

PROFESSIONAL SERVICES AGREEMENT

EBA ENGINEERING

This agreement ("Agreement"), dated as of December 15, 2020 ("Effective Date") is by and between the County of Sonoma, a political subdivision of the State of California (hereinafter "County"), and EBA Engineering, a California corporation (hereinafter "Consultant").

RECITALS

WHEREAS, Consultant represents that it is a duly qualified and licensed engineering firm, experienced in engineering and geotechnical review services on vineyard and orchard site development plans and related services; and

WHEREAS, in the judgment of the Agricultural Commissioner, it is necessary and desirable to employ the services of Consultant to review the engineering and geologic components of vineyard and orchard site development plans as well as agricultural grading and drainage improvement plans submitted to the Department of Agriculture/Weights and Measures (AWM) and verify that such plans and reports comply with Chapter 36 of the Sonoma County Code and the Best Management Practices (BMPs).

WHEREAS, County conducted a Request for Proposals in August 2020 that was a fair and competitive process that resulted in this award of the initial agreement with Consultant.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

1. Scope of Services.

1.1 Consultant's Specified Services. Consultant shall perform the services described in Exhibit "A," attached hereto and incorporated herein by this reference (hereinafter "Scope of Work"), and within the times or by the dates provided for in Exhibit "A" and pursuant to Article 7, Prosecution of Work. In the event of a conflict between the body of this Agreement and Exhibit "A," the provisions in the body of this Agreement shall control.

1.2 Cooperation with County. Consultant shall cooperate with County and County staff in the performance of all work hereunder.

1.3 Performance Standard. Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a

person practicing in Consultant's profession. County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor's work by County shall not operate as a waiver or release. If County determines that any of Consultant's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require Consultant to meet with County to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

1.4 Assigned Personnel.

1.4.1 Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time County, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from County.

1.4.2 Any and all persons identified in this Agreement or any exhibit hereto as the project manager, project team, or other professional performing work hereunder are deemed by County to be key personnel whose services were a material inducement to County to enter into this Agreement, and without whose services County would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of County. With respect to performance under this Agreement, Consultant shall employ Damon Morelli, Bret McIntyre, and David Noren as key personnel representing Consultant before the County and public.

1.4.3 In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

2. Payment. For all services and incidental costs required hereunder, Consultant shall be paid on a time and material/expense basis in accordance with the budget set forth in Exhibit B, provided, however, that total payments to Consultant shall not exceed \$150,000 each fiscal year, without the prior written approval of County. Consultant shall submit its bills in arrears on a monthly basis in a form approved by County's Auditor and the Head of the County Department receiving the services. The bills shall show or include: (i) the task(s) performed; (ii) the time in quarter hours devoted to the task(s); (iii) the hourly rate or rates of the persons

performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. Expenses not expressly authorized by the Agreement shall not be reimbursed.

Unless otherwise noted in this Agreement, payments shall be made within the normal course of County business after presentation of an invoice in a form approved by the County for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the County.

Pursuant to California Revenue and Taxation code (R&TC) Section 18662, the County shall withhold seven percent of the income paid to Consultant for services performed within the State of California under this agreement, for payment and reporting to the California Franchise Tax Board, if Consultant does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.

If Consultant does not qualify, County requires that a completed and signed Form 587 be provided by the Consultant in order for payments to be made. If Consultant is qualified, then the County requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, the Consultant agrees to promptly notify the County of any changes in the facts. Forms should be sent to the County pursuant to Article 12. To reduce the amount withheld, Consultant has the option to provide County with either a full or partial waiver from the State of California.

3. Term of Agreement. The term of this Agreement shall be from December 15, 2020 to December 14, 2023 with two one-year extension options, unless terminated earlier in accordance with the provisions of Article 4 below. Extensions will be predicated on satisfactory performance, which may include a customer service survey.

4. Termination.

4.1 Termination Without Cause. Notwithstanding any other provision of this Agreement, at any time and without cause, County shall have the right, in its sole discretion, to terminate this Agreement by giving 5 days written notice to Consultant.

4.2 Termination for Cause. Notwithstanding any other provision of this Agreement, should Consultant fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, County may immediately terminate this Agreement by giving Consultant written notice of such termination, stating the reason for termination.

4.3 Delivery of Work Product and Final Payment Upon Termination.

In the event of termination, Consultant, within 14 days following the date of termination, shall deliver to County all_ reports, original drawings, graphics, plans, studies, and other data or documents, in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement and shall submit to County an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.

4.4 Payment Upon Termination. Upon termination of this Agreement by County, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and reimbursable expenses properly incurred hereunder, an amount which bears the same ratio to the total payment specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total payment; provided, however, that if services which have been satisfactorily rendered are to be paid on a per-hour or per-day basis, Consultant shall be entitled to receive as full payment an amount equal to the number of hours or days actually worked prior to the termination times the applicable hourly or daily rate; and further provided, however, that if County terminates the Agreement for cause pursuant to Section 4.2, County shall deduct from such amount the amount of damage, if any, sustained by County by virtue of the breach of the Agreement by Consultant.

4.5 Authority to Terminate. The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the Purchasing Agent or Agricultural Commissioner, in consultation with County Counsel, shall have the authority to terminate this Agreement on behalf of the County.

5. Indemnification. Consultant agrees to accept all responsibility for loss or damage to any person or entity, including County, and to indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to Consultant's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Consultant agrees to provide a complete defense for any claim or action brought against County based upon a claim relating to such Consultant's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Consultant's obligations under this Section apply whether or not there is concurrent or contributory negligence on County's part, but to the extent required by law, excluding liability due to County's conduct. County shall have the right to select its legal counsel at Consultant's expense, subject to Consultant's approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

6. Insurance. With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Exhibit "C," which is attached hereto and incorporated herein by this reference.

7. Prosecution of Work. The execution of this Agreement shall constitute Consultant's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

8. Extra or Changed Work. Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Changes which do not exceed the delegated signature authority of the Department may be executed by the Department Head in a form approved by County Counsel. The Board of Supervisors or Purchasing Agent must authorize all other extra or changed work which exceeds the delegated signature authority of the Department Head. The parties expressly recognize that, pursuant to Sonoma County Code Section 1-11, County personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of the County.

9. Representations of Consultant.

9.1 Standard of Care. County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by County shall not operate as a waiver or release.

9.2 Status of Consultant. The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement pursuant to Article 4, above,

Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

9.3 No Suspension or Debarment. Consultant warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Consultant also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration. If the Consultant becomes debarred, consultant has the obligation to inform the County

9.4 Taxes. Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold County harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case County is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish County with proof of payment of taxes on these earnings.

9.5 Records Maintenance. Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to County for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.

9.6 Conflict of Interest. Consultant covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Consultant further covenants that in the performance of this Agreement no person having any such interests shall be employed. In addition, if requested to do so by County, Consultant shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with County disclosing Consultant's or such other person's financial interests.

9.7 Statutory Compliance/Living Wage Ordinance. Consultant agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly acknowledges and agrees that this Agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will

be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

9.8 Nondiscrimination. Without limiting any other provision hereunder, Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.9 AIDS Discrimination. Consultant agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

9.10 Assignment of Rights. Consultant assigns to County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to County in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as County may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of County. Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of County.

9.11 Ownership of Work Product. All reports, drawings, graphics, plans, and studies, in their final form and format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement, shall be the property of County. Consultant shall deliver such materials to County upon request in their final form and format. Such materials shall be and will remain the property of County without restriction or limitation. Document drafts, notes, and emails of the Consultant and Consultant's subcontractors, consultants, and other agents shall remain the property of those persons or entities.

9.12 Authority. The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Consultant.

10. Demand for Assurance. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received

may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits County's right to terminate this Agreement pursuant to Article 4.

11. Assignment and Delegation. Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

12. Method and Place of Giving Notice, Submitting Bills and Making Payments. All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

TO COUNTY: Esther Martinez
County of Sonoma
Department of Agriculture/Weights & Measures
133 Aviation Blvd., Suite 110
Santa Rosa, CA 95403
esther.martinez@sonoma-county.org

TO CONSULTANT: Damon Morelli, Principal Engineer/Vice President
EBA Engineering
825 Sonoma Avenue, Suite C
Santa Rosa, CA 95404
dmorelli@ebagroup.com

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13. Miscellaneous Provisions.

13.1 No Waiver of Breach. The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

13.2 Construction. To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Consultant and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

13.3 Consent. Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

13.4 No Third Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

13.5 Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

13.6 Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

13.7 Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

13.8. Survival of Terms. All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

13.9 Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

///

//

/

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

CONSULTANT: **EBA ENGINEERING**

COUNTY: **COUNTY OF SONOMA**

**CERTIFICATES OF INSURANCE
REVIEWED AND ON FILE:**

By: _____
Nazar Eljumaily
President

Date: _____

By: _____
Andrew F. Smith
Agricultural Commissioner

Date: _____

APPROVED TO FORM FOR COUNTY:

By: _____
Holly Rickett, County Counsel

Date: _____

AGREEMENT EXECUTED:

By: _____
Andrew F. Smith
Agricultural Commissioner

Date: _____

EXHIBIT "A"

Scope of Work

RESPONSIBILITIES OF CONSULTANT

1. Administrative Services.

- 1.1 Program Support. Consultant shall meet with County staff to develop and review project review and approval procedures, standards, and best management practices (BMPs) for Vineyard and Orchard Site Development, Agricultural Grading and Drainage Improvement plans that include engineering and/or geologic reports (hereinafter "plans") as needed and as determined by County Staff.
- 1.2 Outreach and Education. Consultant may be requested to provide public presentations or participate at public workshops with stakeholders, local, state, and federal staff, and public officials, including attendance at Board of Supervisor meetings.
- 1.3 Training. Over the course of the agreement, Consultant shall provide training to County staff to perform field inspection, plan review, and other appropriate tasks. The Consultant shall utilize County staff to complete initial application intake and review and field inspections to validate information contained in the plans when possible.
- 1.4 Confidentiality. Consultant shall not discuss or release any materials that may be confidential. Consultant shall discuss plans only with the property owner or authorized agent. In the event any questions arise regarding the appropriateness of sharing information, Consultant will confer with the Sonoma County Department of Agriculture/Weights and Measures (AWM).
- 1.5 Time Keeping for Project Specific Services. Consultant shall track all hours worked to include the permit application number, project site address, task type, name and title of staff performing the task(s), hours and hourly rate, date services provided, and project type number provided by AWM. The AWM shall provide direction on what project type numbers and permit application number to use for various types of work performed.
- 1.6 Non-Project Specific Services. Consultant shall provide non-project specific services including developing procedures; responding to general VESCO, agricultural grading and draining improvement technical questions from permit applicants and potential permit applicants; pre-application consultation services; consulting with County on topics such as protocol and water quality/farm plan requirements; preparation and

participation in outreach and/or educational events; and staff training when requested by County staff.

- 1.7 When requested by County staff, Consultant shall provide the above services, including services to the public on request and covered under AWM fees as Pre-Application Consultative Services, and conducting project review or site inspections normally performed by AWM staff when specifically requested by County staff. These services shall be provided based on established hourly rates except that Consultant shall provide one and one half (1.5) hours of these services at no charge for each ten (10) hours invoiced by Consultant and paid by County.
- 1.8 In consideration of the cost to County and project applicant, Consultant shall provide services in the timeliest and most efficient method including conserving travel time for performing site inspections.

2. Response Timing Standards.

- 2.1 Consultant must initiate review and contact with applicants within one week of the date the project is submitted to Consultant.
- 2.2 Consultant shall respond to non-emergency phone calls and emails from potential and current project applicants and County staff within 24 hours and shall accommodate appointment requests within 3-5 business days. In the event Consultant receives requests for a call or appointment that is outside of engineering or geologic issues, Consultant shall direct the applicant back to AWM staff. At times, it will be more effective for appointments to include both Consultant and staff from AWM.
- 2.3 Consultant and AWM staff shall interface regularly on projects to ensure that high quality and efficient customer service is rendered to potential and current project applicants.
- 2.4 In rare instances, Consultant may be required to respond to emergency situations affecting health and safety, including times during forecasted inclement weather or floods. In such a situation, Consultant shall make a qualified expert available on call to respond to emergency requests.

3. Technical Review and Consultation Services.

- 3.1 Consultant shall review engineering and/or geologic elements of project applications, plans, maps, and related information submitted to AWM, perform site visits as determined by AWM staff, evaluate and verify compliance or corrective steps necessary for compliance with the standards for Vineyard and Orchard Site Development, Agricultural Grading and Drainage Improvement as outlined in Chapter

36 of the Sonoma County Code and the assigned elements of the Best Management Practices (BMPs).

- 3.1.1 Any incomplete applications, items needing to be addressed by the applicant, or non-compliances shall be noted needing follow up by the applicant and provided to AWM staff.
- 3.1.2 Consultant will perform additional site evaluations and make recommendations as requested by AWM including but not limited to.
- 3.1.3 Consultant shall verify compliance by signing off on the project application checklist provided by AWM. Consultant shall also utilize the permit tracking system provided by County to track the status of plans that have been routed to Consultant for review and sign off.
- 3.1.4 Consultant agrees to adhere to the review timelines that are established in collaboration with AWM.
- 3.2 At the request of the Agricultural Commissioner or designee, Consultant shall make recommendations to AWM staff in a timely fashion on issues of non-compliance and participate in enforcement actions including processes associated with complaints, investigations, testifying, and documentation for notices of violations.
- 3.3 Consultant shall review and verify compliance with standards for as-built plans, which may include site visits.
- 3.4 Consultant, when directed by the Agricultural Commissioner or designee, shall make site visits and make recommendations on slope stabilization and other necessary environmental remediation.
- 3.5 Consultant shall be available to County staff as a subject matter expert regarding the technical elements of Chapter 11 of the Sonoma County Code and BMPs.
- 3.6 At the request of the Agricultural Commissioner or designee, Consultant shall work with County to update the standards set forth in Chapter 11 and/or BMPs at the request of County.
- 3.7 Consultant shall defend work completed under agreement, if challenged.
- 3.8 Consultant shall notify County in writing if anyone other than the key personnel identified in this Agreement will be working on a project. County expects that all work done under this Agreement will be completed by the key personnel unless so notified, (i.e., work will be done by engineer and not a technician or other staff member of Consultant's firm).

RESPONSIBILITIES OF COUNTY

1. AWM will provide direction on priority order of work product to be delivered under this Agreement.
2. AWM staff will be the first point of contact with potential and current project applicants, and AWM staff will only direct appropriate calls to Consultant. Consultant will direct calls not associated specifically with engineering or geologic questions to County staff.
3. AWM will provide final approval of vineyards and orchard site development and Agricultural Grading and Drainage Improvement plans that have been reviewed and verified for compliance with standards and BMPs by Consultant.
4. AWM is ultimately responsible for managing the resolution and closure of any corrective action issues.
5. AWM will provide final approval of any “as built” plans that have been reviewed and verified for compliance with standards by Consultant.

EXHIBIT "B"

Budget

1. **Payment.** For all services and incidental costs required hereunder, Consultant shall be paid in accordance with the following terms:

- 1.1 Consultant shall be paid on a time and material/expense basis in accordance with the rates set forth below; provided however, that total payments to Consultant shall not exceed \$150,000 per fiscal year without the prior written approval of County.
- 1.2 Consultant shall provide one and one half (1.5) hours of non-project specific and program support services to County at no charge for every ten (10) hours invoiced by Consultant and paid by County. The hours at no cost to County will accrue over the entire term of the Agreement. When providing non-project specific and support services, Consultant shall note such on the invoice so County can track use of the hours at no charge to County.

2. **Hourly Rates.**

- 2.1 Consultant shall be paid for the review and inspection of projects, which includes reviewing and inspecting project applications, maps, plans, and other project related information submitted to the Sonoma County Department of Agriculture/Weights and Measures (AWM), inspection of the projected site, and other assigned tasks as follows:

<u>Consultant Type</u>	<u>Hourly Rate</u>
Principal Geologist/Principal Engineer*	\$230
Project Manager*	\$160 - \$210
Senior Geologist/Senior Engineer*	\$150 - \$190
Senior Project Geologist/Senior Project Engineer*	\$140 - \$170
Project Geologist/Project Engineer	\$135 - \$170
Staff Geologist/Staff Engineer	\$100 - \$130
Survey: 3 Man Crew	\$380
Survey: 2 Man Crew	\$290
Survey Travel: 2 Man Crew	\$200
Survey: 1 Man Crew	\$185
Senior Survey Technician	\$130 - \$150
Survey Technician	\$90 - \$125
Senior Environmental Scientist/Specialist	\$130 - \$150

<u>Consultant Type</u>	<u>Hourly Rate</u>
Environmental Scientist/Specialist	\$75 - \$115
Design Draftsperson	\$115 - \$135
Drafting Technician	\$95 - \$115
Clerical	\$65
Administrative	\$70
Systems Manager	\$80
Depositions or court proceedings	200% of usual rates
Subconsultants	Cost plus 15%
Prints and Materials	Cost plus 15%
Miscellaneous Expenses	Cost plus 15%
Mileage	Current Federal Rate

- 2.2 Time shall be billed to the nearest quarter hour. The hourly rates cover payment for all Consultant cost including labor, overhead, transportation, information technology, equipment, and any other costs associated with providing services. Consultant shall not bill for time to pick up or deliver project applications and related documents, time that is at no cost to County or the applicant.
- 2.3 Overpayment. If County overpays Consultant for any reason, Consultant agrees to return the amount of such overpayment to County or, at County's option, permit County to offset the amount of such overpayment against future payments owed to Consultant under this Agreement or any other agreement.

3. Billing Requirements.

- 3.1 Consultant shall submit its bills in arrears within five (5) business following the periods of the 1st through the 15th and the 16th through the last day of the month in a form approved by County's Auditor and Head of the County Department receiving the services.
- 3.2 For services rendered for permit application and site approval, the bills shall show:
- 3.2.1 The project permit application number (ACO number) and project type (AC number), and project owner name and address as provided by County;
- 3.2.2 The task(s) performed, the name and title of person(s) performing the task(s), the number of hours in ¼ time increments to perform the task(s), the date the services were provided, and the hourly rate for the person(s) performing the task(s); and

3.2.3 Notation that the task(s) were performed under the project rates.

3.3 For services rendered for pre-application consultation services, the bills shall show:

3.3.1 The name and address of the owner of the site for which the services are related to;

3.3.2 The task(s) performed, the name and title of person(s) performing the task(s), the number of hours in ¼ time increments to perform the task(s), the date the services were provided, and the hourly rate for the person(s) performing the task(s).

3.4 For non-project specific and program support, the bills shall show:

3.4.1 The type of services provided including staff training, outreach/education/community outreach, program development, general program questions, and procedures development;

3.4.2 The task(s) performed, the name and title of person(s) performing the task(s), the number of hours in ¼ time increments to perform the task(s), and the hourly rate for the person(s) performing the task(s); and

3.4.3 Notation that these services were provided at no cost to County up to one and one half (1.5) hours accrued per ten (10) hours of billed hours.

EXHIBIT "C"

Insurance

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain insurance as described below unless such insurance has been expressly waived by the attachment of a *Waiver of Insurance Requirements*. Any requirement for insurance to be maintained after completion of the work shall survive this Agreement.

County reserves the right to review any and all of the required insurance policies and/or endorsements, but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Consultant from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

1. Workers Compensation and Employers Liability Insurance.

- 1.1 Required if Consultant has employees as defined by the Labor Code of the State of California.
- 1.2 Workers Compensation insurance with statutory limits as required by the Labor Code of the State of California.
- 1.3 Employers Liability with minimum limits of \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.
- 1.4 *Required Evidence of Insurance:* Certificate of Insurance.

If Consultant currently has no employees as defined by the Labor Code of the State of California, Consultant agrees to obtain the above-specified Workers Compensation and Employers Liability insurance should employees be engaged during the term of this Agreement or any extensions of the term.

2. General Liability Insurance.

- 2.1 Commercial General Liability Insurance on a standard occurrence form, no less broad than Insurance Services Office (ISO) form CG 00 01.
- 2.2 Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Excess or

Commercial Umbrella Liability Insurance. If Consultant maintains higher limits than the specified minimum limits, County requires and shall be entitled to coverage for the higher limits maintained by Consultant.

- 2.3 Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by County. Consultant is responsible for any deductible or self-insured retention and shall fund it upon County's written request, regardless of whether Consultant has a claim against the insurance or is named as a party in any action involving the County.
- 2.4 The County of Sonoma Department of Agriculture/Weights and Measures shall be endorsed as additional insureds for liability arising out of operations by or on behalf of the Consultant in the performance of this Agreement.
- 2.5 The insurance provided to the additional insureds shall be primary to, and non-contributory with, any insurance or self-insurance program maintained by them.
- 2.6 The policy definition of "insured contract" shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the "f" definition of insured contract in ISO form CG 00 01, or equivalent).
- 2.7 The policy shall cover inter-insured suits between the additional insureds and Consultant and include a "separation of insureds" or "severability" clause which treats each insured separately.
- 2.8 *Required Evidence of Insurance:*
 - 2.8.1 Copy of the additional insured endorsement or policy language granting additional insured status; and
 - 2.8.2 Certificate of Insurance.

3. Automobile Liability Insurance.

- 3.1 Minimum Limit: \$1,000,000 combined single limit per accident. The required limits may be provided by a combination of Automobile Liability Insurance and Commercial Excess or Commercial Umbrella Liability Insurance.
- 3.2 Insurance shall cover all owned autos. If Consultant currently owns no autos, Consultant agrees to obtain such insurance should any autos be acquired during the term of this Agreement or any extensions of the term.

3.3 Insurance shall cover hired and non-owned autos.

3.4 Required Evidence of Insurance: Certificate of Insurance.

4. Professional Liability/Errors and Omissions Insurance.

4.1 Minimum Limits: \$1,000,000 per claim or per occurrence; \$1,000,000 annual aggregate.

4.2 Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by County.

4.3 If Consultant's services include: (1) programming, customization, or maintenance of software: or (2) access to individuals' private, personally identifiable information, the insurance shall cover:

4.3.1 Breach of privacy; breach of data; programming errors, failure of work to meet contracted standards, and unauthorized access; and

4.3.2 Claims against Consultant arising from the negligence of Consultant, Consultant's employees and Consultant's subcontractors.

4.4 If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of the work.

4.5 Coverage applicable to the work performed under this Agreement shall be continued for two (2) years after completion of the work. Such continuation coverage may be provided by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the work under this Agreement.

4.6 Required Evidence of Insurance: Certificate of Insurance specifying the limits and the claims-made retroactive date.

5. Standards for Insurance Companies. Insurers, other than the California State Compensation Insurance Fund, shall have an A.M. Best's rating of at least A:VII.

6. Documentation.

6.1 The Certificate of Insurance must include the following reference: Engineering and Geologic Review of VESCO Projects.

6.2 All required Evidence of Insurance shall be submitted prior to the execution of this

Agreement. Consultant agrees to maintain current Evidence of Insurance on file with County for the entire term of this Agreement and any additional periods if specified in Sections 1 – 4 above.

- 6.3 The name and address for Additional Insured endorsements and Certificates of Insurance is: Sonoma County Department of Agriculture/Weights & Measures, ATTN: Esther Martinez, 133 Aviation Blvd., Suite 110, Santa Rosa, CA 95403 or via email to esther.martinez@sonoma-county.org.
 - 6.4 Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.
 - 6.5 Consultant shall provide immediate written notice if: (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased.
 - 6.6 Upon written request, certified copies of required insurance policies must be provided within thirty (30) days.
7. **Policy Obligations.** Consultant's indemnity and other obligations shall not be limited by the foregoing insurance requirements.
8. **Material Breach.** If Consultant fails to maintain insurance which is required pursuant to this Agreement, it shall be deemed a material breach of this Agreement. County, at its sole option, may terminate this Agreement and obtain damages from Consultant resulting from said breach. Alternatively, County may purchase the required insurance, and without further notice to Consultant, County may deduct from sums due to Consultant any premium costs advanced by County for such insurance. These remedies shall be in addition to any other remedies available to County.