

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND
ENVIRONMENTAL SCIENCE ASSOCIATES (ESA)**

THIS AGREEMENT, entered into this _____ day of _____ ,
20____, by and between the COUNTY OF SAN MATEO, hereinafter called
“County,” and ESA, hereinafter called “Contractor”;

W I T N E S S E I H:

WHEREAS, pursuant to Government Code Section 31000, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof;

WHEREAS, it is necessary and desirable that Contractor be retained for the purpose of preparing the environmental documentation and permitting services for the Alpine Road Trail Improvements project.

**NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO
AS FOLLOWS:**

1. Exhibits and Attachments

The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

Exhibit A—Services
Exhibit B—Payments and Rates
Exhibit C—General Obligation of Contractor
Attachment I—§ 504 Compliance
Attachment IP – Intellectual Property

2. Services to be performed by Contractor

In consideration of the payments set forth herein and in Exhibit B, Contractor shall perform services for County in accordance with the terms, conditions, and specifications set forth herein and in Exhibit A.

3. Payments

In consideration of the services provided by Contractor in accordance with all terms, conditions, and specifications set forth herein and in Exhibit A, County shall make payment to Contractor based on the rates and in the manner specified in Exhibit B. County reserves the right to withhold payment if County determines that the quantity or quality of the work performed is unacceptable. In no event shall County's total fiscal obligation under this Agreement exceed Three Hundred Thousand and No/100 (\$300,000).

4. Term and Termination

Subject to compliance with all terms and conditions, the term of this Agreement shall be from January 27, 2015, through January 27, 2018

This Agreement may be terminated by Contractor, the Director of Public Works, or his/her designee at any time without a requirement of good cause upon thirty (30) days' written notice to the other party.

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of County and shall be promptly delivered to County. Upon termination, Contractor may make and retain a copy of such materials. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that portion of the full payment which is determined by comparing the work/services completed to the work/services required by the Agreement.

5. Availability of Funds

County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon unavailability of Federal, State, or County funds by providing written notice to Contractor as soon as is reasonably possible after County learns of said unavailability of outside funding.

6. Relationship of Parties

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent Contractor and not as an employee of County and that neither Contractor nor its employees acquire any of the rights, privileges, powers, or advantages of County employees.

7. Hold Harmless

7.1 General Hold Harmless. Contractor shall indemnify and save harmless County and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from this Agreement, the performance of any work or services required of Contractor under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following: (A) injuries to or death of any person, including Contractor or its employees/officers/agents; (B) damage to any property of any kind whatsoever and to whomsoever belonging; (C) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; or (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County and/or its officers, agents, employees, or servants. However, Contractor's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which County has been found in a court of competent

jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

7.2 Intellectual Property Indemnification.

Contractor hereby certifies that it owns, controls, or licenses and retains all right, title, and interest in and to any intellectual property it uses in relation to this Agreement, including the design, look, feel, features, source code, content, and other technology relating to any part of the services it provides under this Agreement and including all related patents, inventions, trademarks, and copyrights, all applications therefor, and all trade names, service marks, know how, and trade secrets ("IP Rights") except as otherwise noted by this Agreement. Contractor warrants that the services it provides under this Agreement do not infringe, violate, trespass, or constitute the unauthorized use or misappropriation of any IP Rights of any third party. Contractor shall defend, indemnify, and hold harmless County from and against all liabilities, costs, damages, losses, and expenses (including reasonable attorney fees) arising out of or related to any claim by a third party that the services provided under this Agreement infringe or violate any third-party's IP Rights provided any such right is enforceable in the United States. Contractor's duty to defend, indemnify, and hold harmless under this Section applies only provided that: (a) County notifies Contractor promptly in writing of any notice of any such third-party claim; (b) County cooperates with Contractor, at Contractor's expense, in all reasonable respects in connection with the investigation and defense of any such third-party claim; (c) Contractor retains sole control of the defense of any action on any such claim and all negotiations for its settlement or compromise (provided Contractor shall not have the right to settle any criminal action, suit, or proceeding without County's prior written consent, not to be unreasonably withheld, and provided further that any settlement permitted under this Section shall not impose any financial or other obligation on County, impair any right of County, or contain any stipulation, admission, or acknowledgement of wrongdoing on the part of County without County's prior written consent, not to be unreasonably withheld); and (d) should services under this Agreement become, or in Contractor's opinion be likely to become, the subject of such a claim, or in the event such a third party claim or threatened claim causes County's reasonable use of the services under this Agreement to be seriously endangered or disrupted, Contractor shall, at Contractor's option and expense, either: (i) procure for County the right to continue using the services without infringement or (ii) replace or modify the services so that they become non infringing but remain functionally equivalent.

Notwithstanding anything in this Section to the contrary, Contractor will have no obligation or liability to County under this Section to the extent any otherwise covered claim is based upon: (a) any aspects of the services under this Agreement which have been modified by or for County (other than modification performed by, or at the direction of, Contractor) in such a way as to cause the alleged infringement at issue; (b) any aspects of the services under this Agreement which have been used

by County in a manner prohibited by this Agreement.

The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

8. Assignability and Subcontracting

Contractor shall not assign this Agreement or any portion thereof to a third party or subcontract with a third party to provide services required by Contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without County's prior written consent shall give County the right to automatically and immediately terminate this Agreement.

9. Insurance

Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by County's Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. Contractor shall furnish County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Contractor's coverage to include the contractual liability assumed by Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to County of any pending change in the limits of liability or of any cancellation or modification of the policy.

- (1) **Workers' Compensation and Employer's Liability Insurance.** Contractor shall have in effect during the entire term of this Agreement workers' compensation and employer's liability insurance providing full statutory coverage. In signing this Agreement, Contractor certifies, as required by Section 1861 of the California Labor Code, (a) that it is 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 the Labor Code, and (b) that it will comply with such provisions before commencing the performance of work under this Agreement.
- (2) **Liability Insurance.** Contractor shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Contractor and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Contractor's operations under this Agreement, whether such operations be by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or by an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the

amount specified below.

Such insurance shall include:

- | | |
|---|-------------|
| (a) Comprehensive General Liability | \$1,000,000 |
| (b) Motor Vehicle Liability Insurance | \$1,000,000 |
| (c) Professional Liability. | \$1,000,000 |

County and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that (a) the insurance afforded thereby to County and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy and (b) if the County or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, County, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work and payment pursuant to this Agreement.

10. Compliance With Laws

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, and regulations, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended (if applicable), the Business Associate requirements set forth in Attachment H (if attached), the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of handicap in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including but not limited to appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, County, or municipal law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement.

Further, Contractor certifies that Contractor and all of its subcontractors will adhere to all applicable provisions of Chapter 4.106 of the San Mateo County Ordinance Code, which regulates the use of disposable food service ware.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

11. Non-Discrimination and Other Requirements

- A. *General non-discrimination.* No person shall be denied any services provided pursuant to this Agreement (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.
- B. *Equal employment opportunity.* Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County upon request.
- C. *Section 504 of the Rehabilitation Act of 1973.* Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement. This Section applies only to contractors who are providing services to members of the public under this Agreement.
- D. *Compliance with County's Equal Benefits Ordinance.* With respect to the provision of benefits to its employees, Contractor shall comply with Chapter 2.84 of the County Ordinance Code, which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse. In order to meet the requirements of Chapter 2.84, Contractor must certify which of the following statements is/are accurate:
- ☒ Contractor complies with Chapter 2.84 by:
 - ☒ offering the same benefits to its employees with spouses and its employees with domestic partners.
 - ☐ offering, in the case where the same benefits are not offered to its employees with spouses and its employees with domestic partners, a cash payment to an employee with a domestic partner that is equal to Contractor's cost of providing the benefit to an employee with a spouse.
 - ☐ Contractor is exempt from having to comply with Chapter 2.84 because it has no employees or does not provide benefits to employees' spouses.
 - ☐ Contractor does not comply with Chapter 2.84, and a waiver must be sought.
- E. *Discrimination Against Individuals with Disabilities.* The Contractor shall

comply fully with the nondiscrimination requirements of 41 C.F.R. 60-741.5(a), which is incorporated herein as if fully set forth.

- F. *History of Discrimination.* Contractor must check one of the two following options, and by executing this Agreement, Contractor certifies that the option selected is accurate:

- ☒ No finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or any other investigative entity.
- ☐ Finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or other investigative entity. If this box is checked, Contractor shall provide County with a written explanation of the outcome(s) or remedy for the discrimination.

- G. *Violation of Non-discrimination provisions.* Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to the following:

- i) termination of this Agreement;
- ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;
- iii) liquidated damages of \$2,500 per violation; and/or
- iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this Section, the County Manager shall have the authority to examine Contractor's employment records with respect to compliance with this Section and/or to set off all or any portion of the amount described in this Section against amounts due to Contractor under this Agreement or any other agreement between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission, or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint, and

a description of the circumstance. Contractor shall provide County with a copy of their response to the Complaint when filed.

12. Compliance with County Employee Jury Service Ordinance

Contractor shall comply with Chapter 2.85 of the County's Ordinance Code, which states that a contractor shall have and adhere to a written policy providing that its employees, to the extent they live in San Mateo County, shall receive from the Contractor, on an annual basis, no fewer than five days of regular pay for jury service in San Mateo County, with jury pay being provided only for each day of actual jury service. The policy may provide that such employees deposit any fees received for such jury service with Contractor or that the Contractor may deduct from an employee's regular pay the fees received for jury service in San Mateo County. By signing this Agreement, Contractor certifies that it has and adheres to a policy consistent with Chapter 2.85. For purposes of this Section, if Contractor has no employees in San Mateo County, it is sufficient for Contractor to provide the following written statement to County: "For purposes of San Mateo County's jury service ordinance, Contractor certifies that it has no employees who live in San Mateo County. To the extent that it hires any such employees during the term of its Agreement with San Mateo County, Contractor shall adopt a policy that complies with Chapter 2.85 of the County's Ordinance Code."

13. Retention of Records, Right to Monitor and Audit

(a) Contractor shall maintain all required records for three (3) years after County makes final payment and all other pending matters are closed, and Contractor shall be subject to the examination and/or audit of County, a Federal grantor agency, and the State of California.

(b) Reporting and Record Keeping: Contractor shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State, and local agencies, and as required by County.

(c) Contractor agrees upon reasonable notice to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representatives, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.

14. Merger Clause & Amendments

This Agreement, including the Exhibits and Attachments attached to this Agreement and incorporated herein by reference, constitutes the sole Agreement of the parties to this Agreement and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the

Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

15. Controlling Law and Venue

The validity of this Agreement and of its terms or provisions, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

16. Notices

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via facsimile to the telephone number listed below or transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of County, to:

County of San Mateo
Department of Public Works
555 County Center, 5th Floor
Redwood City, CA 94063
Telephone: (650) 363-4100
Facsimile: (650) 361-8220

In the case of Contractor, to:

ESA
550 Kearny Street, Suite 800
San Francisco, CA 94108
Telephone: (415) 896-5900
Facsimile: (415) 896-0332

17. Electronic Signature

If both County and Contractor wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law and County's Electronic Signature Administrative Memo, both boxes below must be checked. Any party that agrees to allow digital signature of this Agreement may revoke such agreement at any time in relation to all future documents by providing notice pursuant to this Agreement.

For County: ☐ If this box is checked by County, County consents to the use of electronic signatures in relation to this Agreement.

For Contractor: ☐ If this box is checked by Contractor, Contractor consents to the use of electronic signatures in relation to this Agreement.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

By: _____
President, Board of Supervisors, San Mateo
County

Date: _____

ATTEST:

By: _____
Clerk of Said Board

ESA



Contractor's Signature

Date: 1-13-15

Exhibit "A"

SERVICES

In consideration of the payments set forth in Exhibit B, Contractor shall provide the following services:

Scope of services shall include but not be limited to, generation and verification of support information, documentation and reports, and all tasks necessary for the completion of the California Environmental Quality Act (CEQA) review, revision and recirculation of the Initial Study/ Mitigated Negative Declaration (IS/MND) and preparation of the permit process and incorporation of the regulatory comments and requirements. The Consultant will also assist in the site design, geomorphic assessment, preliminary and final design for locations 2 and 3 and all tasks for the preparation of a design package and as outline below:

List of Task/Deliverables:

Task 1: Site Design

- Prepare for and attend Agency site visit
- Perform field review of proposed alternatives
- Review existing conditions model and provide input to incorporate into refined conditions model
- Use proposed conditions model design features (stone size, crib wall, etc) at location 2
- Use proposed conditions model to design channel elements for two (2) alternatives channel alignments, including estimates for channel dimension and roughness
- For Location 2: Design channel grading, biotechnical stabilizations, sizing and placing of alluvial material, crib wall design including incorporation into proposed soldier pile retaining wall, bank grading and blending, stabilizations of transitions upstream and downstream, temporary irrigation, and revegetation plan for impacted area
- For Location 3: Design step pools and/or roughened rock ramp(s), biotechnical bank stabilization including transitions upstream and downstream, isolation of abandoned channel, temporary irrigation, revegetation plan for impacted area, design and sizing of rock protection to prevent creek from occupying existing alignment
- Develop Fish Passage Assessment Report/Memo
- 30% Design submittal (Plans and Specifications)
- County comment response on 30% Design Submittal
- 60% Design submittal (Plans, Specifications and Engineer's Estimate)
- County comment response on 60% Design Submittal
- 90% Design submittal (Plans, Specifications and Engineer's Estimate)
- County comment response on 90% Design Submittal
- 100% Signed Design submittal (Plans, Specifications and Engineer's Estimate)
- Construction schedule based on final design
- Correspondence/ coordination between the County and other consultants working on the project.

Task 2: Prepare and Process an Initial Study/ Mitigated Negative Declaration (IS/MND)

- Incorporate specific project information as developed in Task 1 into a revised Project Description
- County comment response on revised Project Description
- Provide updated assessment of natural resource issues, impacts to protected wetlands and waters, instream aquatic habitats, hydrology and water quality, traffic, air quality, noise emissions, and cultural and paleontological resources.
- Provide recalculated air quality emissions to be included in the IS/MND
- Submit a Notice of Completion, on behalf of the County, to the San Mateo County Clerk, and State Clearinghouse, and any other required stakeholders
- Prepare a Mitigation and Monitoring Reporting Plan (MMRP)
- Prepare an updated IS/MND incorporating above tasks
- County comment response on updated IS/MND
- Assist the County with developing a mailing list and distribute copies of the IS/MND to local and regional agencies and interested parties.
- Prepare 15 hard copies of the IS/MND for public circulation
- Prepare and publish a legal notice in a local newspaper
- Respond to public comments received after circulating the Draft IS/MND
- Prepare a Final IS/MND and incorporate a response to public comments section
- County comments response on Final IS/MND

Task 3: Prepare and Process Permits

- Revise regulatory agency permits including, Fish and Game Code Section 1600 Lake and Streambed Alteration Agreement from the California Department of Fish and Wildlife (CDFW), a Clean Water Action Section 401 Water Quality Certification and or/a Waste Discharge Requirement from the Regional Water Quality Control Board (RWQCB), and a Clear Water Act Section 404 Permit from the U.S. Army Corps of Engineers (Corps)
- Revise the documentation to support federal Endangered Species Act consultation with the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS).
- Revision to the following documents:
 - 1) *Alpine Road Trail Improvements Project Preliminary Delineation of Waters of the United States, San Mateo County, California* (dated December 2013)
 - 2) *Alpine Road Trail Improvements Project Habitat Assessment* (dated December 2013)
 - 3) *The Alpine Road Trail Improvements Project Unincorporated San Mateo County Cultural Resources Survey Report* (dated December 2013)
- Prepare Habitat Mitigation Monitoring Plan for review
- County Comments response on Habitat Mitigation Monitoring Plan

Task 4: Project Management

- Attend three (3) in person field meetings in addition to those outline above
- Participate in seven (7) half hour conference calls as the County's discretion or as needed

Optional Tasks

- Various tasks to be performed by the Consultant after the field meeting with the Regulatory Agencies that are unknown at this time.
- Various meetings/ conference calls regarding the project that are unknown at this time.
- Optional Tasks will be outlined prior to issuing a separate task order for Consultant to perform work.

Exhibit "B"
PAYMENT AND RATES

In consideration of the services provided by Contractor in Exhibit A and subject to the terms of the Agreement, County shall pay Contractor based on the following fee schedule and terms:

Task 1:	Site Design	\$177,750
Task 2:	Prepare and Process an Initial Study/ Mitigated Negative Declaration (IS/MND)	\$46,345
Task 3:	Prepare and Process Permits	\$34,435
Task 4:	Project Management	\$14,590
Miscellaneous Fees and Reimbursable Expenses		\$12,179
Optional Tasks		\$14,701
Total		\$300,000

- I. In consideration of the services provided by Contractor in Exhibit "A", County shall pay Contractor upon receipt in Accounting Section of the Department of Public Works and Parks of a written itemized invoice identifying the task order, County project number (if applicable), specific work completed, number of hours involved and breakdown of charges. The Approved Project total not-to-exceed amount will be stipulated in each task order. Costs for services deemed necessary by the County for completion of each task order shall be authorized in writing prior to proceeding with the work. Billing rates for services provided under this Agreement shall be based upon the Contractor's most recent fee schedule and by reference made a part of this Agreement. The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable.
2. The County shall pay Contractor reimbursable expenses. The Contractor shall be entitled to mileage, meals and lodging at the same rate granted to employees of the County whenever the Contractor is required to travel outside of San Mateo County in the performance of his duties under this Agreement. Such travel must first be approved in writing by the County. The Contractor shall also be reimbursed for expenses associated with reproduction (drawings, project manuals, reports, etc.); telephone or fax outside 650, 415, 408, 510, 707, and 925 area codes; fees paid for securing necessary permits and approvals of authorities having jurisdiction over the project; and special delivery service.

3. The County's total fiscal obligation under this Agreement shall not exceed \$300,000 unless said amount is authorized to be increased by the County Board of Supervisors by written amendment to this agreement. Specific projects that may be assigned to the Contractor shall have individual not-to-exceed amounts as stated in the specific task orders. The sum of individual task order not-to-exceed fees for multiple projects that may be assigned to the Contractor shall not exceed the total \$300,000 not-to-exceed amount for this Agreement without prior written approval by the County Board of Supervisors.

Exhibit "C"
GENERAL OBLIGATION OF CONTRACTOR

1. Contractor Personnel

The Contractor shall provide the County with resumes of the key staff members to be assigned to said project in advance of commencing any professional services. Once the County approves the key staff to be assigned to the project, any substitutions or additions shall be subject to written approval by the County. The County reserves the right to reject any personnel the Contractor proposes for use on the project.

Contractor represents that it is qualified to furnish the services described under this Agreement. Contractor further declares that one or more members or employees of its firm and that of its sub Contractors, if so required by the State, if any, are licensed by the State of California to perform their services and that these services will be performed by them or under their direct supervision. Contractor shall furnish to County for approval, upon execution of this Agreement, a list of all firms or corporations to be employed as sub Contractors.

Nothing in this Agreement abrogates the professional responsibilities of the Contractor and/or sub Contractors with respect to design defects, errors, omissions, or malpractice.

2. Corrections and/or Revisions

Contractor shall make and provide to the County all necessary corrections and/or revisions to the project design and document when it is determined by the Director of Public Works or his designated representative, that such changes are necessary for the project and are due to oversights, omissions or errors of Contractor.

3. General Obligations of County

County shall be responsible for providing any available data required by the Contractor as stipulated in any approved Task Order.

County shall examine documents submitted by Contractor and shall render comments and direction pertaining thereto promptly (up to two weeks or otherwise upon written agreement by County and Contractor), as stipulated in approved Task Orders.

4. Payment Upon Suspension, Abandonment of Project, or Termination of Agreement

If any Task Order is suspended for more than thirty (30) calendar days, or abandoned in all or part, Contractor shall be paid for services performed prior to receipt of thirty (30) days written notice from County of such suspension or abandonment, together with reimbursable expenses then due. In the event that the County abandons any Final Task Order the County may specifically authorize additional work necessary to properly close out the project.

If this Agreement or any Task Order is suspended or terminated due to fault of Contractor, County shall be obligated to compensate Contractor only for that portion of Contractor's services that were satisfactorily performed.

5. Performance of Services if Contractor is not Diligent in Performing Work

In the event Contractor is not diligent in pursuing the designated services as specified in each Task Order, the Director of Public Works or the respective designated representative may, at his option, seven (7) days after written notice to Contractor, perform any such required engineering services or retain a different Contractor to do the same, and the cost associated with having said work completed by means other than the Contractor will be retained from any sums not yet paid to the Contractor.

6. Authorization to Proceed

Contractor shall commence work upon receipt of the Task Order.

6.1 Time of Completion of Each Task

Contractor agrees to perform the professional services for the Task Order within the time limits set forth in the project schedule required by this Agreement. Any change in the scope of services as outlined in the Task Order will require a revised timetable.

County agrees to exercise due diligence in performing it's tasks to implement the Contractor's time schedule.

7. County's Review and Approval

Between each phase of work and at critical progress points there shall be a review and approval period by County and other agencies. County shall reject Contractor's submittal if changes and/or comments transmitted to Contractor by County during previous review were not addressed by Contractor in current submittal.

8. Changes in Work

The Director of Public Works or the respective designated representative may order changes in scope or character of work in writing which are mutually acceptable, either decreasing or increasing the amount of Contractor's services. In the event that such changes are ordered, Contractor shall be entitled to compensation of all work previously directed by County and performed by Contractor prior to receipt of notice of change. Increased compensation for changes shall be determined in accordance with the Agreement. Compensation shall first have been agreed to in writing by County.

In the event that changes are ordered pursuant to this Section, the schedule for progress and completion and compensation as provided with respective Task Order shall be adjusted by negotiation between Contractor and County.

9. Interest of Contractor/Contractor Independent of County

In accepting this Agreement, Contractor covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of these services hereunder. Contractor further covenants that, in the performance of this Agreement, no subcontractor or person having such an interest shall be employed throughout the term of this Agreement. Contractor certifies that no one who has or will have any financial interest under this Agreement is an officer or employee of the County.

In the performance of the engineering services necessary for compliance with this Agreement, Contractor, and any of its sub Contractors or employees, shall be, and is at all times considered, an Independent Contractor, and is not an agent or employee of the County. Contractor has, and shall retain, the right to exercise full control and supervision of the services, and full control over the employment, direction, compensation and discharge of all persons assisting him in the performance of his engineering services hereunder to include any and all sub Contractors employed for the project described herein. Contractor shall be solely responsible for all matters relating to payment of his employees, including compliance with social security, withholding, and all other regulations governing such matters, and shall be solely responsible for his own acts and those of his subordinates and employees.

10. General Provisions

- (a) The Contractor acknowledges that time is of the essence for all projects defined in approved Task Order(s) and agrees to complete all work within the time frame as stipulated within said Task Order(s). Time extensions shall only be approved with prior written approval of the County and failure to complete services according to a mutually agreed upon schedule may be grounds for contract termination.
- (b) The Contractor upon becoming aware of factors which would result in delays shall be responsible for alerting County to potential delays well in advance in order that possible mitigation measures may be evaluated. Contractor shall detail the nature and reasons for potential delays and shall provide the County with possible mitigation measures for consideration.
- (c) On matters pertaining to Task Orders to be performed and the time taken by Contractor to perform such services, the decision of the Director of Public Works or the respective designated representative will be final after discussions between County and Contractor.
- (d) The Contractor warrants that he/she has not employed or retained any company or persons, other than a bona fide employee working for the Contractor, to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this Agreement. For breach or violation of this warranty, the County shall have the right to annul this Agreement without liability, or at its discretion to deduct

from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

11. Ownership of Documents

Consistent with Attachment IP, all tracings, sketches, plans, specifications, estimates, maps, design calculations, quantity calculations, supporting documents, studies, survey notes, and other documents prepared by Contractor or sub Contractors under the terms of this Agreement shall be delivered to and become the property of the County without restriction or limitation on their use. However, should County re-use or utilize data or drawings not for their intended use then County shall be solely liable and indemnify Contractor against such use. Computer files used by Contractor to produce the final set of plans and specifications shall also be delivered in AutoCAD, Access, Excel and Word electronic form on compact disks or other media acceptable to the County at no additional cost and become the property of the County.

12. Jobsite Safety and Environmental Protection

Neither the professional activities of the Contractor nor the presence of the Contractor or his or her employees and sub Contractors at a construction site, shall relieve the General Contractor and any other entity of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the Work of construction in accordance with the contract documents and any health or safety or environmental protection precautions required by any regulatory agencies. The Contractor and his or her personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions. The Contractor agrees that the General Contractor is solely responsible for jobsite safety, and environmental protection, and warrants that this intent shall be made evident in the County's Agreement with the General Contractor. The Contractor also agrees that the County, the Contractor and any other County Contractors that may be providing services at the construction site shall be indemnified and shall be made additional insured's under the General Contractor's general liability insurance policy.

ATTACHMENT I

Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, as Amended

The undersigned (hereinafter called "Contractor(s)") hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended, all requirements imposed by the applicable DHHS regulation, and all guidelines and interpretations issued pursuant thereto.

The Contractor(s) gives/give this assurance in consideration of for the purpose of obtaining contracts after the date of this assurance. The Contractor(s) recognizes/recognize and agrees/agree that contracts will be extended in reliance on the representations and agreements made in this assurance. This assurance is binding on the Contractor(s), its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Contractor(s).

The Contractor(s): (Check a or b)

☐ a. Employs fewer than 15 persons.

☒ b. Employs 15 or more persons and, pursuant to section 84.7 (a) of the regulation (45 C.F.R.

84.7 (a), has designated the following person(s) to coordinate its efforts to comply with the DHHS regulation.

Name of 504 Person:

Annette Bonilla

Name of Contractor(s):

Environmental Science Associates (ESA)

Street Address or P.O. Box:

550 Kearny St, Ste 80

City, State, Zip Code:

SF, CA 94122

I certify that the above information is complete and correct to the best of my knowledge

Signature:

Annette Bonilla

Title of Authorized Official:

Vice President

Date:

January 13, 2015

*Exception: DHHS regulations state that: "If a recipient with fewer than 15 employees finds that, after consultation with a disabled person seeking its services, there is no method of complying with (the facility accessibility regulations) other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible."

Attachment IP Intellectual Property Rights

1. The County of San Mateo ("County"), shall and does own all titles, rights and interests in all Work Products created by Contractor and its subcontractors (collectively "Vendors") for the County under this Agreement. Contractor may not sell, transfer, or permit the use of any Work Products without the express written consent of the County.
2. "Work Products" are defined as all materials, tangible or not, created in whatever medium pursuant to this Agreement, including without limitation publications, promotional or educational materials, reports, manuals, specifications, drawings and sketches, computer programs, software and databases, schematics, marks, logos, graphic designs, notes, matters and combinations thereof, and all forms of intellectual property.
3. Contractor shall not dispute or contest, directly or indirectly, the County's exclusive right and title to the Work Products nor the validity of the intellectual property embodied therein. Contractor hereby assigns, and if later required by the County, shall assign to the County all titles, rights and interests in all Work Products. Contractor shall cooperate and cause subcontractors to cooperate in perfecting County's titles, rights or interests in any Work Product, including prompt execution of documents as presented by the County.
4. To the extent any of the Work Products may be protected by U.S. Copyright laws, Parties agree that the County commissions Vendors to create the copyrightable Work Products, which are intended to be work-made-for-hire for the sole benefit of the County and the copyright of which is vested in the County.
5. In the event that the title, rights, and/or interests in any Work Products are deemed not to be "work-made-for-hire" or not owned by the County, Contractor hereby assigns and shall require all persons performing work pursuant to this Agreement, including its subcontractors, to assign to the County all titles, rights, interests, and/or copyrights in such Work Product. Should such assignment and/or transfer become necessary or if at any time the County requests cooperation of Contractor to perfect the County's titles, rights or interests in any Work Product, Contractor agrees to promptly execute and to obtain execution of any documents (including assignments) required to perfect the titles, rights, and interests of the County in the Work Products with no additional charges to the County beyond that identified in this Agreement or subsequent change orders. The County, however, shall pay all filing fees required for the assignment, transfer, recording, and/or application.
6. Contractor agrees that before commencement of any subcontract work it will incorporate this **ATTACHMENT IP** to contractually bind or otherwise oblige its subcontractors and personnel performing work under this Agreement such that the County's titles, rights, and interests in Work Products are preserved and protected as intended herein.