any amounts whatsoever from the compensation paid to CONTRACTOR, 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, CONTRACTOR shall be solely responsible for all such payments.

6. **Specific Performance.** It is agreed that CONTRACTOR, including the agents or employees of CONTRACTOR, shall be the sole providers of the services required by this Agreement. Because the services to be performed by CONTRACTOR 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, COUNTY, in addition to any other rights or remedies which COUNTY may possess, shall be entitled to injunctive and other equitable relief to prevent a breach of this Agreement by CONTRACTOR.

7. **Insurance.** CONTRACTOR 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, CONTRACTOR shall provide workers' compensation insurance for the performance of any of CONTRACTOR'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 COUNTY with certification of all such coverages upon request by COUNTY's Risk Manager.

(b) Liability Insurance. CONTRACTOR 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 CONTRACTOR or any officer, agent, or employee of CONTRACTOR 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 CONTRACTOR arising out of or in connection with this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) per claim. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

(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 CONTRACTOR'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 CONTRACTOR 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 CONTRACTOR or CONTRACTOR's employees, officers, or agents will use personal automobiles in any way in the performance of this Agreement, CONTRACTOR shall provide evidence of personal auto liability coverage for each such person upon request.

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

(1) The certificate(s) or other evidence of coverage shall reference this Agreement by its COUNTY number or title and department; shall be kept current during the term of this Agreement; shall provide that COUNTY 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 7(b)(1) and, for the comprehensive automobile liability insurance coverage referenced in 7(b)(3) where the vehicles are covered by a commercial policy rather than a personal policy, CONTRACTOR shall also file with the evidence of coverage an endorsement from the insurance provider naming COUNTY, its officers, employees, agents and volunteers as additional insureds and waiving subrogation. For the Workers Compensation insurance coverage, CONTRACTOR shall file an endorsement waiving subrogation with the evidence of coverage.

(3) The certificate or other evidence of coverage shall provide that if the same policy applies to activities of CONTRACTOR not covered by this Agreement, then the limits in the applicable certificate relating to the additional insured coverage of COUNTY shall pertain only to liability for activities of CONTRACTOR under this Agreement, and that the insurance provided is primary coverage to COUNTY with respect to any insurance or self-insurance programs maintained by COUNTY. 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 COUNTY's Risk Manager, CONTRACTOR 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, COUNTY's Risk Manager, which approval shall not be denied unless the COUNTY'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 CONTRACTOR by this Agreement. At the option of and upon request by COUNTY'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 COUNTY, its officers, employees, agents and volunteers or CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

(e) Inclusion in Subcontracts. CONTRACTOR 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. To the full extent permitted by law, CONTRACTOR shall defend at its own expense, indemnify, and hold harmless COUNTY and its officers, agents, employees, volunteers, or representatives from and against any and all liability, claims, actions, proceedings, losses, injuries, damages or expenses of every name, kind, and description, including litigation costs and reasonable attorney's fees incurred in connection therewith, brought for or on account of personal injury (including death) or damage to property, arising from all acts or omissions of CONTRACTOR or its officers, agents, employees, volunteers, contractors and subcontractors in rendering services under this Agreement, excluding, however, such liability, claims, actions, losses, injuries, damages or expenses arising from the sole negligence or willful acts of COUNTY or its officers, agents, employees, volunteers, representatives, or other contractors or their subcontractors. 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. CONTRACTOR accepts responsibility for determining and approving the character and fitness of its employees (including volunteers, agents or representatives) to provide the services required of CONTRACTOR 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, CONTRACTOR shall hold COUNTY and its officers, agents and employees harmless from any liability for injuries or damages resulting from a breach of this provision or CONTRACTOR'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 fifteen (15) 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 ten (10) days prior written notice to the defaulting party in the manner set forth in Paragraph 13 (Notices). The Napa County 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 COUNTY 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 COUNTY unless an opportunity for consultation is provided prior to the effective date of the termination. COUNTY 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 COUNTY for the convenience of COUNTY.

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

(2) All finished or unfinished documents and other materials, if any, and all rights therein shall become, at the option of COUNTY, the property of and shall be promptly returned to COUNTY, although CONTRACTOR 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 CONTRACTOR under this Agreement shall be deemed a "work made for hire" for purposes of copyright or patent law and only COUNTY 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 CONTRACTOR 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 COUNTY 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 COUNTY is a party. If the product involves a source code, CONTRACTOR shall either provide a copy of the source code to COUNTY or shall place the source code in an escrow account, at CONTRACTOR's expense, from which the source code may be withdrawn and used by COUNTY 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 COUNTY.

(b) CONTRACTOR 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 CONTRACTOR shall not be relieved of liability to COUNTY for damages sustained by COUNTY by virtue of any breach of the Agreement by CONTRACTOR whether or not the Agreement expired or otherwise terminated, and COUNTY may withhold any payments not yet made to CONTRACTOR for purpose of setoff until such time as the exact amount of damages due to COUNTY from CONTRACTOR 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.

COUNTY

Steven E. Lederer
Director of Public Works
1195 Third St., Room 201
Napa, CA 94559

CONTRACTOR

H. Fred Huang, President
MGE Engineering, Inc
7415 Greenhaven Drive, Suite #100
Sacramento, CA 95831

14. **Compliance with COUNTY Policies on Waste, Harassment, Drug/Alcohol-Free Workplace, and Computer Use.** CONTRACTOR 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. CONTRACTOR also agrees that it shall not engage in any activities, or permit its officers, agents 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 COUNTY 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 June 20, 2017.

(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 CONTRACTOR whose performance of services under this Agreement requires

access to any portion of the COUNTY computer network shall sign and have on file with COUNTY'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. Confidentiality.

(a) Maintenance of Confidential Information. Confidential information is defined as all information disclosed to CONTRACTOR which relates to COUNTY's past, present, and future activities, as well as activities under this Agreement. CONTRACTOR shall hold all such information as CONTRACTOR may receive, if any, in trust and confidence, except with the prior written approval of COUNTY, expressed through its Director of Public Works or designee. Upon cancellation or expiration of this Agreement, CONTRACTOR shall return to COUNTY all written and descriptive matter which contains any such confidential information, except that CONTRACTOR may retain for its files a copy of CONTRACTOR's work product if such product has been made available to the public by COUNTY.

(b) Protection of Personally Identifiable Information and Protected Health Information.

(1) To the extent CONTRACTOR is provided, creates, or has access to, Protected Health Information (PHI), Personally Identifiable Information (PII), or any other legally protected confidential information or data in any form or matter (collectively referred to as "Protected Information"), CONTRACTOR shall adhere to all federal, state and local laws, rules and regulations protecting the privacy of such information. CONTRACTOR shall adhere to all existing and future federal, state and local laws, rules and regulations regarding the privacy and security of Protected Information, including, but not limited to, laws and regulations requiring data encryption or policy and awareness programs for the protection of COUNTY Protected Information provided to, or accessed or created by, CONTRACTOR. Additionally, CONTRACTOR shall only access, use or disclose County Protected Information if such access, use, or disclosure is expressly permitted by the terms of its agreement with County. Any other access, use or disclosure of County Protected Information is prohibited. Examples of prohibited accesses, uses and disclosures include, but are not limited to: the removal of confidential files, documents or devices containing County Protected Information from a County facility; the unauthorized transmission of County Protected Information via email, fax or other means; and the discussion of such information with other individuals (including other CONTRACTOR or County employees) who do not have a County approved business reason to obtain the information.

(2) CONTRACTOR shall ensure that its staff and any third party organizations or individuals that it engages to perform services in conjunction with the terms of this agreement are trained to its privacy and security policies, as well as Paragraph 15 of this agreement; and procedures and that appropriate physical, technological and administrative safeguards are in place to protect the confidentiality of COUNTY's Protected Information. Upon request, CONTRACTOR shall make available to COUNTY its policies and procedures, staff training records and other documentation of compliance with this Paragraph 15.

(3) CONTRACTOR agrees to notify COUNTY immediately of any unauthorized access to or disclosure of Protected Information that it becomes aware of. This

includes instances wherein CONTRACTOR encounters unsecured Protected Information in areas where CONTRACTOR employees are performing services.

(4) CONTRACTOR will be responsible for all costs associated with CONTRACTOR's breach of the security and privacy of COUNTY's Protected Information, or its unauthorized access to or disclosure of COUNTY's Protected Information, including, but not limited to, mitigation of the breach, cost to the County of any monetary sanctions resulting from breach, notification of individuals affected by the breach, and any other action required by federal, state, or local laws, rules or regulations applicable at the time of the breach.

16. No Assignments or Subcontracts.

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

(b) Effect of Change in Status. If CONTRACTOR 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 CONTRACTOR. Failure of CONTRACTOR 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. Failure of CONTRACTOR to secure such authorization in writing in advance of performing any 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.** CONTRACTOR 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, CONTRACTOR 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. CONTRACTOR 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, CONTRACTOR 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 CONTRACTOR services or works required of COUNTY by the State of California pursuant to agreement between COUNTY 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 CONTRACTOR 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. CONTRACTOR agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of CONTRACTOR 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. CONTRACTOR shall make the required documentation available upon request to COUNTY for inspection.

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

(d) Prevailing Wages. Contractor shall adhere to the prevailing wages provisions as set forth in Exhibit "D," attached hereto and incorporated herein by this reference.

20. **Taxes.** CONTRACTOR 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. CONTRACTOR agrees to indemnify and hold COUNTY harmless from any liability it may incur to the United States or the State of California as a consequence of CONTRACTOR's failure to pay or withhold, when due, all such taxes and obligations. In the event that COUNTY is audited for compliance regarding any withholding or other applicable taxes or amounts, CONTRACTOR agrees to furnish COUNTY with proof of payment of taxes or withholdings on those earnings.

21. **Access to Records/Retention.** COUNTY, 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 CONTRACTOR 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, CONTRACTOR shall maintain all required records for at least seven (7) years after COUNTY makes final payment for any of the work authorized hereunder and all pending matters are closed, whichever is later.

22. **Authority to Contract.** CONTRACTOR and COUNTY each warrant 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. CONTRACTOR hereby covenants that it presently has no interest not disclosed to COUNTY 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 COUNTY may consent to in writing prior to the acquisition by CONTRACTOR of such conflict. CONTRACTOR further warrants that it is unaware of any financial or economic interest of any public officer or employee of County relating to this Agreement. CONTRACTOR agrees that if such financial interest does exist at the inception of this Agreement, COUNTY may terminate this Agreement immediately upon giving written notice without further obligation by COUNTY to CONTRACTOR under this Agreement.

(b) Statements of Economic Interest. CONTRACTOR acknowledges and understands that COUNTY has developed and approved a Conflict of Interest Code as required by state law which requires CONTRACTOR 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 CONTRACTOR, although holding a "designated" position as a 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. CONTRACTOR agrees to timely comply with all filing obligations for a consultant under COUNTY's Conflict of Interest Code unless such a determination is on file on the filing dates for each of the required Statements of Economic Interest.

24. **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.

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.

[Remainder of page intentionally left blank]

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.

IN WITNESS WHEREOF, this Agreement was executed by the parties hereto as of the date first above written.

MGE Engineering Inc., a California Corporation

By _____
H. Fred Huang, President

By _____
H. Fred Huang, Secretary

“CONTRACTOR”

“CONTRACTOR”

NAPA COUNTY, a political subdivision of the State of California

By _____
RYAN GREGORY, Chair
Board of Supervisors

“COUNTY”

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <u>John L. Myers (e-sign)</u> County Counsel</p> <p>Date: <u>January 11, 2022</u></p>	<p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS</p> <p>Date: _____</p> <p>Processed By: _____</p> <p>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”

SCOPE OF WORK

CONTRACTOR shall provide COUNTY with the following services and compensation shall be based upon services actually rendered and reimbursable expenses actually incurred:

I. DESCRIPTION OF SERVICES

MGE’s proposed scope of work is based on a site visit and discussions with the County along with experience gained in successfully completing similar landslide projects. The following is an outline of tasks required to complete the preliminary engineering design including surveying and geotechnical investigations, environmental investigations and studies in support of obtaining CEQA clearance, and final design and PS&E for permanent repairs.

PHASE 1

Task 1 – Project Management

Project Kickoff Meeting

MGE Engineering, Inc. (MGE) will meet with County staff to establish protocol, learn of funding limitations, finalize the schedule, and discuss other issues that will need to be considered in the development of permanent repairs for the Redwood Road PM 5.76 site. The kick-off meeting will include a site visit with the County and key team members, including ESA’s biologist.

Progress Meeting and Meeting Minutes

MGE will participate in meetings as necessary to complete the design and environmental tasks and coordinate between technical disciplines. Project development team (PDT) meetings will be organized by MGE to occur at specified milestones during the project development and design process. MGE will prepare meeting agendas and minutes for all PDT meetings. This task will also include notes and minutes from the project kick-off meeting and following by a site visit.

Invoicing and Progress Reports

MGE will submit a monthly Progress Report to accompany invoices. The reports will include a narrative on work accomplished during the reporting period; work planned for the next reporting period; information/decisions required to maintain the Project schedule and complete deliverables; problems encountered that may affect the schedule, budget, and anticipated work items; and recommendations to resolve issues. MGE will also update the project schedule on a quarterly basis within this task.

Deliverables: Meeting Agendas and Minute, Project Schedule, Progress Reports & Invoices.

Task 2 – Survey, Base Mapping, and Right of Way

Right of Way Survey and Resolution:

C&P will perform a right of way survey to establish the County right of way or easements lines along Redwood Road PM 5.76. Tasks include the following:

- Perform boundary research to locate the existing right of way.

- Perform boundary surveys to search for, locate and tie existing monumentation.
- Perform a resolution of the existing road right of way.
- Complete a Record of Survey in accordance with Section 8762, of the California Land Surveyor’s Act depicting the existing right of way. This proposal assumes that Record of Survey checking and recording fees will not be required.

Deliverables: PDF copy of the Recorded Record of Survey Map.

Topographic Survey

C&P will perform topographic surveys including locating above ground evidence of underground utilities, existing sign locations and nomenclature, pavement delineation, driveways, trees six inches and larger at chest height, drainage structures, the slide areas and other detailed information that will be required for the design of the project. The full road width will be mapped beyond the edge of pavement uphill of the road to 20’ beyond the top of bank where physically accessible and to the toe of slope at the creek downhill from the roadway where physically accessible and immediately adjacent to the slide area. The slide scarps, where identifiable, will be mapped as well. The mapping will extend along the roadway for 200 feet in the easterly direction of the slide and approximately 500 feet in the westerly direction and will include turnouts/wide shoulders on both sides of the road. The topographic survey will be at a drawing scale of 1 inch = 20 feet, with a one-foot contour interval.

The topographic survey will horizontally relate to the California Coordinate System of 1983, Zone II, Epoch 2017.50. The vertical datum will relate the North American Vertical Datum of 1988 using Geoid 12B. Using these horizontal and vertical datums will allow comparison to publicly available imagery and LiDAR data if needed.

Deliverables: Sealed hardcopy of Topographic Survey Map with the right-of-way boundary. The Autocad “dwg” used to create the hardcopy will also be provided for your convenience.

Task 3 - Geotechnical Engineering

MGE will perform the geotechnical exploration, geologic reconnaissance, and prepare reports. The following presents the scope of services and field explorations.

Site PM	No. of Drilled Borings	Depth (ft)	Traffic Control	Napa Environmental Permit	Mark USA prior to drilling
Redwood Rd PM 5.76	3	3x80	Yes, 1 and 2	Yes	Yes

Note: 1 = Shoulder closures; 2 = traffic control with flaggers

MGE will collect samples at 5-foot intervals and will only recover rock core samples if diamond core drilling methods are required to advance the boring. Laboratory testing will likely include moisture content, dry density, soil classification, compressive strength tests, corrosivity, and one R-value. If rock cores are recovered, point load or compressive strength testing will be completed, as necessary.

MGE will obtain a Napa County encroachment permit. MGE assumes no fee or bond will be required for the encroachment permit. MGE is required to obtain an environmental health permit on a per parcel basis. one parcel may be affected on Redwood Road.

Geologic Reconnaissance

MGE will perform geologic reconnaissance and will use the topographic mapping to evaluate the landslide and surrounding slopes. MGE expects geologic reconnaissance will consist of site review and observations of the terrain, any seepage areas, general geologic conditions, and observations of rock outcrop characteristics such as bedding, rock type, weathering, fracturing, etc.

MGE will develop preliminary geotechnical criteria for the preferred design alternative, including site preparation and grading, excavation characteristics, suitability of excavated soils within the roadway for re-use as fill, and the treatment of existing fill, expansive and porous soils, as appropriate; foundation design criteria for walls or other structures required for the repair and pavement sections for asphalt-paved areas based on the R-value test results and Caltrans Highway Design Manual criteria.

Prepare Geotechnical Reports

MGE will prepare a preliminary geotechnical memo that includes laboratory test results, boring logs, and geologic cross sections, to provide a basis for evaluating and selecting a repair alternative. Upon repair selection, MGE will prepare draft and final geotechnical reports for the selected alternative that will include final geotechnical recommendations and geotechnical criteria for earthwork, structure design, cut slopes, stabilization measures, pile depths, slope stability analyses, etc.

Task 3 Deliverables: Preliminary Geotechnical Report, Draft and Final Geotechnical Report

Task 4 – Utility IDENTIFICATION & COORDINATION

MGE will identify type and location of utilities at the project sites based on topographic mapping and line work. A Utility “A” Letter will be prepared for each utility. The utility owners will be requested to confirm the location of their facilities and provide as-built information. This task will follow completion of the Type Selection Report so that the preliminary plans can be included with the utility “A” letters. Following completion of 80% plans, utility “B” letters will be prepared for affected utilities. The “B” letters will include utility conflict drawings and indicate areas where the utilities will need to be temporarily or permanently relocated to facilitate construction of the improvements. MGE will follow up with affected utilities to coordinate acceptable relocation plans as well as the construction schedule.

Deliverables: Utility “A” & “B” Letters

Task 5 - PRELIMINARY ENGINEERING & TYPE SELECTION MEMORANDUM

The purpose of this task is to complete enough preliminary engineering and design work to select a preferred alternative for the project. Under this task, MGE will complete the following tasks:

Preliminary Engineering and Type Selection Memorandum

MGE will complete preliminary engineering and prepare a brief Type Section Memorandum to facilitate selection of a preferred repair alternative. The memorandum will serve as the basis for the environmental assessment and final design by MGE. A draft memorandum will be prepared including General Plan, Layout, and Profile sheets for the recommended alternative. The memorandum will also include evaluation of alternatives, preliminary Engineer’s estimates, and recommendations for a preferred alternative. Completion of the preliminary engineering and memorandum will include, but not be limited to the following:

Alternatives Development

MGE will evaluate two feasible repair alternatives including roadway geometrics and repair details. Estimated construction costs for each alternative will also be developed.

Type Selection Memorandum

MGE will complete a memorandum to present design and construction considerations, and repair alternatives with construction costs to facilitate selection of a preferred alternative for design and construction. MGE will submit the memorandum to the County for review and concurrence on the

recommended alternative. The General Plan, Layout, and Profile sheets for the preferred alternatives will be considered a 30% level of design, and will serve as the basis of completion of the environmental documentation and final design for the project.

Type Selection Meeting

MGE will participate in a meeting with the County to discuss the Type Selection Memorandum and finalize any outstanding issues regarding selection of preferred alternatives. MGE anticipates using a video conference to facilitate this meeting.

Deliverables: Type Selection Memorandum (2 copies each and electronic pdf files)

PHASE 2

Task 6. ENVIRONMENTAL & PERMITTING

ESA will prepare the required studies and reports in support of obtaining CEQA clearance for the project. Additionally, if required, ESA will prepare permit applications and coordinate with the associated resource agencies to obtain permits for construction of the proposed repairs. This task is anticipated to include the following subtasks:

Task 6.1- Technical Studies

ESA will prepare the following technical investigations to support CEQA documentation and permitting, if necessary.

6.1.1 Biological Resources Evaluation

ESA will prepare a Biological Resources Evaluation (BRE) to identify, characterize, and map baseline biological resource characteristics including vegetation, observed species, and sensitive species with potential to occur in the project area. The report will include results of records searches for known special-status species (California Natural Diversity Database, USFWS species lists and critical habitat mapper, California Native Plant Society List of Rare, Threatened and Endangered Plants). Field staff will confirm the location, size and species of trees six (6) inches and larger at breast height that were mapped in Task 2 Survey and Base Mapping, informally document the approximate extent of jurisdictional aquatic resources (riparian areas and the creek) for inclusion in the BRE. ESA will develop an impact assessment for special status species and sensitive natural resource features and recommend avoidance and minimization measures as necessary.

6.1.2 Cultural Resources

To determine the cultural resources sensitivity of the project area, ESA will complete a cultural resources review that includes background research at the Northwest Information Center of the California Historical Resources Information System and a review of historic maps and aerial imagery. ESA will document the results of the cultural resources review in a memorandum for the administrative record.

Task 6.1 Deliverables:

- *Biological Resource Evaluation*
- *Tree Survey Inventory*
- *Cultural Resources Review*

Task 6.2- CEQA Documentation

It is expected that the proposed project would qualify for a Class 1(c) Categorical Exemption (CE), under CEQA Guidelines section 15301, which applies to repair of existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities. ESA will prepare a CEQA CE Support Memo to document that the project was reviewed for compliance with the applicable CE category and to document that no exceptions are identified to

the use of a CE as identified in CEQA Guidelines section 15300.2. ESA will also prepare a Notice of Exemption in the format or desired template identified by the County for County's use in filing with the County Clerk Recorder's office.

Task 6.2 Deliverables:

- *CEQA Categorical Exemption Support Memo*
- *Notice of Exemption*

Task 6.3- Regulatory Agency Coordination Support

MGE will coordinate with the regulatory agencies as necessary to assist the County with obtaining any required permits.

Task 7. Engineering Design

MGE will prepare draft and final geotechnical reports as well as plans, special provisions and a construction cost estimate (PS&E) for construction of the permanent repairs. The plans will include all plan sheets necessary for a biddable and buildable package. The contract documents will be developed in accordance with Napa County requirements. It is understood that the County will be responsible for inserting the technical special provisions prepared by MGE into the County front-end boiler plate documents of the final bid documents. The PS&E will be developed based on the Caltrans 2018 Standard Specifications, Standard Plans, and contract cost data. The PS&E will be submitted to the County for review and comment at an 80% level of completion. Comments received from the County from the 80% PS&E will be incorporated into the 100% PS&E package for advertising and construction of the permanent repair work.

Plans will be prepared at appropriate scales and in accordance with the most current version of each of the following design standards including; AASHTO, Caltrans Highway Design Manual, California Manual of Uniform Traffic Control Devices, Napa County Standards and Caltrans Seismic Design Criteria.

This task includes the following subtasks:

Task 7.1 – 80% PS&E

7.1.1 Structure Design & PS&E

Based on the approved Type Selection Memorandum, MGE will proceed with the repair design and production of a set of 80% structure plans, structure special provisions, quantities, and cost estimates for all structural items. Structure plans may include, as appropriate, the following sheets:

- General Plan
- Index to Plans & General Notes
- Deck Contours
- Foundation Plan
- Structure Layout
- Sections & Details No. 1
- Sections & Details No. 2
- Miscellaneous Details
- Log of Test Borings Sheets

7.1.2 Roadway Design & PS&E

MGE will complete the roadway design, construction details, and associated civil design and plans in accordance with the County Standards, AASHTO "A Policy on Geometric Design of Highways and Streets", Manual of Uniform Traffic Control Devices (MUTCD) and Caltrans Highway Design Manual. A full set of detailed roadway and civil plans will be prepared. Associated special provisions, quantities,

and cost estimates for all civil items will also be prepared. Roadway plans may include, as appropriate, the following sheets:

- Title Sheet
- Survey and Horizontal Control Plan
- Layout and Profile Sheets
- Typical Cross Sections
- Construction Details
- Water Pollution Control Plans
- Drainage Plans and Profiles
- Erosion Control Plan
- Traffic Handling/Construction Staging/ Detour/Construction Signage Plans
- Pavement Delineation and Signage Plan

7.1.3 Quality Control

MGE will perform a quality control review of the 80% design plans, special provisions, and estimate. A senior level engineer at MGE in addition to principal and supervising engineers will perform the quality control review of the PS&E documents and provide comments to designers to review and to make changes. Changes will be back-checked by the reviewers in preparation of the final 80% PS&E submittal.

Task 7.1 Deliverables 80% PS&E (One half-size hard copy plans, one copy estimate and special provisions, and electronic files in a pdf format)

Task 7.2- Final (100%) PS&E

After the County has reviewed and provided written comments on the 80% PS&E submittal, MGE will finalize the design, addressing the comments. The unchecked structure plans will be provided to another registered civil engineer not otherwise involved in the project, to prepare an independent design check of all aspects of the structure design including the quantities, costs estimate, and special provisions. The designer and checker will confer and agree on any discrepancies in the analysis and detailing prior to finalizing the design and PS&E.

The QC procedures described in Task 7.1.3 will be implemented during this task with an emphasis on coordination between the structural and roadway documents. In addition, MGE will perform a plans-in-hand site review prior to finalizing the 100% PS&E to verify that the design is still appropriate for the current site conditions.

Task 7.2 Deliverables:

- *One Set of 24x36 final design plans*
- *One Set of 11x17 final design plans (half size)*
- *Copy of Technical Special Provisions (hard copy and MSWord file)*
- *Copy of Engineer's Estimate*
- *Copy of design and design check calculations and quantities*

Task 8. Bid Assistance and Construction Support Services

MGE will provide all the necessary engineering support services throughout the bidding and construction phases of the project. Bidding and construction support services are anticipated to include the following tasks:

Bidding Assistance (as-needed) - MGE will help the County during the bidding period with responses to Requests for Information or Plan Clarifications, provide design support for addenda, review Bid Proposals for irregularities, and assist the County with Award Recommendations.

Design Services During Construction (as-needed) - MGE will provide engineering support services for the duration of construction. MGE anticipates that this task will include attendance of the project pre-construction meeting, review of submittals related to design and specialized materials, engineering support for design changes, change order review, review of shop drawings, review of RFI's, and periodic field review and inspections as requested by the County. In addition, MGE will assist the County with the final project walk and the development of the project punch list.

Record Drawings (As-Built Plans) - MGE will prepare record drawings (as-built plans) based on the resident engineer's plan mark ups. The as-built changes will be added to the construction drawings (changes will be identified with "clouds") and provided to the County in electronic format.

Deliverables: Addenda, Response to RFI's and Submittal Reviews, and As-Built Plans.

ASSUMPTIONS AND CONDITIONS OF SERVICES:

County Responsibilities:

1. Coordinate with ESA to complete environmental permits, any environmental studies (including hazardous materials) and site environmental field reviews required
2. Coordinate utility relocations, as necessary
3. Provide comments on submittals within three weeks of receipt

MGE's Assumptions:

1. MGE will not characterize hazardous materials at the site.
2. MGE assumes that encroachment permit will not require a fee or bond.
3. Two alternatives will be developed for the site during the Type Selection Process.
4. County will provide all comments on designs in one summary document for MGE to address
5. County will provide access to private property for any exploration or geologic reconnaissance activity, as necessary.
6. Drilling and Traffic Control Services will be billed on a time and materials basis.

ESA's Assumptions:

1. County will be responsible for coordination and submittal of information to show the Project is in compliance with the Water Quality and Stream Protection ordinance.
2. The Project will not be federal-funded, located on federal land, or require federal decisions on any elements of the project; as such, no National Environmental Protection Act (NEPA) documentation is expected to be required and is not included in this scope. The Project will not require Federal Endangered Species Act (FESA) Section 7 Consultation or compliance with Section 106 of the National Historic Preservation Act (NHPA).
3. The Project will not result in dredge or fill of waters below the ordinary high-water mark of the creek; as such, no Clean Water Act Section 404 Nationwide Permit or Individual permit is needed from the U.S. Army Corps of Engineers (USACE).
4. A formal Aquatic Resources Delineation Report (ARDR) is not included in the scope.
5. This scope does not include seasonally timed floristic plant surveys or State/Federal protocol level wildlife surveys.
6. Work will be limited to areas outside the riparian corridor and streambed, and conducted with a number of BMPs and/or avoidance and minimization measures to prevent direct or indirect downslope impacts. Work within the riparian corridor may result in the need for state permits (optional task).
7. Project activities, including tree removal, will not result in take of northern spotted owl. This scope does not include a California Endangered Species Act (CESA) 2081(b) Incidental Take Permit (ITP).
8. County will pay any CEQA filing fees and permit application fees, as applicable.
9. The project duration will be approximately 12 months from project initiation to delivery of Final PS&E.
10. ESA will attend up to four, 1/2-hour-long Progress Meeting throughout the course of project delivery.

II. COMPLIANCE WITH GOVERNMENT CODE SECTION 7550. As required by Government Code section 7550, each document or report prepared by CONTRACTOR for or under the direction of COUNTY 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.

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EXHIBIT “B”

COMPENSATION AND EXPENSE REIMBURSEMENT

Compensation shall be based upon services actually rendered and reimbursable expenses actually incurred:

MGE Rates

		Total Rate
Principal In Charge	Robert Sennett	\$ 336.43
Supervisory Civil Engineer	Stephen Hawkins	\$ 263.29
Lead Civil	Joe Siemers	\$ 222.33
Project Manager	Martin McIlroy	\$ 248.66
Senior Structural	Wes Sennett	\$ 219.41
Senior Structural	Danny Vang	\$ 254.51
Independent Check	Eric Monzon	\$ 234.04
Structural CAD	Peter Zhou	\$ 187.23
Civil CAD	Kai Wang	\$ 175.53
Senior Civil Engineer	Brad Reichel	\$ 219.41
Senior Geologist	Brigid Doran	\$ 219.41
Staff Engineer	Danielle Torres	\$ 102.39
Administrative Assistant	Staff	\$ 93.61

Cinquini & Passarino Rates

Professional Land Surveyor <i>Legal research and Court exhibits</i>	\$258.00
Professional Land Surveyor (4-hr. Min.) <i>Expert Witness, Depositions and Consultations</i>	\$486.00
Principal Professional Land Surveyor	\$228.00
Senior Professional Land Surveyor	\$202.00
Professional Land Surveyor	\$166-191
Survey Technician	\$122-\$171 (plus materials)
GIS Analyst	\$140.00

Remote Pilot Includes Mission Planning, Vehicles, UAS/Drone, mileage and materials	\$212-\$228
Word Processing	\$104-155
Field Crews	
1 Person Field Party	\$205.00
1 Person GPS Party	\$230.00
2 Person Field Party	\$300.00
3 Person Field Party	\$425.00
4 Person Field Party	\$495.00

ESA Rates

Senior Director, Level I,II,III	\$275, \$300, \$325
Director, Level I,II,III	\$225, \$245, \$260
Managing Associate, Level I,II, III	\$190, \$205, \$220
Senior Associate, Level I,II, III	\$160, \$170, \$185
Associate, Level I,II, III	\$115, \$135, \$145
Project Technicians, Level I,II, III	\$90, \$110, \$130

Expenses

Mileage Costs	Per mile	\$IRS Rate
Hotel and Per diem	Per day	\$GSA Rate
Napa County Environmental Health Permit	Each	\$500
Laboratory Testing	Each	\$3,500
Rental Truck	Week	\$650
Drilling and Traffic Control, time and materials	Not to Exceed	\$40,000

Note: Total reimbursable expenses not to exceed is \$48,369

EXHIBIT "C"

[Company Name]
 [Street Address]
 [City, ST ZIP Code]
 Phone [phone] Fax [fax]
 Taxpayer ID #

**SAMPLE
 INVOICE**

INVOICE # _____
 DATE: _____

TO:
 [Customer Name]
 [Street Address]
 [City, ST ZIP Code]

FOR:
 [Project or service description]
 Contract No.

Date	DESCRIPTION	Employee & Title	HOURS	RATE	AMOUNT
1/1/15	Site visit/investigation 123 Main St,	Smith, Engineer	1.5	\$165.00	247.50
1/1/15	Napa.	Smith, Engineer	1	\$165.00	165.00
1/1/15	Conf w/Owner	Smith, Engineer	4	\$165,00	660.00
	AutoCad, Bldg X, 3 rd Floor	Smith, Engineer			
1/2/15	Rev plans, phone conf w/Owner	Jones, PE	1.75	\$195.00	341.25
1/2/15	AutoCad Bldg X, 3 rd Floor	Smith, Engineer	4	\$165.00	660.00
1/2/15	Conf w/Owner re 2 nd Floor	Smith, Engineer	.5	\$165.00	82.50
1/3/15	Mtg w/Jones re 2 nd Floor; conf	Smith, Engineer	1.5	\$165.00	247.50
1/3/15	w/Owner	Jones, PE	1.5	\$195.00	292.50
	Mtg w/Smith; conf w/Owner re 2 nd				
	Floor				
TOTAL					

EXHIBIT "D"

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 sections 1720 through 1861 of the California Labor Code, 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 its subcontractors to also comply with section 1776. The Contractor and all subcontractors shall furnish records specified in California Labor Code 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 section 4104 of the California Public Contract Code, 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 section 7029.1 of the California Business and Professions code or by sections 10164 or 20103.5 of the California Public Contract Code, 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 twenty-four 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 he or she 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, and 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.