



**MILLER PACIFIC  
ENGINEERING GROUP**

August 23, 2017  
File: 779.251pro Ph2.doc

San Rafael City Schools  
310 Nova Albion Way  
San Rafael, California 94903  
Attn: Dr. Dan Zaich, Senior Facilities Director

Re: Proposal for Supplemental Geotechnical Investigation  
Phase 2 Improvements – San Rafael High School  
San Rafael, California

### Introduction

Based on our review of the preliminary site plan, and discussions with the design team, we are pleased to propose our supplemental geotechnical services to aid in the development of the proposed Phase 2 Improvements to the San Rafael High School campus in Marin County, California. The project includes construction of a new, ~25,000 square foot, classroom building and administration building. Ancillary improvements include concrete and asphalt pedestrian areas, shade structures, and site utilities.

### Scope of Services

We customarily provide our services in phases to match project development. Based on our experience with similar projects we recommend the following three phases of work:

### Phase 2 – Supplemental Geotechnical Investigation

We previously performed a Geotechnical Investigation dated September 2, 2015 for the Stadium Improvements project, currently under construction; and a Preliminary Geotechnical Investigation for the remainder of the campus dated April 19, 2017. These previous investigations utilized a total of 10-shallow and deep soil borings and 6-Cone Penetration Tests (CPT). We understand the design portion of this project will be reviewed by DSA and by CGS. Therefore, we will perform a subsurface exploration with that complies with CGS' Note 48. Per Note 48 one boring is required for every 5,000-square feet, with a minimum of two-borings per structure. Therefore, we will perform 4-soil borings excavated with track mounted drilling equipment to supplement our existing borings, drilled over a two-day period. School is currently in session; therefore, we can perform our exploration over 2-Saturdays to avoid disturbing the students and assure student safety. However, weekend work will require a fee surcharge to cover overtime charges.

We anticipate the borings will extend 15 to 30-feet below the existing ground surface or at least 5-feet into firm materials. During our exploration we will collect select soil samples for laboratory testing. We anticipate our testing will include moisture content, dry density, unconfined compressive strength, material passing the #200 sieve, plasticity index, expansive index (if necessary), R-Value, and Caltrans corrosion resistance testing.

We will prepare a geotechnical investigation report to aid in the design and construction of the proposed improvements. Our report will include a summary of the existing subsurface conditions, a summary of the pertinent geologic hazards and associated mitigation measures, site grading recommendations; and foundation and seismic design criteria. The report will also include a site plan showing our approximate boring locations, boring logs, and laboratory test results.

Phase 2a – Site Specific Seismic Response Analysis

If necessary, we will perform a site specific seismic response analyses if required based on the results of our subsurface exploration and/or if requested by the Project Structural Engineer. Per CGS requirements we will input at least 5-acceleration time histories into a seismic hazard analyses software that will include a model of the anticipated soil column. The results of our analyses will be presented in our Geotechnical Investigation Report and will include a design acceleration response spectra and a plot of the acceleration time histories input into the program.

Phase 3 – Supplemental Consultation

We will provide supplemental consultation with the design team, as requested, during the design and permitting process. We will address and respond to the comments made by OSHPD/CGS if any. Additionally, we will review the final plans to verify that the intent of our geotechnical recommendations has been implemented and will summarize the results of our review in a brief letter.

Phase 4 – Construction Observation & Testing

We will provide intermittent site visits to observe and test the geotechnical portions of the work performed to form an opinion of the Contractor's compliance with the project plans and specifications. We anticipate observing and testing the following items:

- Building pad preparation,
- Foundation excavations,
- Pavement section compaction testing,
- Utility trench backfill testing, and
- Other geotechnical items, as needed.

We will also provide a letter report summarizing our observations upon satisfactory completion of the project.

Schedule and Fee

We propose our services per the terms on the attached Agreement and Schedule of Charges and the following fee arrangements:

Phase 2 – Geotechnical Investigation:.....Fixed Fee, \$10,700  
(Add \$2,500 if weekend work is required)

Phase 2a – Site Specific Seismic Response Analysis (if required):.....Fixed Fee, \$3,500

Phase 3 – Supplemental Consultation:.....Time & Expense, Estimate, \$3,500

Phase 4 – Construction Observation & Testing:.....Time & Expense, TBD

Budget to be determined when the project details and construction schedule are known.

San Rafael City Schools  
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August 23, 2017

We are pleased to have the opportunity to provide geotechnical services on this project and are prepared to begin our work soon after your authorization. When you wish us to proceed, please return one signed copy of the attached Agreement. If you have any questions regarding our proposal, please do not hesitate to call.

Very truly yours,  
MILLER PACIFIC ENGINEERING GROUP

A handwritten signature in black ink, appearing to read 'Benjamin S. Pappas', written over a horizontal line.

Benjamin S. Pappas  
Geotechnical Engineer No. 2786  
(Expires 9/30/18)

Attachments: Agreement and Schedule of Charges



**.AGREEMENT FOR PROFESSIONAL ENGINEERING AND TESTING SERVICES**

This AGREEMENT is made between MILLER PACIFIC ENGINEERING GROUP ("MPEG"), a California Corporation, and the CLIENT to provide Professional Engineering and Testing Services with respect to the PROJECT, with the following GENERAL CONDITIONS and for the FEE as described below and on the attached pages,

- 1.0     CLIENT NAME:**                      San Rafael City Schools  
Attention: Dr. Dan Zaich, Senior Facilities Director
- ADDRESS:                      310 Nova Albion Way  
   San Rafael, California 94903
- CLIENT #:                      779.251Ph2
- 2.0     PROJECT:**                              Phase 2 Improvements – San Rafael High School
- LOCATION:                      San Rafael High School  
   San Rafael, California
- 3.0     SCOPE OF SERVICES:**                      Geotechnical Engineering Services as described in our proposal  
letter dated August 23, 2017:
- Phase 2 – Geotechnical Investigation  
   Phase 2a – Site Specific Seismic Response Analysis (if required)  
   Phase 3 – Supplemental Consultation  
   Phase 4 – Construction Observation & Testing
- 4.0     FEE:**                                      Phase 2 – Fixed Fee .....\$10,700  
   (Add \$2,500 if weekend work is required)  
   Phase 2a – Fixed Fee .....\$3,500  
   Phase 3 – Time & Expense, Estimate.....\$3,500  
   Phase 4 – Time & Expense .....TBD  
   Budget to be determined when the project details and construction  
   schedule are known.

DATE: 08/23/2017     FOR MPEG:   
Benjamin Pappas, Geotechnical Engineer No. 2786

DATE: \_\_\_\_\_     FOR CLIENT: \_\_\_\_\_

## GENERAL CONDITIONS

### 1. DEFINITIONS

**1.1. Contract Documents.** Plans, specifications, and agreements between Client and Contractors, including addenda, amendments, supplementary instructions, and change orders.

**1.2. Contractor.** The contractor or contractors retained to construct the Project for which MPEG is providing Services under this Agreement.

**1.3. Day(s).** Calendar day(s) unless otherwise stated.

**1.4. Hazardous Materials.** The term Hazardous Materials means any toxic substances, chemicals, radioactivity, pollutants or other materials, in whatever form or state, known or suspected to impair the environment in any way whatsoever. Hazardous Materials include, but are not limited to, those substances defined, designated or listed in any federal, state or local law, regulation or ordinance concerning hazardous wastes, toxic substances or pollution.

**1.5. Services.** The Services provided by MPEG as set forth in this Agreement, the Scope of Services, and any written amendment to this Agreement.

**1.6. Work.** The labor, materials, equipment, and services required to complete the work described in the Contract Documents.

### 2. SCOPE OF SERVICES

MPEG will perform the scope of Services per Page 1 of the agreement.

**2.1. Changes in Scope.** If MPEG provides Client with a written confirmation of a change in the Scope of Services, it will become an amendment to this Agreement unless Client objects in writing within 5 business days after receipt. All Services performed by MPEG on the Project are subject to the terms and limitations of this Agreement. If Services are performed, but the parties do not reach agreement concerning modifications to the Scope of Services or compensation, then the terms and limitations of this Agreement apply to such Services, except for the payment terms. The parties agree to resolve disputes concerning modifications to scope or compensation pursuant to Section 19, "Disputes."

**2.2. Licenses.** MPEG will procure and maintain business and professional licenses and registrations necessary to provide its Services.

**2.3. Excluded Services.** MPEG's Services under this Agreement include only those Services specified in the Scope of Services.

2.3.1. General. Client expressly waives any claim against MPEG resulting from its failure to perform recommended additional Services that Client has not authorized MPEG to perform, and any claim that MPEG

failed to perform services that Client instructs MPEG not to perform.

2.3.2. Biological Pollutants. MPEG's Scope of Services specifically excludes the investigation, detection, prevention or assessment of the presence of Biological Pollutants. The term "Biological Pollutants" includes, but is not limited to, molds, fungi, spores, bacteria, viruses, and/or any of their byproducts.

MPEG's Scope of Services will not include any interpretations, recommendations, findings, or conclusions pertaining to Biological Pollutants. Client agrees that MPEG has no liability for any claims alleging a failure to investigate, detect, prevent, assess, or make recommendations for preventing, controlling, or abating Biological Pollutants. Furthermore, Client agrees to defend, indemnify, and hold harmless MPEG from all claims by any third party concerning Biological Pollutants, except for damages caused by MPEG's sole negligence.

### 3. PAYMENTS TO MPEG

**3.1. Basic Services.** MPEG will perform the Services set forth per the Scope of Services for the Fee and per the Schedule of Charges shown on Page 1 and Page 8 of this Agreement.

**3.2. Additional Services.** Any Services performed under this Agreement, except those Services expressly identified in the attached Scope of Services, will be provided on a time and materials basis unless otherwise specifically agreed to in writing by both parties.

**3.3. Estimate of Fees.** MPEG will, to the best of its ability, perform the Services and accomplish the objectives defined in this Agreement within any written cost estimate provided by MPEG. Client recognizes that changes in scope and schedule, and unforeseen circumstances can all influence the successful completion of Services within the estimated cost. The use of an estimate of fees or of a "not to exceed" limitation is not a guarantee that the Services will be completed for that amount; rather, it indicates that MPEG shall not incur fees and expenses in excess of the estimate or limitation amount without obtaining Client's agreement to do so.

**3.4. Rates.** Client will pay MPEG at the rates set forth in the Schedule of Charges.

3.4.1. Changes to Rates. Client and MPEG agree that the Schedule of Charges is subject to periodic review and amendment, as appropriate to reflect MPEG's current fee structure. Unless Client objects in writing to the proposed amended fee structure within 30 days of invoice, the amended fee structure will be incorporated into this Agreement and will then supersede any prior fee structure. If Client timely objects to the amended fee structure within 30 days, and MPEG and Client cannot agree upon a new fee structure within 30 days after notice, MPEG may terminate this Agreement and be

compensated as set forth under Section 18, "Termination."

**3.4.2. Prevailing Wages.** Unless Client specifically informs MPEG in writing that prevailing wage regulations cover the Project and the Scope of Services identifies it as covered by such regulations, Client will reimburse, defend, indemnify and hold harmless MPEG from and against any liability resulting from a subsequent determination that prevailing wage regulations cover the Project, including all costs, fines and attorneys' fees.

**3.5. Payment Timing; Late Charge.** All invoices are due upon receipt. All amounts unpaid 30 days after the invoice date will include a late payment charge from the date of the invoice, at the rate of 1-1/2% per month or the highest rate permitted by law.

#### **4. STANDARD OF PERFORMANCE; DISCLAIMER OF WARRANTIES**

**4.1. Level of Service.** MPEG offers different levels of Services to suit the desires and needs of different clients. Although the possibility of error can never be eliminated, more detailed and extensive Services yield more information and reduce the probability of error, but at increased cost. Client must determine the level of Services adequate for its purposes. Client has reviewed the Scope of Services and has determined that it does not need or want a greater level of Services than that being provided.

**4.2. Standard of Care.** Subject to the limitations inherent in the agreed Scope of Services as to the degree of care, the amount of time and expenses to be incurred, and subject to any other limitations contained in this Agreement, MPEG will endeavor to perform its Services consistent with that level of care and skill ordinarily exercised by other professional practicing in the same locale and under similar circumstances at the time the Services are performed.

**4.3. No Warranty.** No warranty, express or implied, is included or intended by this Agreement.

#### **5. ESTIMATE OF CONSTRUCTION COSTS**

Client acknowledges that construction and project development are subject to many influences that are not subject to precise forecasting and are outside of MPEG's control. Client further acknowledges that actual costs incurred may vary substantially from the estimates prepared by MPEG and that MPEG does not warrant or guaranty the accuracy of construction or development cost estimates.

#### **6. CONSTRUCTION PHASE SERVICES**

If MPEG's Scope of Services includes observation and/or testing during the course of construction, the following conditions apply.

##### **6.1. Construction Observation.**

**6.1.1. Site Meetings & Visits.** MPEG will participate in job site meetings as requested by Client, and, unless otherwise requested by Client, visit the site at times specified in the Scope of Services or, if not specified in the Scope of Services at intervals as MPEG deems appropriate to the various stages of construction to observe the geotechnical conditions encountered by Contractor and the progress and quality of the geotechnical aspects of the Work. Based on information obtained during such visits and on such observations, MPEG may inform Client of the progress of the geotechnical aspects of the Work. Client understands that MPEG may not be on site continuously; and, unless expressly agreed otherwise, MPEG will not observe all of the Work.

**6.1.2. Contractor's Performance.** MPEG does not, and cannot, warrant or guarantee that all of the geotechnical Work performed by Contractor meets the requirements of MPEG's geotechnical recommendations or the plans and specifications for such geotechnical Work; nor can MPEG be responsible for Contractor's failure to perform the Work in accordance with the plans, specifications or the recommendations of MPEG.

**6.1.3. Contractor's Responsibilities.** MPEG will not supervise, direct or have control over the Work nor will MPEG have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor for the geotechnical aspects of the Project; for safety precautions and programs incident to the Work; nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor furnishing and performing its Work.

**6.1.4. Final Report.** At the conclusion of Construction Phase Services, MPEG may provide Client with a written report summarizing the tests and observations, if any, made by MPEG.

**6.2. Review of Contractor's Submittals.** If included in the Scope of Work, MPEG will review and take appropriate action on the Contractor's submittals, such as shop drawings, product data, samples, and other required submittals. MPEG will review such submittals solely for general conformance with MPEG's design, and will not include review for the following, all of which will remain the responsibility of the Contractor: accuracy or completeness of details, quantities or dimensions; construction means, methods, sequences or procedures; coordination among trades; or construction safety.

**6.3. Tests.** Tests performed by MPEG on finished Work or Work in progress are taken intermittently and indicates the general acceptability of the Work on a statistical basis. MPEG's tests and observations of the Work are not a guarantee of the quality of Work and do not relieve other parties from their responsibility to perform their Work in



accordance with applicable plans, specifications and requirements.

## **7. CLIENT'S RESPONSIBILITIES**

In addition to payment for the Services performed under this Agreement, Client agrees to:

**7.1. Cooperation.** Assist and cooperate with MPEG in any manner necessary and within its ability to facilitate MPEG's performance under this Agreement.

**7.2. Representative.** Designate a representative with authority to receive all notices and information pertaining to this Agreement, communicate Client's policies and decisions, and assist as necessary in matters pertaining to the Project and this Agreement. Client's representative will be subject to change by written notice.

**7.3. Rights of Entry.** Provide access to and/or obtain permission for MPEG to enter upon all property, whether or not owned by Client, as required to perform and complete the Services. MPEG will operate with reasonable care to minimize damage to the Project Site(s). However, Client recognizes that MPEG's operations and the use of investigative equipment may unavoidably alter conditions or affect the environment at the existing Project Site(s). The cost of repairing such damage will be borne by Client and is not included in the fee unless otherwise stated.

**7.4. Relevant Information.** Supply MPEG with all information and documents in Client's possession or knowledge which are relevant to MPEG's Services. Client warrants the accuracy of any information supplied by it to MPEG, and acknowledges that MPEG is entitled to rely upon such information without verifying its accuracy. Prior to the commencement of any Services in connection with a specific property, Client will notify MPEG of any known potential or possible health or safety hazard existing on or near the Project Site, with particular reference to Hazardous Materials or conditions.

**7.5. Subsurface Structures.** Correctly designate on plans to be furnished to MPEG the location of all subsurface structures, such as pipes, tanks, cables and utilities within the property lines of the Project Site(s), and be responsible for any damage inadvertently caused by MPEG to any such structure or utility not so designated. MPEG is not liable to Client for any losses, damages or claims arising from damage to subterranean structures or utilities that were not correctly shown on plans furnished by Client to MPEG.

## **8. CHANGED CONDITIONS**

If MPEG discovers conditions or circumstances that it had not contemplated at the commencement of this Agreement ("Changed Conditions"), MPEG will notify Client in writing of the Changed Conditions. Client and MPEG agree that they will then renegotiate in good faith the terms and conditions of this Agreement. If MPEG and

Client cannot agree upon amended terms and conditions within 30 days after notice, MPEG may terminate this Agreement and be compensated as set forth in Section 18, "Termination."

## **9. HAZARDOUS MATERIALS**

Client understands that MPEG's Services under this Agreement are limited to geotechnical investigation and that MPEG has no responsibility to locate, identify, evaluate, treat or otherwise consider or deal with Hazardous Materials. Client is solely responsible for notifying all appropriate federal, state, municipal or other governmental agencies, including the potentially affected public, of the existence of any Hazardous Materials located on or in the Project site, or located during the performance of this Agreement. The existence or discovery of Hazardous Materials constitutes a Changed Condition under this Agreement.

## **10. CERTIFICATIONS**

Client agrees not to require that MPEG execute any certification with regard to Services performed or Work tested and/or observed under this Agreement unless: 1) MPEG believes that it has performed sufficient Services to provide a sufficient basis to issue the certification; 2) MPEG believes that the Services performed or Work tested and/or observed meet the criteria of the certification; and 3) MPEG has reviewed and approved in writing the exact form of such certification prior to execution of this Agreement. Any certification by MPEG is limited to an expression of professional opinion based upon the Services performed by MPEG, and does not constitute a warranty or guaranty, either expressed or implied.

## **11. ALLOCATION OF RISK**

**11.1. Limitation of Liability.** The total cumulative liability of MPEG, its subconsultants and subcontractors, and all of their respective shareholders, directors, officers, employees, and agents (collectively "MPEG Entities"), to Client arising from Services under this Agreement, including attorney's fees due under this Agreement, will not exceed the gross compensation received by MPEG under this Agreement or \$50,000, whichever is greater; provided, however, that such liability is further limited as described below. This limitation applies to all lawsuits, claims, or actions for errors or omissions in MPEG's Services, whether alleged to arise in tort, contract, warranty, or other legal theory. Upon Client's written request, MPEG and Client may agree to increase the limitation to a greater amount in exchange for a negotiated increase in MPEG's fee, provided that they amend this Agreement in writing as provided in Section 20.

## **11.2. Indemnification.**

11.2.1. Indemnification of Client. Subject to the provisions and limitations of this Agreement, MPEG agrees to indemnify and hold harmless Client, its shareholders, officers, directors, employees, and agents from and against any and all claims, suits, liabilities, damages, expenses (including without limitation reasonable attorney's fees and costs of defense), or other losses (collectively "Losses") to the extent caused by MPEG's negligent performance of its Services under this Agreement.

11.2.2. Indemnification of MPEG. Client will indemnify and hold harmless MPEG Entities from and against any and all Losses to the extent caused by the negligence of Client, its employees, agents and contractors. In addition, except to the extent caused by MPEG's sole negligence, Client expressly agrees to defend, indemnify and hold harmless MPEG Entities from and against any and all Losses arising from or related to the existence, disposal, release, discharge, treatment or transportation of Hazardous Materials, or the exposure of any person to Hazardous Materials, or the degradation of the environment due to the presence, discharge, disposal, release of or exposure to Hazardous Material.

**11.3. Consequential Damages.** Neither Client nor MPEG will be liable to the other for any special, consequential, incidental, or penal losses or damages including but not limited to losses, damages, or claims related to the unavailability of property or facilities, shutdowns or service interruptions, loss of use, profits, revenue, or inventory, or for use charges, cost of capital, or claims of the other party and/or its customers.

**11.4. Continuing Agreement.** The indemnity obligations and the limitations of liability established under this Agreement will survive the expiration or termination of this Agreement. If MPEG provides Services to Client that the parties do not confirm through execution of an amendment to this Agreement, the obligations of the parties to indemnify each other and the limitations on liability established under this Agreement apply to such Services as if the parties had executed an amendment.

## **12. INSURANCE**

**12.1. MPEG's Insurance.** MPEG will obtain, if reasonably available, the following coverages:

12.1.1. Statutory Workers' Compensation / Employer's Liability Insurance;

12.1.2. Commercial General Liability Insurance with a combined single limit of \$1,000,000 per occurrence and \$2,000,000 general aggregate;

12.1.3. Automobile Liability Insurance, including liability for all owned, hired and non-owned vehicles with minimum limits of \$1,000,000 for bodily injury per person, \$1,000,000 property damage, and \$1,000,000 combined single limit per occurrence; and,

12.1.4. MPEG maintains Professional Liability Insurance for our own benefit.

**12.2. Contractor's Insurance.** Client or Project Owner will require owner's Contractor, subcontractors and consultants to purchase and maintain General Liability, Builder's Risk, Automobile Liability, Workers' Compensation, and Employer's Liability insurance with limits no less than as set forth above.

**12.3. Certificates of Insurance.** Upon request, MPEG and Client will each provide the other with certificate(s) of insurance evidencing the existence of the policies required herein. Except for Professional Liability and Workers' Compensation Insurance, all policies required herein shall contain a waiver of subrogation.

## **13. OWNERSHIP AND USE OF DOCUMENTS**

**13.1. Client Documents.** All documents provided by Client will remain the property of Client. MPEG will return all such documents to Client upon request, but may retain file copies of such documents.

**13.2. MPEG's Documents.** Unless otherwise agreed in writing, all documents and information prepared by MPEG or obtained by MPEG from any third party in connection with the performance of Services, including, but not limited to, MPEG's reports, boring logs, maps, field data, field notes, drawings and specifications, laboratory test data and other similar documents (collectively "Documents") are the property of MPEG. MPEG has the right, in its sole discretion, to dispose of or retain the Documents.

**13.3. Use of Documents.** All Documents prepared by MPEG are solely for use by Client and will not be provided by either party to any other person or entity without MPEG's prior written consent.

13.3.1. Use by Client. Client has the right to reuse the Documents for purposes reasonably connected with the Project for which the Services are provided, including without limitation design and licensing requirements of the Project.

13.3.2. Use by MPEG. MPEG retains the right of ownership with respect to any patentable concepts or copyrightable materials arising from its Services and the right to use the Documents for any purpose.

**13.4. Electronic Media.** MPEG may agree at Client's request to provide Documents and information in an electronic format. Client recognizes that Documents or other information recorded on or transmitted as electronic media are subject to undetectable alteration due to (among other causes) transmission, conversion, media degradation, software error, or human alteration. Accordingly, all Documents and information provided by MPEG in electronic media are for informational purposes only and not as final documentation. Unless otherwise defined in the Scope of Services, MPEG's electronic Documents and media will conform to MPEG's standards.



MPEG will provide any requested electronic Documents for a 30-day acceptance period, and MPEG will correct any defects reported by Client to MPEG during this period. MPEG makes no warranties, either express or implied, regarding the fitness or suitability of any electronic Documents or media.

**13.5. Unauthorized Reuse.** No party other than Client may rely and Client will not represent to any other party that it may rely on Documents without MPEG's express prior written consent and receipt of additional compensation. Client will not permit disclosure, mention, or communication of, or reference to the Documents in any offering circular, securities offering, loan application, real estate sales documentation, or similar promotional material without MPEG's express prior written consent. Client waives any and all claims against MPEG resulting in any way from the unauthorized reuse or alteration of Documents by itself or anyone obtaining them through client. Client will defend, indemnify and hold harmless MPEG from and against any claim, action or proceeding brought by any party claiming to rely upon information or opinions contained Documents provided to such person or entity, published, disclosed or referred to without MPEG's prior written consent.

#### **14. SAMPLES AND CUTTINGS**

**14.1. Sample Retention.** If MPEG provides laboratory testing or analytic Services, MPEG will preserve such soil, rock, water, or other samples as it deems necessary for the Project, but no longer than 45 days after issuance of any Documents that include the data obtained from these samples. Client will promptly pay and be responsible for the removal and lawful disposal of all contaminated samples, cuttings, Hazardous Materials, and other hazardous substances.

**14.2. Monitoring Wells.** Client will take custody of all monitoring wells and probes installed during any investigation by MPEG, and will take any and all necessary steps for the proper maintenance, repair or closure of such wells or probes at Client's expense.

#### **15. RELATIONSHIP OF THE PARTIES**

MPEG will perform Services under this Agreement as an independent contractor.

#### **16. ASSIGNMENT AND SUBCONTRACTS**

Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other party, except for an assignment of proceeds for financing purposes. MPEG may subcontract for the services of others without obtaining Client's consent if MPEG deems it necessary or desirable for others to perform certain Services.

#### **17. SUSPENSION AND DELAYS**

**17.1. Procedures.** Client may, at any time by 10 days written notice suspend performance of all or any part of the Services by MPEG. MPEG may terminate this Agreement if Client suspends MPEG's Services for more than 60 days and Client will pay MPEG as set forth under Section 18, "Termination." If Client suspends MPEG's Services, or if Client or others delay MPEG's Services, Client and MPEG agree to equitably adjust: (1) the time for completion of the Services; and (2) MPEG's compensation in accordance with MPEG's then current Schedule of Charges for the additional labor, equipment, and other charges associated with maintaining its workforce for Client's benefit during the delay or suspension, or charges incurred by MPEG for demobilization and subsequent remobilization.

**17.2. Liability.** MPEG is not liable to Client for any failure to perform or delay in performance due to circumstances beyond MPEG's control, including but not limited to pollution, contamination, or release of hazardous substances, strikes, lockouts, riots, wars, fires, flood, explosion, "acts of God," adverse weather conditions, acts of government, labor disputes, delays in transportation or inability to obtain material and equipment in the open market.

#### **18. TERMINATION**

**18.1. Termination for Convenience.** MPEG and Client may terminate this Agreement for convenience upon 30 days written notice delivered or mailed to the other party.

**18.2. Termination for Cause.** In the event of material breach of this Agreement, the party not breaching the Agreement may terminate it upon 10 days written notice delivered or mailed to the other party. The termination notice shall state the basis for the termination. The Agreement may not be terminated for cause if the breaching party cures the breach within the 10-day period.

**18.3. Payment on Termination.** Following termination other than for MPEG's material breach of this Agreement, Client will pay MPEG for Services performed prior to the termination notice date, and for any necessary Services and expenses incurred in connection with the termination of the Project, including but not limited to, the costs of completing analysis, records and reports necessary to document job status at the time of termination and costs associated with termination of subcontractor contracts in accordance with MPEG's then current Schedule of Charges.

#### **19. DISPUTES**

**19.1. Mediation.** All disputes between MPEG and Client are subject to mediation. Either party may demand mediation by serving a written notice stating the essential nature of the dispute, amount of time or money claimed,

and requiring that the matter be mediated within 45 days of service of notice.

**19.2. Precondition to Other Action.** No action or suit may be commenced unless the mediation did not occur within 45 days after service of notice; or the mediation occurred but did not resolve the dispute; or a statute of limitation would elapse if suit was not filed prior to 45 days after service of notice.

**19.3. Choice of Law; Venue.** This Agreement will be construed in accordance with and governed by the laws of the state in which the Project is located. Unless the parties agree otherwise, any mediation or other legal proceeding will occur in the state in which the Project is located.

**19.4. Statutes of Limitations.** Any applicable statute of limitations will be deemed to commence running on the earlier of the date of substantial completion of MPEG's Services under this Agreement or the date on which claimant knew, or should have known, of facts giving rise to its claims.

## **20. MISCELLANEOUS**

**20.1. Integration and Severability.** This Agreement reflects the entire agreement of the parties with respect to its terms and supersedes all prior agreements, whether written or oral. If any portion of this Agreement is void or

voidable, such portion will be deemed stricken and the Agreement reformed to as closely approximate the stricken portions as the law allows.

**20.2. Modification of this Agreement.** This Agreement may not be modified or altered, except by a written agreement signed by authorized representatives of both parties and referring specifically to this Agreement.

**20.3. Notices.** Any and all notices, requests, instructions, or other communications given by either party to the other must be in writing and either hand delivered to the recipient or delivered by first-class mail (postage prepaid) or express mail (billed to sender) at the addresses given in this Agreement.

**20.4. Headings.** The headings used in this Agreement are for convenience only and are not a part of this Agreement.

**20.5. Waiver.** The waiver of any term, conditions or breach of this Agreement will not operate as a subsequent waiver of the same term, condition, or breach.

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End of General Conditions

**MILLER PACIFIC ENGINEERING GROUP**  
a California corporation

**SCHEDULE OF CHARGES**  
**PROFESSIONAL ENGINEERING AND TESTING SERVICES**

<u>Professional and Technical Personnel</u>	<u>Hourly Rate</u>
Staff Engineer/Geologist – Level 1-3 .....	\$90 - \$100 - \$110
Project Engineer/Geologist – Level 1-3 .....	\$120 - \$130 - \$140
Senior Engineer/Geologist – Level 1-3 .....	\$160 - \$170 - \$180
Associate Engineer/Geologist – Level 1-3 .....	\$195 - \$205 - \$215
Principal Level 1-3.....	\$220 - \$230 - \$240
Project Assistant/Word Processor .....	\$75
Technician Level 1-3 .....	\$85 - \$90 - \$95
Senior Technician Level 1-2 .....	\$105 - \$110
Prevailing Wage.....	\$130

Other Inside Charges

Mileage.....	\$ 0.80 per mile
Vehicle (Field) .....	\$9 per hour
Nuclear Density Gage .....	\$8 per test
Inclinometer.....	\$150 per day / \$85 per half day
Laser Level.....	\$50 per day
Sampling Equipment .....	\$50 per day / \$30 half day

Outside Services ..... Cost + 20%

Exploration, drilling equipment and instrumentation, in-situ monitoring, specialized laboratory testing, per diem, shipping, courier/delivery services, outside reproduction, and other services and supplies not normally provided.

\*NOTES:

1. Field site visits and travel time are normal hourly rates, portal to portal.
2. Overtime – Weekday & Saturday add \$25  
Overtime – Sunday/Holiday/Night add \$35
3. Rates are for normal Geotechnical Engineering and Geological services. Rates for depositions and testimony are \$470 per hour for Principal; \$420 per hour for Associate; and \$365 per hour for Senior. All other personnel are \$260 per hour. These fees are due and payable at the time of service.
4. Schedule of charges is effective as of March, 2017. It is subject to revision annually and at other times without notice.