



CITY OF EL PASO DE ROBLES

"The Pass of the Oaks"

TO: INTERESTED INDIVIDUALS OR FIRMS

FROM: FREDA BERMAN, PROJECT MANAGER

SUBJECT: INVITATION TO SUBMIT PROPOSALS TO THE CITY OF PASO ROBLES TO PROVIDE DESIGN SERVICES FOR A PUMP TRACK AT BARNEY SCHWARTZ PARK

DATE: JANUARY 27, 2021

The attached Request for Proposals (RFP) describes the general project background and scope of services for the construction of a pump track at Barney Schwartz Park, 2970 Union Road, Paso Robles, California. A local non-profit fundraising organization, REC Foundation, is funding the project.

Interested parties are invited to submit proposals. Submit two (2) bound hard copies and one (1) electronic copy on a USB flash drive.

Proposals are due by 5:00 p.m. on Friday, March 5, 2021 and should be addressed to:

City of Paso Robles
Community Services Department/Maintenance Division
Attention: Freda Berman
625 Riverside Avenue
Paso Robles, CA. 93446

Please mark the envelope: "Proposal to Provide Design Services for Pump Track Construction at Barney Schwartz Park"

REQUEST FOR PROPOSALS TO PROVIDE DESIGN SERVICES
FOR PUMP TRACK CONSTRUCTION AT BARNEY SCHWARTZ PARK
DPW PROJECT NO. 21-01

I. SUBMITTAL DATA

All proposals must be received by mail, recognized carrier or hand delivered, not later than 5 p.m. on Friday, March 5, 2021 at Maintenance Services, 625 Riverside Avenue, Paso Robles. Submit two (2) bound hard copies and one (1) electronic copy on a USB flash drive.

- Costs of preparation of the proposal shall be borne by the individual or firm making the proposal.
- This request does not constitute an offer of employment or a contract for services.
- All questions and correspondence should be directed to:

Freda Berman, Project Manager
Community Services/Maintenance Division
625 Riverside Avenue
Paso Robles, CA 93446
805-237-3873
e-mail: fberman@prcity.com

Please note on the envelope:

“Proposal to Provide Design Services for Pump Track Construction at
Barney Schwartz Park”

II. SELECTION PROCESS

- An individual or firm will be selected based upon staff review of the qualifications and the possible presentation of the proposals to the City Council.
- Selected staff will be evaluating such factors as demonstrated expertise and experience in park design, including working within an existing park; the ability to perform the desired services within a specified time frame; a record of satisfactory work associated with projects of this type performed for either this City or other agencies; and completeness in responding to the RFP.
- Individuals or firms need also demonstrate experience in designing public facilities that comply with of the State of California disabled access standards and the Americans with Disabilities Act, as well as possessing significant experience in pump track design.
- All responses to this RFP and other material submitted to the City in response to this request become the property of the City.

III. GENERAL BACKGROUND

Dedicated in 2002, Barney Schwartz Park is the premier sports park in north San Luis Obispo County. Four soccer fields, four softball fields, two playgrounds, a fishing lake and walking trails occupy most of the 37-acre park. There is a small undeveloped area on the upper hillside near the fishing lake that is being considered as a site for Paso Robles' first pump track (Attachment A).

REC Foundation, a local non-profit organization, is funding the pump track project ("Project"). The group has expressed the desire for a track that is challenging, yet rider friendly and appeals to all ages and skill levels (topping out at a strong intermediate level.) Ease of maintenance is a primary concern, and REC Foundation is open to the use of a variety of materials in the construction of the Project.

The group has developed a list of preferred Project features to be considered during the design process. Those features include, in no particular order:

- An inner and outer loop that takes advantage of the existing elevation change;
- A multi-use entry pavilion for monitoring, safety and storage;
- Jumps appealing to various skill levels;
- Amphitheater slope seating;
- A perimeter trail loop/nature walk;
- A climbing feature for those in the park without a bike.

Barney Schwartz Park will remain open during construction of the pump track.

The City has established a construction budget for the Project in the amount of \$300,000. Further, the construction budget includes the total cost to the City of all work designed or specified by the successful proposer, including alternates, fees and permits, construction testing included in the general conditions, a design contingency, and a construction contingency. The construction budget does not include payment to the successful proposer or its subconsultants, financing costs, special district fees, or the City's administrative costs.

IV. OBJECTIVES

The individual(s) or firm(s) selected will work directly with several City Divisions/Departments: Community Services Department; Building Division/Community Development Department; and the City Manager's Office. All will have input in the design and approval of the Project.

REC Foundation will have significant input into the design of the Project. Moreover, the successful proposer will be expected to conduct one public outreach meeting soliciting the input of interested residents.

After City staff agrees to a scope of work and Project design is 90% complete, the Parks and Recreation Advisory Committee and City Council will be given the opportunity to review the design.

V. REQUIRED FORMAT

Proposals shall include all of the following:

- A. A statement reflecting the individual's or firm's understanding of the scope of the issues to be addressed.
- B. An outline of the proposed approach to addressing the City's requirements.
- C. Identification of the specific person(s) who would be assigned to the City's project.
- D. Qualifications of assigned personnel (RE. Architectural License, registration as a Engineer, etc.).
- E. Identification of available support resources as applicable.
- F. Identification of any subconsultants to the person or firm providing service to the City, including resumes or qualifications of individuals or the firm as applicable.
- G. A list of public agencies or private entities to which the proposer and the particular personnel proposed for the City's Project have or are currently providing design services, including a description of the project and the name and phone number of a person the City can contact for a reference.
- H. Proof of commercial general liability, automobile liability and professional liability insurance as required in City's contract.
- I. ANY AND ALL EXCEPTIONS TO THE CITY'S ATTACHED CONTRACT FORM OR SCOPE OF SERVICES. PROPOSERS WILL BE DEEMED TO HAVE ACCEPTED ALL CONTRACT TERMS TO WHICH NO EXCEPTION IS TAKEN IN THE PROPOSAL.
- J. A fee proposal including all fees, including sub consultant fees, reimbursable expenses and costs to provide the services described in this RFP and the attached contract form. Fees should be broken down into the following tasks: assessment, design, bidding, and limited construction administration services.

VI. PROPOSED TERMS

1.0 Scope of Work

The City is seeking a firm or individual who can supply assessment, design, bidding and limited construction administration services.

2.0 Required Time Frames

Proposers must be available for panel interviews the week of March 15, 2021.

The City anticipates awarding the design contract in April 2021, having the design documents complete and all necessary approvals garnered by October 2021 for solicitation of construction bids in November 2021. Construction is estimated to begin in early 2022.

The City will establish a schedule for completion of design services in conjunction with negotiation of the contract.

3.0 Payment Schedule

Payment for services rendered will be made in accordance with the attached Agreement.

4.0 Contract Requirement

The City will enter into a contract with the selected individual or firm in the form attached to this Request for Proposal (“Agreement”). By entering into the Agreement, the individual or firm selected shall warrant that he/she/it possesses all capital and other equipment, labor, and materials to carry out and complete the work in compliance with all Federal, State, County, City Laws, Ordinances, and Regulations.

AGREEMENT FOR PROFESSIONAL DESIGN SERVICES

**Design Services for Pump Track Construction at Barney Schwartz Park
DPW Project No. 21-01**

This Agreement for Professional Design Services made and entered into this ___th day of _____, 20__, by and between the **City of El Paso de Robles**, a municipal corporation existing under the laws of the State of California, hereinafter referred to as "City", and _____, a _____ corporation, hereinafter referred to as "Design Professional." City and Design Professional are sometimes individually referred to as a "Party" and collectively as "Parties" in this Agreement.

Recitals

- A. City is a municipal corporation duly organized and existing under the laws of the State of California, with the power to contract for the services to be provided under this Agreement.
- B. City requires certain professional design and construction administration services in connection with the public work of improvement referred to as _____, more fully described in Exhibit "A" (the "Project").
- C. Design Professional has agreed to provide these services by reason of its qualifications and experience on the terms and in the manner set forth herein.
- D. Design Professional represents that it is fully licensed and qualified, with all professional skills necessary to perform the services described in this Agreement and has special expertise in the design of public works similar in size, scope and complexity to the Project.

Accordingly, the Parties agree as follows:

1. Design Professional's Representations and Responsibilities.

1.1 Design Professional acknowledges that in entering into this Agreement the City is relying solely upon Design Professional's special skills and experience to do and perform the Services in accordance with best standards of professional practice in the design and construction administration of public projects of size, scope and complexity similar to the Project in the general location of the Project. Design Professional agrees to perform the Services in accordance with these standards. The acceptance of Design Professional's services by City does not operate as a release of Design Professional from these obligations.

1.2 Design Professional accepts the relationship of trust and confidence established between it and City by this Agreement. Design Professional shall use its best efforts, skill, judgment, and abilities to perform the Services and to further the interests of City in accordance with City's requirements and procedures, each in accordance with professional standards that apply to Design Professional. Design Professional shall be responsible for the professional quality, technical accuracy and coordination of all Services. Design Professional shall, without additional compensation, correct or revise any errors or deficiencies in its Services.

1.3 Design Professional represents that, upon completion of the Project in accordance with the construction documents, the Project will comply with all Applicable Laws and be suitable for its intended purpose.

1.4 Design Professional represents and maintains that it is skilled in the professional calling necessary to perform the Services. Design Professional represents that all of its employees, architects, engineers, experts and other consultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Design Professional represents that it, its employees, architects, engineers, experts and other consultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services assigned to or rendered by them, and that such licenses and approvals shall be maintained throughout the term of this Agreement.

1.5 Any employee or consultant who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee or consultant who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Design Professional and shall not be re-employed to perform any of the Services or to work on the Project.

1.6 Design Professional's services are unique and personal. Design Professional shall not assign or transfer any of its interest or obligation under this Agreement without the City's written consent. Design Professional shall not subcontract its duties under this Agreement without the City's written consent. No subconsultant will be recognized by City as such; rather, all sub-consultants are deemed to be the agents of Design Professional, and Design Professional agrees to be responsible for their performance. Design Professional is specifically authorized to subcontract with the sub-consulting firms listed in Exhibit "B" to assist in providing the Services.

2. Scope of Services.

2.1 Design Professional shall furnish to City all personnel, materials, tools, equipment necessary to perform the professional services for the Project in accordance with the provisions of this Agreement, including all incidental and customary services (hereinafter referred to as the "Services"). The Services are more particularly described throughout this Agreement, including Exhibit "B." All Services shall be subject to, and performed in accordance with, this Agreement, any exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal states, laws, ordinances, rules and regulations ("Applicable Laws"). All Services performed by Design Professional shall be subject to the approval of the City.

2.2 Design Personnel will be responsible for employing or engaging all persons necessary to perform the Services at its sole expense.

2.3 Design Professional's Basic Services include, generally, assessment, design, bidding and limited construction administration services.

2.4 City may direct Design Professional to perform services not otherwise included in this Agreement, not included within the Basic Services listed in Exhibit "B" attached hereto, and/or not customarily furnished in accordance with generally accepted architectural or

engineering practice. As used herein, "Additional Services" include: (1) any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement; or (2) any work listed as Additional Services in Exhibit "B" attached hereto. Any changes in the Scope of Services must be approved in advance, in writing, by the City Manager or his designee.

2.5 Design Professional shall not perform, or be compensated for, Additional Services without prior written authorization from City and without a written agreement between the City and Design Professional as to the compensation to be paid for such services. City shall pay Design Professional for any approved Additional Services, pursuant to the compensation provisions; provided however, that any redesign or revisions to drawings, specifications or other documents when such revisions are necessary to bring such documents into compliance with Applicable Laws of which Design Professional was aware or should have been aware are not Additional Services.

2.6 Design Professional shall be responsible for any costs, damages and expenses incurred by City in causing the Services called for under this Agreement to be provided by others, for attorneys' fees, and for any costs or damages sustained by City by reason of Design Professional's default or defective work

2.7 Design Professional shall coordinate with City's staff, contractors and consultants in the performance of the Services, and shall be available to City's staff, contractors and consultants at all reasonable times.

3. Independent Contractor. City retains Design Professional as an independent contractor as defined in Labor Code 3353, under the control of the City as to the result of the work but not the means by which the result is accomplished. Design Professional is not an employee of City. Design Professional is not an employee for state tax, federal tax or any other purpose, and is not entitled to the rights or benefits afforded to City's employees. Any additional personnel performing the Services under this Agreement on behalf of Design Professional shall also not be employees of City, and shall at all times be under Design Professional's exclusive direction and control. Design Professional shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Design Professional shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

4. Key Personnel.

4.1 Project Lead. Design Professional shall name a specific individual to act as Project Lead, subject to the approval of City. Design Professional hereby designates **[INSERT NAME OF INDIVIDUAL DESIGN PROFESSIONAL]**, (License No. **[INSERT INDIVIDUAL'S LICENSE NUMBER]**) to act as the Project Lead for the Project. The Project Lead shall: (1) maintain oversight of the Design Professional's activities and performance pertaining to the Project at all times; (2) have full authority to represent and act on behalf of the Design Professional for all purposes under this Agreement; (3) supervise and direct the Services using his or her best skill and attention; (4) be responsible for the means, methods, techniques,

sequences and procedures used for the Services; (5) coordinate all portions of the Services; and (6) act as principal contact with City and all contractors, consultants, engineers and inspectors on the Project. Any change in the Project Lead shall be subject to the City's prior written approval, which approval shall not be unreasonably withheld. The new Project Lead shall be of at least equal competence to the prior Project Lead. If City and Design Professional cannot agree on a new Project Lead, City shall be entitled to terminate this Agreement for cause.

4.2 Key Personnel. In addition to the Project Lead, Design Professional has represented to the City that certain additional key personnel, engineers and consultants will perform the Services under this Agreement. Should one or more of such personnel, engineers or consultants become unavailable, Design Professional may substitute others of at least equal competence upon written approval of the City. In the event that City and Design Professional cannot agree as to the substitution of key personnel, engineers or consultants, City shall be entitled to terminate this Agreement for cause. The additional key personnel, engineers and consultants for performance of this Agreement are as set forth in Exhibit B.

5. Hiring of Consultants and Personnel.

5.1 Right to Hire or Employ. Design Professional shall have the option, unless City objects in writing after notice, to employ at its expense architects, engineers, experts or other consultants qualified and licensed to render services in connection with the Project. Design Professional shall be responsible for the coordination and cooperation of Design Professional's architects, engineers, experts or other consultants. All consultants, including changes in consultants, shall be subject to approval by City in its discretion. Design Professional shall notify City of the identity of all consultants at least fourteen (14) days prior to their commencement of work in order to allow City time to review their qualifications and approve their participation on the Project in its sole and reasonable discretion.

5.2 Qualification and License. All architects, engineers, experts and other consultants retained by Design Professional in performance of this Agreement shall be qualified to perform the Services assigned to them, and shall be licensed to practice in their respective professions, where required by law.

5.3 Standards and Insurance. All architects, engineers, experts and other consultants hired by Design Professional shall be required to meet all of the same standards and insurance requirements set forth in this Agreement, unless other standards or requirements are approved by the City in writing. Unless changes are approved in writing by the City, Design Professional's agreements with its consultants shall contain a provision making them subject to all provisions stipulated in this Agreement.

6. Laws and Regulations.

6.1 Knowledge and Compliance. Design Professional shall keep itself fully informed of and in compliance with all Applicable Laws affecting the performance of the Services or the Project, and shall give all notices required of the Design Professional by law. Design Professional shall be liable for all violations of such laws and regulations related to the performance of its Services. If the Design Professional performs any work knowing it to be

contrary to any Applicable Law and without giving written notice to the City, Design Professional shall be solely responsible for all costs arising therefrom.

6.2 Drawings and Specifications.

6.2.1 Design Professional shall cause all drawings and specifications to meet the requirements of any Applicable Laws. For the preparation of all such drawings and specifications, the Design Professional shall use Computer Aided Design Drafting ("CADD") (e.g., AutoCAD) or other technology acceptable to the Design Professional and City.

6.2.2 Americans with Disabilities Act. Design Professional will use its best professional efforts to interpret all applicable federal, state and local laws, rules and regulations with respect to access, including those of the Americans with Disabilities Act ("ADA"). Design Professional shall inform City of the existence of inconsistencies of which it is aware or reasonably should be aware between federal and state accessibility laws, rules and regulations, as well as any other issues which are subject to conflicting interpretations of the law, and shall provide City with its interpretation of such inconsistencies and conflicting interpretations. Design Professional shall be solely responsible for interpreting such inconsistencies and conflicting interpretations, and the Design Professional shall correct all plans, specifications and other documents prepared for the Project at no additional cost if its interpretations are shown to be incorrect. Design Professional will adhere to the standard of care provided for in this Agreement and will use its reasonable professional efforts and judgment in making its interpretations.

6.3 Permits, Approvals and Authorizations. Design Professional shall provide City with a list of all permits, approvals or other authorizations required for the Project from all federal, state or local governmental bodies with approval jurisdiction over the Project. Design Professional shall then assist the City in obtaining all such permits, approvals and other authorizations. The costs of such permits, approvals and other authorizations shall be paid by the City.

6.1 Prevailing Wages. Design Professional acknowledges the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. To the extent required by the California Labor Code, Design Professional shall fully comply with and to require its consultants to fully comply with such Prevailing Wage Laws. Design Professional shall defend, indemnify and hold City harmless from any claim, demand, penalty or suit arising out of any actual or alleged failure to comply with the Prevailing Wage Laws.

6.2 Labor Certification. By its signature hereunder, Design Professional certifies 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 Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

6.3 Injury and Illness Prevention Program. Design Professional certifies that it is aware of and has complied with the provisions of California Labor Code Section 6401.7, which requires every employer to adopt a written injury and illness prevention program.

7. Term, Progress and Completion.

7.1 Term. The term of this Agreement shall begin on the date the City approves this Agreement and shall expire upon completion of the Services or when terminated as provided below.

7.2 Timely Performance. Design Professional shall perform all Services hereunder diligently and as expeditiously as is consistent with professional skill and care, as well as the orderly progress of the Project work so as not to be the cause, in whole or in part, of delays in the completion of the Project or in the achievement of any Project milestones, as provided herein. Specifically, Design Professional shall perform its Services so as to allow for the completion of the Project within the time required by the City and within any completion schedules adopted for the Project.

7.3 Notice to Proceed. Design Professional shall not commence performance of any Services under this Agreement unless and until the City provides a written Notice to Proceed.

7.4 Performance Schedule.

7.4.1 Design Professional shall perform the services in strict accordance with the schedule attached hereto as Exhibit "C" (the "Schedule") and any updates to the Schedule approved by City. Design Professional shall work such overtime or engage such personnel and equipment as necessary to maintain the Schedule without additional compensation unless the delay is caused by circumstances entirely outside of Design Professional's control. The schedule for performance of Services will be adjusted to conform to the City's Project schedule.

7.4.2 Design Professional shall not exceed or modify the approved schedule without the prior written approval of City. If Design Professional does not perform the Services in accordance with the approved schedule, or any milestones established therein, the City will suffer damages for which the Design Professional will be responsible.

8. City Responsibilities. City's responsibilities shall include the following:

8.1 Data and Information. City shall make available to Design Professional all available data and information concerning the purpose and requirements of the Project, including scheduling and budget limitations, objectives, constraints and other criteria. As part of the budget information, the City shall provide the Design Professional with a preliminary construction budget ("City's Preliminary Construction Budget").

8.2 Project Survey. If required for the scope of the Project and if requested by Design Professional, City shall furnish Design Professional with, or direct Design Professional to procure at City's expense, a survey of the Project site prepared by a registered surveyor or civil engineer, any other record documents that indicate existing structures, land features,

improvements, sewer, water, gas, electrical and utility lines, topographical information and boundary dimensions of the site, and any other such pertinent information.

8.3 Fees of Reviewing or Licensing Agencies. Directly pay or reimburse the payment of all fees required by any reviewing or licensing agency, or other agency having jurisdiction over the Project.

8.4 City's Representative. Designate a person to act as its representative in connection with the performance of this Agreement ("City's Representative"). The City's Representative shall be authorized to act as liaison between Design Professional and City in the administration of this Agreement and the Construction Documents, and shall have the power to act on behalf of the City for all purposes under this Agreement. Such person will be the principal contact between Design Professional and the City. City may designate new and/or different individuals to act as City's Representative from time to time. The City's Representative shall render decisions in a timely manner so as to avoid unreasonable delay in the orderly and sequential progress of the Services, as provided in the excusable delay provisions of this Agreement.

8.5 Review and Approve Documents. Review all documents submitted by Design Professional, including change orders and other matters requiring approval by the City Council or other officials. City shall advise Design Professional of decisions pertaining to such documents within a reasonable time after submission, so as not to cause unreasonable delay as provided in the excusable delay provisions of this Agreement.

9. Compensation.

9.1 Design Professional's Compensation for Basic Services.

9.1.1 City shall pay Design Professional an amount not to exceed _____ for the performance of all Basic Services ("Not-to-Exceed Amount"). The Not-to-Exceed Amount shall constitute full compensation for the Basic Services and may be adjusted only in accordance with the terms of this Agreement.

9.1.2 This Not-to-Exceed Amount shall include the fees of the following consultants listed in Exhibit B:

9.1.3 The Not-to-Exceed Amount includes _____ for all Reimbursable Expenses required for the performance of Basic Services.

9.1.4 Progress payments towards Not-to-Exceed Amount shall not exceed the following percentages of the Not-to-Exceed Amount for the phase indicated:

| | |
|------------------------------|-----------------------|
| Schematic Design Phase | ten percent (10%) |
| Design Development Phase | fifteen percent (15%) |
| Construction Documents Phase | fifty percent (50%) |
| Bidding or Negotiation Phase | five percent (5%) |
| Construction Admin. Phase | twenty percent (20%) |

9.1.5 The City will make monthly payments for completed Services. The amount that will be approved and paid for each portion of the Services shall not exceed the percent complete of that phase, as described above. Payments for various phases may be modified with approval of city within the Not-to-Exceed Amount.

9.2 Payment for Additional Services. The City may authorize Additional Services pursuant to the applicable provisions of this Agreement. If authorized, such Additional Services will be compensated at the rates and in the manner set forth in Exhibit "E," unless a flat rate or some other form of compensation is mutually agreed upon by the Parties. Design Professional shall be paid for Additional Services, as defined by this Agreement, only if the City approved the Additional Services in writing, in advance.

9.3 Reimbursable Expenses.

9.3.1 Reimbursable expenses are in addition to compensation for the Services and Additional Services. Design Professional shall not be reimbursed for any expenses unless authorized in writing by City, which approval may be evidenced by inclusion in Exhibit "E" attached hereto. Such reimbursable expenses shall include only those expenses which are reasonably and necessarily incurred by Design Professional in the interest of the Project and include only (1) Reproduction and handling of construction documents prepared in connection with the Project; (2) Fees paid for securing government approval for the Project; and (3) such other expenses as City may approve in writing in advance.

9.3.2 Design Professional shall be required to acquire prior written consent in order to obtain reimbursement for the following expenses: (1) extraordinary transportation expenses incurred in connection with the Project; (2) out-of-town travel expenses incurred in connection with the Project; (3) fees paid for securing approval of authorities having jurisdiction over the Project; (4) bid document duplication costs in excess of \$[_____]; and (5) other costs, fees and expenses in excess of \$[_____].

9.4 Payment to Design Professional.

9.4.1 Design Professional shall submit written applications for progress payments in a form satisfactory to City on or before the first day of each month on account of the Basic Services, Additional Services and Reimbursable Expenses completed during the preceding month. The City will make payment for Basic Services for each phase of Services set forth above. Payment applications for Additional Services shall identify each person performing services, the time each person spends on each task (in units not to exceed one quarter hour) and shall be based on the rates in Exhibit "E". Payment Applications for Reimbursable Expenses shall be supported by invoices or such other documents as City may reasonably request.

9.4.2 Within forty-five (45) days after receipt of each application for progress payment, City shall verify the accuracy of the progress payment application, correct the charges where appropriate, and make payment to Design Professional in an amount equal to the amount of such application, as verified or corrected by City. No payment made hereunder prior to completion and acceptance of the Project shall be construed as evidence of acceptance of any part of the Services. If City disagrees with any portion of a billing, the City shall promptly notify

Design Professional of the disagreement, and the City and the Design Professional shall attempt to resolve the disagreement. City's payment of any amounts shall not constitute a waiver of any disagreement and City shall promptly pay all amounts not in dispute.

9.4.3 The City may withhold payment, in whole or in part, on account of Services not performed satisfactorily, delays in Design Professional's performance, other defaults, or to the extent reasonably necessary to protect the City from claims, demands, causes of action, costs, expenses, liabilities, losses, damages, or injuries of any kind arising from or related to Design Professional's Services. Failure by City to deduct any sums from a progress payment shall not constitute a waiver of the City's right to assert a claim against Design Professional or to withhold payment at a future time. The City may keep any moneys which would otherwise be payable at any time hereunder and apply the same, or so much as may be necessary therefor, to the payment of any expenses, losses, or damages as determined by the City, incurred by the City for which Design Professional is liable under the Agreement or state law. Payments to the Design Professional shall not be contingent on the construction, completion or ultimate success of the Project.

10. Records and Audit.

10.1 Design Professional shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. Design Professional's accounting system shall conform to the accounting practices of reputable firms providing professional services similar to the Services. The records shall include a breakdown of total costs charged under this Agreement, including properly executed payrolls, time records, invoices and payments made. All such records shall be clearly identifiable.

10.2 Design Professional shall permit City and its authorized representatives to inspect, examine and make copies of Design Professional's books, records, accounts, and any and all data relevant to this Contract at any reasonable time for the purpose of auditing and verifying statements, invoices, or bills submitted by Design Professional pursuant to this contract and shall provide such assistance as may be reasonably required in the course of such inspection. City further reserves the right to examine and re-examine said books, records, accounts, and data during the three (3)-year period following final payment; and Design Professional shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatever for three (3) years after final payment.

10.3 Pursuant to California Government Code Section 8546.7, the Parties to this Contract shall be subject to the examination and audit of representative of the Auditor General of the State of California for a period of three (3) years after final payment under the contract. The examination and audit shall be confined to those matters connected with the performance of this contract including, but not limited to, the cost of administering the contract.

11. Termination, Suspension and Abandonment.

11.1 Suspension.

11.1.1 The City may suspend this Agreement and Design Professional's performance of the Services, wholly or in part, for such period as it deems necessary due to

unfavorable conditions or to the failure on the part of the Design Professional to perform any provision of this Agreement. Design Professional will be paid for satisfactory services performed through the date of suspension. In the event that Design Professional's services hereunder are delayed for a period in excess of six (6) months due to causes beyond Design Professional's reasonable control, Design Professional's compensation shall be subject to renegotiation, provided that the suspension was not attributable to deficiencies in Design Professional's performance.

11.1.2 If City suspends Design Professional's Services, City may require Design Professional to resume such Services within fifteen (15) days after written notice from City.

11.2 Termination for Default.

11.2.1 If Design Professional at any time refuses or neglects to prosecute the Services in a timely fashion or in accordance with the Project schedule, or is adjudicated a bankrupt, or commits any act of insolvency, or makes an assignment for the benefit of creditors without City's consent, or fails to make prompt payment to persons furnishing labor, equipment, materials or services, or fails in any respect to properly and diligently prosecute its services, or otherwise fails to perform fully any and all of the agreements herein contained, Design Professional shall be in default.

11.2.2 If Design Professional fails to cure the default within seven (7) days after written notice thereof, City may, at its sole option, take possession of any Project Documents (as defined, below) or other materials (in paper and electronic form) prepared or used by Design Professional in connection with the Project and (1) provide any such work, labor, materials or services as may be necessary to overcome the default and deduct the cost thereof from any money then due or thereafter to become due to Design Professional under this Agreement; or (2) terminate Design Professional's right to proceed with this Agreement.

11.2.3 In the event City elects to terminate, City shall have the right to immediate possession of all Project Documents and work in progress, whether located at the Project, at Design Professional's place of business, or at the offices of a subconsultant, and may employ any other person or persons to finish the Services and provide the materials therefor. In case of such default termination, Design Professional shall not be entitled to receive any further payment under this Agreement until the Project is completely finished. At that time, if the expenses incurred by City in obtaining architectural and/or engineering services for the Project exceed such unpaid balance, then Design Professional shall promptly pay to City the amount by which such expense exceeds the unpaid balance of the Contract Amount. The expense referred to in the previous sentence shall include expenses incurred by City in causing the Services called for under this Agreement to be provided by others, for attorneys' fees, and for any costs or damages sustained by City by reason of Design Professional's default or defective work.

11.3 Termination for Convenience. In addition to the foregoing right to terminate for default, City reserves the absolute right to terminate this Agreement without cause, upon 72-hours' written notice to Design Professional. In the event of termination without cause, Design Professional shall be entitled to payment in an amount not to exceed the Not-to-Exceed Amount which shall be calculated as follows: (1) Payment for Basic Services then satisfactorily

completed and accepted by City, plus (2) Payment for authorized Additional Services satisfactorily completed and accepted by City, plus (3) Reimbursable Expenses actually incurred by Design Professional, as approved by City. The amount of any payment made to Design Professional prior to the date of termination of this Agreement shall be deducted from the amounts described in (1), (2) and (3) above. Design Professional shall not be entitled to any claim or lien against City or the Project for any additional compensation, lost profits or other damages of any kind in the event of such termination and payment. In addition, the City's right to withhold funds shall be applicable in the event of a termination for convenience.

11.4 Wind-Up Services. Upon the City's request and authorization, Design Professional shall perform any and all additional Services necessary to wind up the work performed to the date of suspension, abandonment or termination. Design Professional hereby expressly waives any and all claims for damages or compensation arising under this Section, except as set forth herein, in the event of such suspension, abandonment or termination.

11.5 Documents and Other Data. Within seven (7) calendar days following suspension, abandonment or termination of this Agreement, Design Professional shall provide to City all studies, sketches, working drawings, notes, specifications, computations, and all other Project Documents, as defined below, in paper and electronic form, to which City would have been entitled at the completion of Design Professional's Services under this Agreement. City shall have the rights, as provided in this Agreement hereinafter, to use such Project Documents prepared by or on behalf of Design Professional under this Agreement. In the event of a dispute regarding the amount of compensation to which the Design Professional is entitled under the termination provisions of this Agreement, Design Professional shall provide all Project Documents to City upon payment of the undisputed amount. Design Professional shall have no right to retain or fail to provide to City any such documents pending resolution of the dispute. Design Professional shall make such documents available to City without additional compensation other than as may be approved as a Reimbursable Expense.

11.6 Employment of Other Design Professionals. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services in connection with the Project similar to those terminated.

11.7 Savings Clause. If this Agreement is terminated by City for default and it is later determined that the default termination was wrongful, such termination automatically shall be converted to and treated as a termination for convenience under this Section 8 and Design Professional shall be entitled to receive only the amounts payable hereunder in the event of a termination for convenience.

12. Ownership and Use of Documents; Confidentiality.

12.1 Ownership. All plans, specifications, original or reproducible transparencies of working drawings and master plans, preliminary sketches, architectural presentation drawings, structural computations, estimates and any other documents prepared pursuant to this Agreement, including, but not limited to, any other works of authorship fixed in any tangible medium of expression such as writings, physical drawings and data recorded magnetically or

electronically (hereinafter referred to as the "Project Documents") shall be and remain the property of City. Although the official copyright in all Project Documents shall remain with the Design Professional or other applicable subcontractors or consultant, the Project Documents shall be the property of City whether or not the work for which they were made is executed or completed. Within thirty (30) calendar days following completion of the Project, or at any time on seven (7) days' written notice from City, Design Professional shall provide to City copies of all Project Documents required by City. In addition, Design Professional shall retain copies of all Project Documents on file for a minimum of fifteen (15) years following completion of the Project, and shall make copies available to City upon the payment of reasonable duplication costs. Before destroying the Project Documents following this retention period, Design Professional shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

12.2 Right to Use. Design Professional hereby grants to City the right to use and reuse all or part of the Project Documents, at City's sole discretion and with no additional compensation to Design Professional, for the following purposes:

12.2.1 The construction of all or part of this Project;

12.2.2 The repair, renovation, modernization, replacement, reconstruction or expansion of this Project at any time; or

12.2.3 The construction of another project by or on behalf of the City for its ownership and use.

12.3 City is not bound by this Agreement to employ the services of Design Professional in the event such documents are used or reused for these purposes. City shall be able to use or reuse the Project Documents for these purposes without risk of liability to the Design Professional or third parties with respect to the condition of the Project Documents, and the use or reuse of the Project Documents for these purposes shall not be construed or interpreted to waive or limit City's right to recover for latent defects or for errors or omissions of the Design Professional.

12.4 Any use or reuse by City of the Project Documents on any project other than this Project without employing the services of Design Professional shall be at City's own risk with respect to third parties. If City uses or reuses the Project Documents on any project other than this Project, it shall remove the Design Professional's seal from the Project Documents and hold harmless Design Professional and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Project Documents on such other project.

12.5 Design Professional shall not be responsible or liable for any revisions to the Project Documents made by any party other than the Design Professional, a party for which the Design Professional is legally responsible or liable, or anyone approved by the Design Professional.

12.6 License.

12.6.1 Design Professional hereby grants (and if any subsequent grant is necessary, agrees to grant) a non-exclusive, perpetual, irrevocable, royalty-free, fully paid-up license for City to copy, use, modify or reuse any and all Project Documents and any intellectual property rights therein. Design Professional shall require any and all subcontractors and consultants to agree in writing that City is granted the license described above for the work of such subcontractors or consultants performed pursuant to this Agreement.

12.6.2 Design Professional represents and warrants that Design Professional has the legal right to license any and all copyrights, designs and other intellectual property embodied in the Project Documents that Design Professional prepares or causes to be prepared pursuant to this Agreement. Design Professional shall indemnify, defend and hold City harmless pursuant to the indemnification provisions of this Agreement for any breach of this Section. Design Professional makes no such representation and warranty in regard to previously prepared designs, plans, specifications, studies, drawings, estimates or other documents that were prepared by design professionals other than Design Professional and provided to Design Professional by City.

12.7 Confidentiality. All Project Documents, either created by or provided to Design Professional in connection with the performance of this Agreement, shall be held confidential by Design Professional. All Project Documents shall not, without the written consent of City, be used or reproduced by Design Professional for any purposes other than the performance of the Services. Design Professional shall not disclose, cause or facilitate the disclosure of the Project Documents to any person or entity not connected with the performance of the Services or the Project. Design Professional shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the written consent of City.

13. Indemnification.

13.1 To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.8), Design Professional shall defend (with legal counsel reasonably acceptable to the City) indemnify and hold harmless City and its officers, agents, departments, officials, representatives and employees (collectively "Indemnitees") from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of Design Professional or its subconsultants), expense and liability of every kind, nature and description (including, without limitation, fines, penalties, incidental and consequential damages, court costs, attorneys' fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith, and costs of investigation), that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Design Professional, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively "Liabilities"). Such obligations to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused by the sole negligence, active negligence, or willful misconduct of such Indemnitee.

13.2 Neither termination of this Agreement nor completion of the Services shall release Design Professional from its obligations under this Section 13, as long as the event giving rise to the claim, loss, cost, damage, injury, expense or liability occurred prior to the effective date of any such termination or completion.

13.3 Design Professional agrees to obtain executed indemnity agreements with provisions identical to those set forth in this section from each and every subconsultant or any other person or entity involved by, for, with or on behalf of Design Professional in the performance of this Agreement. If Design Professional fails to obtain such indemnity obligations from others as required, Design Professional shall be fully responsible for all obligations under this Section. City's failure to monitor compliance with this requirement imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. The obligation to indemnify and defend City as set forth herein is binding on the successors, assigns or heirs of Design Professional and shall survive the termination of this Agreement or this section.

13.4 Design Professional's compliance with the insurance requirements does not relieve Design Professional from the obligations described in this Section 10, which shall apply whether or not such insurance policies are applicable to a claim or to damages.

14. Insurance. Design Professional shall, at all times it is performing services under this Agreement, provide and maintain insurance in the types and with limits set forth in Exhibit D to this Agreement, and meet all other requirements set forth in Ex. D. Design Professional shall not commence Services under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this Section. In the event Design Professional fails to provide or maintain all required insurance, City may, in its sole discretion, obtain such insurance and deduct the amount therefor from the Not-to-Exceed Amount.

15. Miscellaneous.

15.1 Disabled Veteran Business Enterprise Certification. If required for this Project, **Design Professional** shall provide proof of DVBE compliance, in accordance with any applicable policies of the City or the _____, within thirty (30) days of its execution of this Agreement. If **Design Professional** fails to comply with this requirement, the Agreement may be canceled.

15.2 No Third Party Rights. This Agreement shall not create any rights in, or inure to the benefits of, any third party except as expressly provided herein.

15.3 Governing Law. This Agreement shall be construed in accordance with, and governed by, the laws of the State of California. Venue shall be in San Luis Obispo County.

15.4 Entire Agreement. This Agreement, with its exhibits, contains the entire, integrated agreement of the Parties hereto, and supersedes any and all other prior or contemporaneous negotiations, understandings and oral or written agreements between the Parties hereto. Each Party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other

agreements shall be void. Furthermore, any modification of this Agreement shall only be effective if in writing signed by all Parties hereto.

15.5 Exhibits and Recitals. All exhibits and recitals contained herein and attached hereto are material parts of this Agreement and are incorporated as if fully set forth. The Exhibits are as follows:

- Exhibit A: Project Description
- Exhibit B: Scope of Services, Approved Consultants, Key Personnel
- Exhibit C: Initial Project Schedule
- Exhibit D: Insurance
- Exhibit E: Hourly Rates and Reimbursable Expenses

15.6 Severability. Should any provision in the Agreement be held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall continue in full force and effect.

15.7 Non-Waiver. None of the provisions of this Agreement shall be considered waived by either Party, unless such waiver is expressly specified in writing.

15.8 Safety. Design Professional shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the **Design Professional** shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of its employees, consultant and subcontractors appropriate to the nature of the work and the conditions under which the work is to be performed.

15.9 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective Parties may provide in writing for this purpose:

CITY:

Email: _____
Attn: _____

DESIGN PROFESSIONAL:
[INSERT ADDRESS]

Email: _____
Attn.: _____

The Parties may designate, in writing, other individuals to whom notice is to be given. Notices shall be deemed to be received upon personal delivery to the addresses above; if sent by email, upon delivery; if sent by overnight delivery, upon delivery as shown by delivery service records; if sent by facsimile, upon receipt as confirmed by the sending facsimile equipment; if by United States Postal Service, five days after deposit in the mail.

15.10 Attorneys' Fees. Each Party will be responsible for all of its own attorneys' fees in connection with the preparation, negotiation, and execution of this Agreement. In the event of legal action arising out of or relating to this Agreement, the court shall have the discretion to determine whether one of the Parties is a prevailing party for purposes of recovering its reasonable attorneys' fees and other reasonable costs of such action.

15.11 Non-Discrimination. Design Professional warrants that it is an Equal Opportunity Employer and shall comply with applicable regulations governing equal employment opportunity. Neither Design Professional nor any of its subcontractors shall discriminate in the employment of any person because of race, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, or age, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment and Housing Act.

15.12 Mediation. Should any dispute arise out of this Agreement, either Party may request that it be submitted to mediation. The cost of mediation shall be borne equally by the Parties. Neither Party shall be deemed the prevailing party. No Party shall be permitted to file a legal action without first requesting mediation and making a good faith attempt to reach a mediated settlement. Upon the written request of either Party, the Parties shall exchange documents reasonably necessary to a resolution of the dispute prior to the mediation. The mediation process, once commenced by a meeting with the mediator shall last until agreement is reached by the Parties but not more than 60 days, unless the maximum time is extended by the Parties.

15.13 Litigation. Design Professional shall testify at City's request if litigation is brought against City in connection with Design Professional's services under this Agreement. Unless the action is brought by Design Professional, or is based upon Design Professional's actual or alleged negligence or other wrongdoing, City shall compensate Design Professional for time spent in preparation for testimony, testimony, and travel as Additional Services at the rates set forth in Exhibit E.

15.14 Time of Essence. Time is of the essence for each and every provision of this Agreement.

15.15 City's Right to Employ Other Consultants. City reserves right to employ other consultants, including other design professionals, in connection with this Project or other projects.

16. Prohibited Interests.

16.1 Solicitation. Design Professional maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Design Professional, to solicit or secure this Agreement. Further, Design Professional warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Design Professional, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability.

16.2 Conflict of Interest.

16.2.1 Design Professional understands that its professional responsibility is solely to City. Design Professional warrants that it presently has no interest, and will not acquire any direct or indirect interest, that would conflict with its performance of this Agreement. Design Professional shall not knowingly, and shall take reasonable steps to ensure that, it does not employ a person having such an interest in the performance of this Agreement. If after employment of a person, Design Professional discovers that it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement, Design Professional shall promptly disclose the relationship to the City and take such action as the City may direct to remedy the conflict.

16.2.2 Design Professional (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this contract or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Design Professional's services hereunder. Design Professional further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this contract.

16.2.3 Design Professional is not a designated employee within the meaning of the Political Reform Act because Design Professional:

(a) Will conduct research and arrive at conclusions with respect to his/her rendition of information, advice, recommendation or counsel independent of the control and direction of the City or of any City official other than normal contract monitoring; and

(b) Possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendation or counsel (FPPC Reg. 18700(a)(2)).

16.3 Subcontracting. As specified in this Agreement, **Design Professional** shall not subcontract any portion of the Services required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to each and every provision of this Agreement.

16.4 Supplemental Conditions. Any supplemental conditions shall be attached as an exhibit to this Agreement, and that exhibit shall be incorporated herein by reference.

16.5 Drug/Tobacco Free Facilities. All City facilities are drug and tobacco-free facilities. Any drug and/or tobacco use (smoked or smokeless) is prohibited at all times on all areas of City facilities.

16.6 Authority to Execute. The persons executing this Agreement on behalf of their respective Parties represent and warrant that they have the authority to do so under law and from their respective Parties.

CITY OF EL PASO DE ROBLES

By: _____
Name: _____
Title: _____

Date: _____

Attest: _____
City Clerk

[INSERT NAME OF DESIGN PROFESSIONAL]

By: _____
Name: _____
Title: _____

Date: _____

Fed. Tax I.D. # _____

Approved As To Form:

Kevin Wang
Assistant City Attorney

EXHIBIT A
PROJECT DESCRIPTION

1. The Project includes the furnishing of all labor, materials, tools, transportation, equipment, services and facilities necessary for, and reasonably incidental to, the completion of pump track construction at Barney Schwartz Park, 2970 Union Road, Paso Robles.
2. The Project is located in the City of El Paso de Robles, California.
3. The Owner/Client is the City of El Paso de Robles.
4. The City's Project Manager is Freda Berman – (805) 237-3873.

EXHIBIT B
DESIGN PROFESSIONAL'S SCOPE OF SERVICES AND
APPROVED CONSULTANTS

1. GENERAL REQUIREMENTS.

1.1 Design Professional shall provide comprehensive, complete and coordinated architectural and engineering design services for the Project, including but not limited to site planning, landscape design, building design, and associated civil, structural, mechanical, plumbing, and electrical design. Design Professional shall furnish complete, coordinated and constructible construction documents for the Project and provide the other services described herein. Design Professional shall advise Owner regarding alternative materials, building systems, equipment, current industrial practice, budget and aesthetics in developing the design for the Project.

1.2 Design Professional shall manage Design Professional's services and administer the Project as provided herein. Design Professional shall consult with the City, research applicable design criteria, attend Project meetings, and issue written reports as provided herein. Design Professional shall coordinate the services provided by Design Professional and Design Professional's consultants with those services provided by the City and/or its consultants.

1.3 Design Professional shall periodically update the City on the validity and feasibility of City's requirements for the Project, including the City's schedule requirements and budget for the Project. Design Professional shall periodically review such information and advise the City of any additional or updated information that may be required.

1.4 Design Professional shall coordinate all disciplines involved in the Project, including reviewing and checking Documents prepared by Design Professional and others for compliance with applicable building codes, consistency, coordination and constructability.

1.5 Design Professional shall, as requested by City, assist in preparing for, and shall participate in, all government approval processes applicable to the Project, including researching applicable codes and regulations, preparing written and graphic materials depicting the Project, producing plan check and permit sets of the Documents and appearing at government and community hearings or meetings where the Project is being discussed.

1.6 Design Professional shall assist Owner in reviewing and coordinating Owner-furnished data regarding the Project, establishing design criteria for the Project, and obtaining information necessary to development of the Project, including documentation of existing conditions at the Project site.

1.7 Design Professional shall cooperate with Owner in preparing the Project schedule. Design Professional shall review the schedule prepared by Owner and perform its Services in accordance with the schedule, as that schedule may be reasonably adjusted by Owner. Design Professional shall also review the schedule to determine whether the sequencing and overall time frame are appropriate.

1.8 Cooperation and Communication with City. Design Professional shall cooperate and participate in consultations and conferences with City, City's consultants, authorized representatives of City, and/or other local, regional, or state agencies concerned with the Project, which may be necessary for the completion of the Project or the development of the drawings, specifications and documents in accordance with the applicable standards and requirements of law and the City. Such consultations and conferences shall continue throughout the planning and construction of the Project and the contractor's warranty period. Design Professional shall take direction only from the City's Representative, or any other representative specifically designated by the City for this Project, including any construction manager hired by the City.

1.9 Coordination and Cooperation with Construction Manager. The City may hire a construction manager to administer and coordinate all or any part of the Project on its behalf. If the City does so, it shall provide a copy of its agreement with the construction manager so that the Design Professional will be fully aware of the duties and responsibilities of the construction manager. The Design Professional shall cooperate with the construction manager and respond to any requests or directives authorized by the City to be made or given by the construction manager. The Design Professional shall request clarification from the City in writing if the Design Professional should have any questions regarding the authority of the construction manager.

1.10 Cost Monitoring. In conjunction with the other duties described herein, the Design Professional shall continuously monitor construction costs and provide detailed estimates at the completion of the initial planning phase, schematic design phase, the design development phase, when the Construction Documents are 50% and 90% complete, at any time during the when design revisions or market conditions result in a potential change to the previously provided estimate, or upon Owner's written request. These estimates should include a breakdown of the work elements as well as contingencies in an amount that corresponds to the level of design completion.

1.10.1 Design Professional acknowledges that the City will establish a Construction Budget for the Project. The Construction Budget shall include the total cost to the City of all work designed or specified by Design Professional, including alternates, fees and permits, construction testing included in the general conditions, an escalation allowance, a design contingency, and a construction contingency. The Construction Budget will not include payments to Design Professional or its consultants, land acquisition costs, financing costs, special district fees, or the City's administrative costs.

1.10.2 Design Professional will provide a written estimate of the cost of constructing the Project (the "Estimated Construction Cost"), which shall include the cost of all labor, materials, equipment and services required for the Project designed by or on behalf of Design Professional under this Agreement, including testing, alternates, escalation allowance, design contingency and construction contingency. The Estimated Construction Cost will not exceed 95% of the City's Construction Budget.

1.10.3 The Estimated Construction Cost is Design Professional's opinion of the Project cost based on Design Professional's evaluations of the work and experience with other,

similar facilities. City recognizes that the actual bid price for the Project is the result of independent cost assessments by contractors and suppliers based on conditions in the marketplace that will occur after the Design Professional prepares the final Estimated Construction Cost under this contract, and is outside the Design Professional's control.

1.10.4 The size of the Project and the type and quality of construction are dependent upon the Construction Budget. Design Professional will exercise its best judgment in determining the balance between the size and features of the Project, the type of construction, and the quality of construction to achieve a solution for the City within the Construction Budget. Design Professional shall include contingencies for design, bidding and price escalation, recommend what materials, equipment, component systems and types of construction are to be included in the contract documents, recommend reasonable adjustments in the scope of the Project, and include in the Contract Documents alternate bids as may be necessary to bring the Estimated Construction Cost within the limit in Section 1.10.5, below.

1.10.5 Design Professional will notify City if design decisions are made that will, in the Design Professional's opinion, cause the Estimated Construction Cost to exceed 90% of the Construction Budget. If, based upon its review, the Design Professional believes that the Estimated Construction Cost will exceed 90% of the Construction Budget, Design Professional shall review and provide to the City an opinion of the reasons for the variances. Design Professional shall, as part of its Basic Services, identify revisions for the consideration of the City to reduce the Estimated Construction Cost to an amount no more than 90% of the Construction Budget.

1.10.6 If the lowest bona fide bid exceeds the final Estimated Construction Cost by more than ten percent (10%), and City chooses to proceed by revising the Project scope, schedule and/or quality, Design Professional shall modify the Documents in such ways as may be acceptable to City as necessary to bring the construction Contract Price within ten percent (10%) of the final Estimated Construction Cost. Design Professional shall not be entitled to compensation for these revisions unless: (a) bids were received more than 180 days from the date Design Professional delivered its review of the Estimated Construction Cost at 100% final design or (b) the Construction Cost Index for Los Angeles, CA, as reported in Engineering News Record, has increased more than a total of 15% percent in the 90 days immediately preceding the bid date. In the event of either (a) or (b), above, Design Professional will be compensated for its redesign efforts as Additional Services at the rates shown in Exhibit E.

2. INITIAL PLANNING PHASE. During the initial planning phase of the Project, Design Professional shall do all of the following, as well as any incidental services thereto:

2.1 Project Feasibility. Provide advice and assistance to City in determining the feasibility of the Project, analysis of the type and quality of materials and construction to be selected, the site location, and other initial planning matters, including, but not limited to, developing a building program identifying and confirming the facility functions, square footage requirements, adjacency relationships, flow diagrams and equipment needs (including a preliminary construction cost estimate based on area costs). Existing equipment needs, data and inventory to be provided by the City.

2.2 Meeting Budget and Project Goals. Design Professional shall notify City in writing of potential complications, cost overruns, unusual conditions, and general needs that potentially impact the Project budget and timeline, including the City's Preliminary Construction Budget. It shall be the duty of the Design Professional to suggest alternatives to City which would reduce costs and to design the Project within budget and cost standards, if any. As discussed in this Exhibit, if the lowest responsive and responsible bid for the Project exceeds the budget by the stated percentage amount, Design Professional may be required to make the necessary changes in the drawing and specifications, at its sole cost and expense, to bring the bids within the required budget.

2.3 Permits, Approvals and Authorizations. Design Professional shall perform the research required, including interviews with City personnel, to establish the following detailed requirements for the Project:

2.3.1 Design objectives, limitations and criteria.

2.3.2 Space and function requirements.

2.3.3 Special equipment and systems.

2.3.4 Site requirements.

2.3.5 Permit requirements.

2.4 Design Professional shall provide a programming report setting forth the information described above and such other information as the City may reasonably request.

2.5 Design Professional shall assist City in securing easements, encroachment permits, rights of way, dedications, infrastructures and road improvements, as well as coordinating with utilities and adjacent property owners.

2.6 City shall review the work product developed during the Initial Planning Phase and presented by Design Professional, and request any necessary revisions or obtain any necessary approvals by City, subject to the approval of all federal, state, regional or local agencies concerned with the Project. Design Professional shall address all City requested changes, additions, deletions, and corrections in such work product at no additional cost, so long as they are not inconsistent with earlier City direction.

3. SCHEMATIC DESIGN PHASE. During the schematic design phase of the Project, Design Professional shall do all of the following, as well as any services incidental thereto:

3.1 Code Review. Design Professional shall prepare and submit to City an outline of applicable provisions of building codes that apply to this Project. The outline shall include a written report and diagrammatic drawings that delineate the design criteria. This graphic documentation of the design criteria shall be updated with each subsequent submittal.

3.2 Approval and Revisions. The studies will be consistent with and incorporate the planning requirements approved by City, and shall include site plans, floor plans, elevations,

sections, and other drawings, sketches, or graphic materials needed to describe the Project in three dimensions. Schematic studies shall be consistent with the Construction Budget and Project Schedule.

3.3 Funding Documents. If applicable, Design Professional shall provide a site plan and all other Project-related information necessary and required for an application by City to any federal, state, regional, or local agencies for funds to finance the construction Project.

3.4 Schematic Designs. Design Professional shall prepare the conceptual design of the Project, illustrating the scale and relationship of the Project components ("Schematic design"). The Schematic designs shall include a conceptual site plan, if appropriate, and preliminary plans and studies, sections, elevations, schematic drawings, site utilization plans, and phasing plans showing the scale and relationship of the components of the Project, the plot plan development at the site, and the proposed architectural concept of the buildings. Design Professional shall incorporate the City's functional requirements into the Schematic designs. At the Design Professional's option, the Schematic designs may include study models, perspective sketches, electronic modeling or combinations of these media. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing. The Schematic designs shall meet all laws, rules and regulations of the State of California and other agencies with jurisdiction over the Project. The Schematic designs shall show all rooms incorporated in each building of the Project in single-line drawings, and shall include all revisions required by City or by any federal, state, regional or local agency having jurisdiction over the Project. All architectural drawings for the Project shall be in a form suitable for reproduction.

3.5 Preliminary Project Budget. Design Professional shall use the City's Preliminary Construction Budget and its own expertise and experience with the Project to establish a preliminary Project budget or allowance in a format required by City or, if applicable, by any construction funding agency identified by City ("Design Professional's Preliminary Project Budget"). The purpose of the Design Professional's Preliminary Project Budget is to show the probable Project cost in relation to City's Preliminary Construction Budget and the construction standards of any applicable funding agency. If Design Professional identifies circumstances that render the Project unduly expensive or cost prohibitive, Design Professional shall disclose such conditions in writing to City immediately. As stated below, if the lowest responsive and responsible bid for the Project exceeds the budget by more than the stated percentage amount, Design Professional may be required to make the necessary changes in the drawings and specifications, at its sole cost and expense, to bring the bids within the required budget. Design Professional shall provide a preliminary written time schedule for the performance of all construction work on the Project.

3.6 Copies of Schematic Designs and Other Documents. Design Professional, at its own expense, shall provide a complete set of the Schematic designs described herein for City's review and approval. Additionally, at City's expense, Design Professional shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project, including but not limited to, federal, state, regional or local regulatory bodies. Any additional copies required by City shall be provided at actual cost to City.

3.7 Approval and Revisions. City shall review the Schematic designs presented to it by Design Professional, and request any necessary revisions or obtain any necessary approvals by the City, subject to the approval of all federal, state, regional or local agencies concerned with the Project. Design Professional shall make all City requested changes, additions, deletions, and corrections in the Schematic designs at no additional cost, so long as they are not inconsistent with earlier City direction.

4. DESIGN DEVELOPMENT PHASE. During the design development phase of the Project, Design Professional shall do all of the following, as well as any incidental services thereto:

4.1 Upon written approval by the City of the Schematic Design services and any written adjustments in the scope or quality of the Project or in the Construction Budget, Design Professional shall prepare design development documents including drawings and other documents to describe and fix the size and character of the Project, including the following: (1) site and floor plans; (2) elevations; (3) sections; (4) typical construction details; (5) equipment layouts; and (6) any other drawings and documents sufficient to fix and describe the types and makeup of materials, as well as the scope, relationships, forms, size, appearance and character of the Project's structural, mechanical and electrical systems, and to outline the Project specifications ("Design Development Documents"). The Design Development Documents shall be prepared in sufficient form to present to the City for approval. Design Professional shall submit documentation supporting the design criteria for the structural (including structural loading), HVAC, plumbing, electrical, and lighting.

4.2 Copies of Design Development and Other Documents. Design Professional, at its own expense, shall provide a complete set of the Design Development Documents described herein for City's review and approval. Additionally, at City's expense, Design Professional shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required by City shall be provided at actual cost to City.

4.3 Updates. Design Professional shall use its Preliminary Project Budget and expertise and experience with the Project to establish an updated estimate of probable construction costs, containing detail consistent with the Design Development Documents as set forth herein and containing a breakdown based on types of materials and specifications identified herein ("Design Professional's Updated Project Budget"). Design Professional shall furnish an update of the Schematic Design Phase building code analysis that delineates the design criteria.
SCHEDULE

4.4 Value Engineering. Design Professional shall participate with City and its consultants in a value engineering assessment of the design, and shall review value engineering proposals for consistency with the approved program and design. Design Professional shall make written recommendations regarding value engineering proposals, and shall incorporate proposals approved by City into the design documents.

4.5 Application for Approvals. Design Professional shall assist City in applying for and obtaining required approvals from all federal, state, regional or local agencies concerned

with the Project, including all federal, state, regional or local regulatory bodies with jurisdiction over the Project. Design Professional shall furnish all architectural and engineering information required to prepare and process applications to applicable utilities in order to secure priorities and materials, to aid in the construction of the Project and to obtain final Project approval and acceptance by any of the above agencies as may be required.

4.6 Color and Other Aesthetic Issues. Design Professional shall provide, for City's review and approval, a preliminary schedule of all color materials and selections of textures, finishes and other matters involving an aesthetic decision about the Project.

4.6.1 Approval and Revisions. City shall review the Design Development Documents presented to it by Design Professional, and request any necessary revisions or obtain any necessary approvals, subject to the approval of all federal, state, regional or local agencies concerned with the Project. Design Professional shall make all City requested changes, additions, deletions, and corrections in the Design Development Documents at no additional cost, so long as they are not inconsistent with earlier City direction.

5. CONSTRUCTION DOCUMENTS. During the Construction Documents phase of the Services, Design Professional shall do all of the following, as well as any services incidental thereto:

5.1 Upon City's written authorization to proceed and based on Design Development documents approved in writing by the City and any written adjustments in the scope or quality of the Project or in the Construction Budget, Design Professional shall prepare for approval by City, complete working drawings and specifications as are necessary for developing complete bids and for properly executing the Project work ("Construction Documents"). Such Construction Documents shall be developed from the Schematic designs and Design Development Documents approved by City. The Construction Documents shall set forth in detail all of the following: (1) the construction work to be done; (2) the materials, workmanship, finishes, and equipment required for construction of the Project, including but not limited to architectural structural, mechanical and electrical systems, site utilities, sitework, landscape and irrigation; (3) the utility service connection equipment and site work, and must be in such form as will enable City to obtain, by competitive bidding, a responsible and responsive bid within the applicable budgetary limitations and cost standards.

5.2 Design Professional shall assist City in the completion of all bid and construction documents, including but not limited to, the Notice Inviting Bids, Instructions to Bidders, Contract Bid Forms (including Alternate Bids as requested by City), Contract, General Conditions, Supplementary General Conditions, Special Conditions, other necessary conditions of the contract, Project Manual (e.g. conditions of the contract, specifications, and, if desired by City, bidding requirements and sample forms), Labor Compliance Program requirements or Department of Industrial Relations' Compliance Monitoring Unit requirements as applicable, DVBE and other applicable affirmative action documents, Performance Bond, Payment Bond, Escrow Agreement for Security Deposits, and any other certifications and documents required by federal, state and local laws, rules and regulations which may be reasonably required in order to obtain bids responsive to the specifications and drawings. All such documents shall be subject to the approval of City and City's legal counsel.

5.3 City may be requested to supply Design Professional with necessary information to determine the proper location of all improvements on and off site, including existing record drawings ("existing record drawings") in City's possession. Design Professional will make a good-faith effort to verify the accuracy of such information by means of a thorough interior and exterior visual survey of site conditions. City shall also make a good-faith effort to verify the accuracy of the existing record drawings and provide any supplemental information to Design Professional which may not be shown on the existing record drawings. Design Professional shall not be responsible for the accuracy of the existing record drawings, except to the extent that any inaccuracy should have been detected by the Design Professional, pursuant to its standard of care, from readily available documents and visual observations of existing conditions.

5.4 The Construction Documents shall describe the quality, configuration, size and relationships of all components to be incorporated into the Project, and shall be suitable for competitive bidding in accordance with the Public Contract Code. The Construction Documents shall be complete, coordinated, and consistent with the Construction Budget and the Project Schedule.

5.5 Design Professional shall address all of City's comments on the Design Development Documents and all approved value engineering proposals in the Construction Documents.

5.6 At 50% and 90% completion of the Construction Documents, Design Professional shall prepare and submit for City approval three copies each of the Construction Documents, and a summary of the calculations for the structural, HVAC, electrical, plumbing, and communications systems as applicable.

5.7 Design Professional shall provide design documents and related materials required to obtain building and other permits and approvals for the Project.

5.8 Design Professional shall conduct internal quality control review, including coordination of all work by subconsultants, before submitting Construction Documents for review.

5.9 Design Professional shall respond to all plan check comments and make revisions to the Construction Documents as required to obtain building permits and other approvals.

5.10 City shall review the Construction Documents presented to it by Design Professional, and request any revisions or obtain any necessary approvals by the City Council, subject to the approval of all federal, state, regional or local agencies concerned with the Project. Design Professional shall make all City-requested changes, additions, deletions, and corrections in the Construction Documents at no additional cost, so long as they are not in conflict with the requirements of public agencies having jurisdiction or prior approval, or inconsistent with earlier City direction or Design Professional's professional judgment. Design Professional shall bring any such conflicts and/or inconsistencies to the attention of City.

5.11 The Parties agree that Design Professional, and not the City, possesses the requisite expertise to determine the constructability of the Construction Documents. However, the City reserves the right to conduct one or more constructability reviews with the Construction

Documents, and to hire an independent architect or other consultant to perform such reviews. Any such independent constructability review shall be at City's expense. Design Professional shall make all City-requested changes, additions, deletions, and corrections in the Construction Documents which may result from any constructability review, at no additional cost to the City, so long as they are not in conflict with the requirements of public agencies having jurisdiction or prior approval, or inconsistent with earlier City direction or Design Professional's professional judgment. If Design Professional establishes that such changes, additions, deletions or corrections are inconsistent with prior City direction, Design Professional shall make such alterations and be compensated therefore pursuant to the Additional Services provision of this Agreement.

5.12 Copies of Construction Documents and Other Documents. Design Professional, at its own expense, shall provide a complete set of the Construction Documents described herein for City's review and approval. Additionally, at City's expense, Design Professional shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project, including appropriate federal, state, regional or local regulatory bodies. Any additional copies required by City shall be provided at actual cost to City.

5.13 Final Estimate. At the time of delivery of these bid and construction documents, which shall include the Construction Documents (collectively referred to herein as the "Construction Documents"), Design Professional shall provide City with its final estimate of probable construction cost ("Design Professional's Final Estimate"). Design Professional is obligated to design the Project within budget and any applicable cost standards. Should it become evident that the total construction cost will exceed the specified sum, Design Professional shall at once present a statement in writing to the City's Representative setting forth this fact and giving a full statement of the cost estimates on which the conclusion is based.

6. PRE-QUALIFICATION.

6.1 Design Professional shall review and comment on the pre-qualification criteria prepared by the City. Design Professional shall review and comment on the submittals made to the City by contractors seeking pre-qualification.

6.2 Design Professional will make written recommendations to Owner regarding contractors' qualifications.

7. BID PHASE. During the bid phase of the Project, Design Professional shall do all of the following, as well as any incidental services thereto:

7.1 Respond to Bidder Questions. Prepare (following consultation with City) written responses to bidder questions regarding the Construction Documents; prepare clarifications and/or addenda on design issues (including requests for substitution) and deliver to City for distribution.

7.2 Reproducible Construction Documents. Once City provides Design Professional with specific written approval of the Construction Documents and Design

Professional's Final Estimate, Design Professional shall provide to City one set of reproducible Construction Documents.

7.3 Distribution of Contract Documents and Review of Bids. Design Professional shall assist City in distributing the Construction Documents to bidders and conducting the opening and review of bids for the Project. City will reimburse the Design Professional for the cost of reproducing bid sets, addenda and related delivery charges.

8. CONSTRUCTION PHASE. During the construction phase of the Project, Design Professional shall do all of the following, as well as any incidental services thereto:

8.1 Observation. The Project Lead shall observe work executed from the Construction Documents in person, provided that City may, in its discretion, consent to such observation by another competent representative of Design Professional.

8.2 Pre-Construction Meeting. Design Professional shall conduct one or more pre-construction meetings, as the City determines is needed for the Project, with all interested parties.

8.3 Site Visits of Contractor's Work. Design Professional shall conduct site visits to observe contractor's work for general conformance with the Construction Documents and with any approved construction schedules or milestones. Such site visits shall be conducted as often as are necessary and appropriate to the stage of construction, according to the City's sole discretion, but in no event less than weekly. Design Professional shall prepare a written report of its observations promptly following each site visit and shall submit the report to City no later than five (5) days after the site visit.

8.4 Coordination of Design Professional's Consultants. Design Professional shall cause all architects, engineers and other consultants, as may be hired by Design Professional or City, to observe the work completed under their disciplines as required, and approve and review all test results for general conformance with the Construction Documents.

8.5 Construction Meetings; Minutes. Design Professional shall attend all construction meetings and provide written reports/minutes to the City after each construction meeting in order to keep City informed of the progress of the work. Such meetings shall occur at a frequency appropriate for the progress of the work, according to the City's sole discretion, but no less than weekly.

8.6 Written Reports. Design Professional shall make written reports to City as necessary to inform City of problems arising during construction, changes contemplated as a result of each such problems, and progress of the Project work. Design Professional shall also make regular reports as may be required by applicable federal, state or local laws, rules or regulations, as well as the federal, state, regional or local agencies concerned with the Project.

8.7 The Design Professional shall not have control over the acts or omissions of the contractors, subcontractors or their agents or employees, or of any other persons or entities performing or supplying portions of the work which were not employed or hired by Design Professional. The contractor shall not be relieved of its obligation to perform the work in

accordance with the Contract Documents either by activities or duties of the Design Professional, or by tests, inspections or approvals required or performed by persons other than the contractor.

8.8 Written Records. Design Professional shall keep accurate written records of the progress and quality of the Project work and the time schedules, and shall advise the contractors and City of any deviations from the time schedule which could delay timely completion of the Project.

8.9 Material and Test Reports. Design Professional shall check and process, in a timely manner, all required material and test reports for the Project work. In addition, Design Professional shall provide notice of any deficiencies in material or work reflected in such reports, as well as its recommendation for correction of such deficiencies, to the contractors, City and federal, state, regional or local agencies concerned with the Project.

8.10 Review and Response to Submissions. Design Professional shall review and respond, in a timely manner, to all schedules, submittals, shop drawings, samples, information requests, change requests, and other submissions of the contractor and subcontractors for compliance with, or alterations and additions to, the Construction Documents. Design Professional's review and response shall be done in such a manner so as to ensure the timely and uninterrupted progress of the Project work.

8.11 Rejection of Work. Design Professional shall have the authority to recommend rejection of Work that does not conform to any of the following: the Contract Documents; Design Professional's directives; applicable code requirements; approved Shop Drawings, Product Data, and Samples; Clarification Drawings; or defective Work. Such rejection shall be transmitted to the City in writing for communication to Contractor. Design Professional shall also have the authority to recommend to the City that additional inspection or testing of the work be performed, whether or not such work is fabricated, installed or completed.

8.12 Substitutions. Design Professional shall consult with City, in a timely manner, with regard to substitution of materials, equipment and laboratory reports thereof, prior to the City's final written approval of such substitutions. Design Professional's consultation shall be done in such a manner so as to ensure the timely and uninterrupted progress of the Project work. Substitution requests which involve more work or time than is normally required for routine substitutions, as mutually determined by the Parties, may be the subject of additional compensation as Additional Services.

8.13 Revised Documents and Drawings. Design Professional shall prepare, at no additional expense to City, all documents and/or drawings made necessary by errors and omissions in the originally approved Construction Documents.

8.14 Change Requests and Material Changes. Design Professional shall evaluate and advise City, in a timely manner and in writing, of any change requests and material change(s) which may be requested or necessary in the Project plans and specifications. Design Professional shall provide the City with its opinion as to whether such change requests should be approved, denied or revised. If the City has not hired a construction manager or other person to do so, the Design Professional shall prepare and execute all change orders and submit them to

the City for authorization. If the City has designated a construction manager or other person to prepare all change orders, the Design Professional shall review all change orders prepared by such person, execute them and deliver them to the City for authorization if they meet with the Design Professional's approval, or submit them to the City with recommendations for revision or denial if necessary. Design Professional shall not order contractors to make any changes affecting the Contract Price without approval by City of such a written change order, pursuant to the terms of the Construction Documents. Design Professional may order, on its own responsibility and pending the City approval, changes necessary to meet construction emergencies, if written approval of City's Representative is first secured. Design Professional may also authorize minor changes in the work, pending City's approval, so long as such changes are not inconsistent with the intent of the Construction Documents and do not involve an adjustment in the contract sum or an extension of the contract time.

8.15 Applications for Payment. Design Professional shall examine, verify and approve contractor's applications for payment, and shall issue certificates for payment in amounts approved by the Project Contractor or the City's Representative, based on the Design Professional's observations at the site. The issuance of a certificate for payment shall not be a representation that the Design Professional has (1) made exhaustive or continuous on-site inspections of the work for which payment is sought; (2) reviewed construction means, methods, techniques, sequences or procedures for the work for which payment is sought; (3) ascertained how and for what purpose the contractor has used money previously paid; or (4) certified that the work for which payment is sought is without defects.

8.16 Final Color and Product Selection. Design Professional shall coordinate final color and product selection with City's original design concept.

8.17 Substantial Completion. Design Professional, with the City's representative, shall conduct inspections to determine the date of Substantial Completion. Design Professional shall receive from the Contractor and forward to the City, for the City's review and records, written warranties and related documents required by the Contract Documents. When the Work is found to be substantially complete, Design Professional shall inform the City accordingly.

8.18 Punch List. After determining that the Project is substantially complete, Design Professional shall participate in the inspection of the Project and shall review all remaining deficiencies and minor items needed to be corrected or completed on the Project, including those identified on the punch list prepared by the contractor ("Punch List Items"). Design Professional shall notify contractor in writing that all Punch List Items must be corrected prior to final acceptance of the Project and final payment. Design Professional shall also notify City of all Punch List Items.

8.19 Final Completion. When the Contractor notifies the City that the work is complete, Design Professional shall conduct a punch-list inspection to determine whether the Project is complete in accordance with the Contract Documents and cooperate with City in preparing a punchlist. If requested, Design Professional shall inspect the work to determine whether the punch list items have been completed satisfactorily. When Design Professional determines that work is complete, it shall provide the City with written notice that the work is

complete and in substantial compliance with the Contract Documents, recommend that the City accept the Project, and recommend filing a Notice of Completion.

8.20 Warranties. Design Professional shall review materials assembled by the contractor and subcontractors with regard to all written warranties, guarantees, owners' manuals, instruction books, diagrams, record "as built" drawings, and any other materials required from the contractors and subcontractors pursuant to the Construction Documents. Design Professional shall coordinate and provide these materials to the City.

8.21 Certificate of Completion. Design Professional shall participate in any further inspections of the Project necessary to issue Design Professional's Certificate of Completion and final certificate for payment. Design Professional shall make a written recommendation to the City to accept the Project.

8.22 Documents for Project Close-Out. Design Professional shall cause all other architects, engineers and other consultants, as may be hired by Design Professional, to file any and all required documentation with the City or other governmental authorities necessary to close out the Project. Design Professional shall assist the City in obtaining such documentation from all other architects, engineers, or other consultants.

9. RECORD DRAWINGS. During the record drawings phase of the Project, Design Professional shall do all of the following, as well as any incidental services thereto:

9.1 Record Drawings and Specifications. Not later than thirty (30) days after substantial completion of the Project, before receipt of final payment, Design Professional shall review and forward the Construction Documents, indicating on them all changes made by change orders or otherwise pursuant to the Construction Documents, as well as all information called for on the specifications, thus producing an "record" set of Construction Documents ("Record Drawings and Specifications"). The Record Drawings and Specifications shall show, among other things, the location of all concealed pipe, buried conduit runs and other similar elements within the completed Project. Design Professional shall personally review and certify that the Record Drawings and Specifications are a correct representation of the information supplied to Design Professional by the Contractor.

9.2 Approval. Once City provides Design Professional with specific written approval of the Record Drawings and Specifications, Design Professional shall forward to City the complete set of original Record Drawings and Specifications or a complete set of reproducible duplicate Record Drawings and Specifications. The tracing shall be of such quality that clear and legible prints may be made without appreciable and objectionable loss of detail.

9.3 Documents for Final Payment. Prior to the receipt of Design Professional's final payment, Design Professional shall forward to City all of the following: (1) one clear and legible set of reproductions of the computations; (2) the original copy of the specifications; (3) the Record Drawings and Specifications as required herein; (4) the final verified progress report required pursuant to Title 24 of the California Code of Regulations; and (5) Design Professional's Certificate of Completion.

10. WARRANTY PERIOD.

During the warranty period phase of the Project, Design Professional shall do all of the following, as well as any incidental services thereto:

10.1 At City's request, Design Professional will provide advice to the City on apparent deficiencies in construction following the acceptance of the work and prior to the expiration of the one-year General Construction Contract guarantee period for the Project. Such advice shall be billed as extra services in accordance with Exhibit E, unless the defects arise from deficiencies in the Construction Documents.

EXHIBIT B - continued
DESIGN PROFESSIONAL'S SCOPE OF SERVICES AND
APPROVED CONSULTANTS

Design Professional shall retain the following consultants to perform professionals architectural or engineering services in connection with the Project:

| Name | Services to be Performed |
|------|--------------------------|
| | |
| | |
| | |
| | |

The fees for all consultants listed above are included in the Not-to-Exceed Amount.

EXHIBIT C
INITIAL PROJECT SCHEDULE

EXHIBIT D INSURANCE

Design Professional shall, at all times it is performing services under this Agreement, provide and maintain insurance in the following types and with limits in conformance with the requirements set forth below. Design Professional will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, Design Professional agrees to amend, supplement or endorse the existing coverage to do so. Design Professional acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to Design Professional in excess of the limits and coverage required in this agreement and that is applicable to a given loss will be available to City.

1. Commercial General Liability Insurance, occurrence form, using Insurance Services Office ("ISO") "Commercial General Liability" policy form CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review, but in no event shall be less than \$2,000,000 each occurrence, with an aggregate of not less than \$4,000,000. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit;
2. Business Auto Coverage on ISO Business Automobile Coverage form CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. Limits are subject to review, but in no event shall be less than \$1,000,000 each occurrence. If Design Professional or its employees will use personal autos in any way on this Project, Design Professional shall provide evidence of personal auto liability coverage for each such person.
3. Workers Compensation on a state-approved policy form providing statutory benefits as required by law with employers liability insurance, with minimum limits of \$1 million per occurrence.
4. Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements shall provide coverage at least as broad as specified for the underlying coverages. Any such coverage provided under an umbrella liability policy shall include a drop down provision providing primary coverage above a maximum self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be provided on a "pay on behalf of" basis, with defense costs payable in addition to policy limits. Policy shall contain a provision obligating insurer at the time insured's liability is determined, not requiring actual payment by insured first. There shall be no cross-liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to City for injury to employees of Design Professional, subconsultants or others involved in the Project. The scope of coverage provided is subject to approval of City following receipt of proof of insurance as required herein. Limits are subject to review but in no event less than \$2,000,000.00 per occurrence.
5. Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against acts, errors or

omissions of the Design Professional and "Covered Professional Services" as designated in the policy must specifically include work performed under this agreement. The policy limit shall be no less than \$2,000,000 per claim and in the aggregate. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend. The policy retroactive date shall be on or before the effective date of this agreement.

6. Insurance procured pursuant to these requirements shall be written by insurers that are admitted carriers in the State of California and with an A.M. Bests rating of A- or better and a minimum financial size VII.

7. General conditions pertaining to provision of insurance coverage by Design Professional. Design Professional and City agree to the following with respect to insurance provided by Design Professional:

- a. Design Professional agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds City, its officials, employees and agents, using standard ISO endorsement No. CG 2010 with an edition prior to 1992. Design Professional also agrees to require all contractors, and subcontractors to do likewise.
- b. No liability insurance coverage provided to comply with this Agreement shall prohibit Design Professional, or Design Professional's employees, or agents, from waiving the right of subrogation prior to a loss. Design Professional agrees to waive subrogation rights against City regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractors to do likewise.
- c. All insurance coverage and limits provided by Contractor and available or applicable to this agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operations limits the application of such insurance coverage.
- d. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.
- e. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor.
- f. All coverage types and limits required are subject to approval, modification and additional requirements by the City, as the need arises. Design Professional shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect City's protection without City's prior written consent.

- g. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to Design Professional's general liability policy, shall be delivered to City at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, City has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other agreement and to pay the premium. Any premium so paid by City shall be charged to and promptly paid by Design Professional or deducted from sums due Design Professional, at City's option.
- h. Certificate(s) are to reflect that the insurer will provide 30 days notice to City of any cancellation of coverage. Design Professional agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the certificate.
- i. It is acknowledged by the parties of this agreement that all insurance coverage required to be provided by Design Professional or any subcontractor, is intended to apply first and on a primary, noncontributing basis in relation to any other insurance or self-insurance available to City.
- j. Design Professional agrees to ensure that subcontractors, and any other party involved with the project who is brought onto or involved in the project by Design Professional, provide the same minimum insurance coverage required of Design Professional. Design Professional agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Design Professional agrees that upon request, all agreements with subcontractors and others engaged in the project will be submitted to City for review.
- k. Design Professional agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any contractor, subcontractor, Design Professional, Design Professional or other entity or person in any way involved in the performance of work on the project contemplated by this agreement to self-insure its obligations to City. If Design Professional's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the City. At that time the City shall review options with the Design Professional, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.

- l. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Design Professional ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Design Professional, the City will negotiate additional compensation proportional to the increased benefit to City.
- m. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.
- n. Design Professional acknowledges and agrees that any actual or alleged failure on the part of City to inform Design Professional of non-compliance with any insurance requirement in no way imposes any additional obligations on City nor does it waive any rights hereunder in this or any other regard.
- o. Design Professional will renew the required coverage annually as long as City, or its employees or agents face an exposure from operations of any type pursuant to this agreement. This obligation applies whether or not the agreement is canceled or terminated for any reason. Termination of this obligation is not effective until City executes a written statement to that effect.
- p. Design Professional shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Design Professional's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to City within five days of the expiration of the coverages.
- q. The provisions of any workers' compensation or similar act will not limit the obligations of Design Professional under this agreement. Design Professional expressly agrees not to use any statutory immunity defenses under such laws with respect to City, its employees, officials and agents.
- r. Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.

- s. These insurance requirements are intended to be separate and distinct from any other provision in this agreement and are intended by the parties here to be interpreted as such.
- t. The requirements in this Section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Section.
- u. Design Professional agrees to be responsible for ensuring that no contract used by any party involved in any way with the Project reserves the right to charge City or Design Professional for the cost of additional insurance coverage required by this agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
- v. Design Professional agrees to provide immediate notice to City of any claim or loss against Design Professional arising out of the work performed under this agreement. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.

EXHIBIT E

COMPENSATION RATES AND REIMBURSABLE EXPENSES

1. Hourly Compensation Rates.

| | HOURLY RATES |
|-------------------------------------|---------------------|
| Principal | |
| Director of Design | |
| Cost Estimator | |
| Project Manager | |
| Senior Construction Administrator | |
| Senior Designer | |
| Interior Design Director | |
| Designer | |
| Graphics | |
| Project Leader | |
| Computer Services | |
| Interior Design/Project Coordinator | |
| Drafter | |
| Contract Administrator | |
| Admin Support | |

These are the current hourly rates effective _____ through _____. Increases in the above hourly rates shall be made only by an authorized amendment to this Agreement.

2. Reimbursable Expenses.

[INSERT AUTHORIZED REIMBURSABLE EXPENSES AS NEGOTIATED]

3. Additional Services.

Additional Services shall be computed at the actual hourly rates described above.

4. Additional Consultants.

If City requires Design Professional to hire consultants to perform any Additional Services, Design Professional shall be compensated therefore at the consultant's actual hourly rates. City shall have the authority to review and approve the rates of any such consultants.

ATTACHMENT A – LOCATION MAP

