

**CITY OF SAN BERNARDINO**  
**DESIGN SERVICES AGREEMENT**

**1. PARTIES AND DATE.**

This Agreement is made and entered into as September 6, 2023 by and between the City of San Bernardino, a charter city and municipal corporation organized and operating under the laws of the State of California, with its principal place of business at Vanir Tower, 290 North D Street, San Bernardino, California 92401 ("City"), and Miller Architectural Corporation, a California Corporation with its principal place of business at 1177 Idaho Street, Suite 200, Redlands, California 92374 (hereinafter referred to as "Designer"). City and Designer are sometimes individually referred to herein as "Party" and collectively as "Parties."

**2. RECITALS.**

**2.1 City.** City is a municipal corporation organized under the laws of the State of California, with power to contract for services necessary to achieve its purpose.

**2.2 Designer.** Designer desires to perform and assume responsibility for the provision of certain professional design services required by the City on the terms and conditions set forth in this Agreement. Designer warrants that it is fully licensed, qualified, and willing to perform the services required by this Agreement; provided, however, that if Designer is a corporation or other organization, the Project Designer designated pursuant to Section 3.2, and not the Designer itself, shall be fully licensed to practice as an architect and/or engineer in the State of California.

**2.3 Project.** City desires to engage Designer to render such services for the One Stop Permitting Center ("Project") as set forth in this Agreement.

**3. TERMS**

**3.1 Employment of Designer.**

**3.1.1 Scope of Services.** Designer promises and agrees to furnish to City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional design and related services necessary for the full and adequate completion of the Project consistent with the provisions of this Agreement (hereinafter referred to as "Services"). The Services are more particularly described throughout this Agreement, including Exhibit "A" attached hereto and incorporated herein by reference. 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 laws, rules and regulations. All Services performed by Designer shall be subject to the sole and discretionary approval of the City, which approval shall not be unreasonably withheld.

**3.1.2 Term.** The term of this Agreement shall be from September 6, 2023 to April 6, 2025, unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

**3.2 Project Designer; Key Personnel.**

**3.2.1 Project Designer.** Designer shall name a specific individual to act as Project Designer, subject to the approval of City. Designer hereby designates Kathy Oswalt to

act as the Project Designer for the Project, license number C14635. The Project Designer shall: (1) maintain oversight of the Services; (2) have full authority to represent and act on behalf of the Designer 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) adequately 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 Designer shall be subject to the City's prior written approval, which approval shall not be unreasonably withheld. The new Project Designer shall be of at least equal competence as the prior Project Designer. In the event that City and Designer cannot agree as to the substitution of a new Project Designer, City shall be entitled to terminate this Agreement for cause.

**3.2.2 Key Personnel.** In addition to the Project Designer, Designer 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, Designer may substitute others of at least equal competence upon written approval of the City. In the event that City and Designer cannot agree as to the substitution of key personnel, engineers or consultants, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel, engineers or consultants who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Designer at the request of the City. The key additional personnel, engineers and consultants for performance of this Agreement are as follows:

Kathy Oswalt, Senior Project Manager  
Pawel Kryszewski, Production  
Bob Evers, Mechanical Engineer – REO Engineering  
Luis Flores, Electrical Engineer – A & F Engineering

### **3.3 Hiring of Consultants and Personnel.**

**3.3.1 Right to Hire or Employ.** Designer 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 planning and/or administration of the Project, and to delegate to them such duties as Designer may delegate without relieving Designer from administrative or other responsibility under this Agreement. Designer shall be responsible for the coordination and cooperation of Designer's architects, engineers, experts or other consultants. All consultants, including changes in consultants, shall be subject to approval by City in its sole and reasonable discretion. Designer shall notify City of the identity of all consultants at least fourteen (14) days prior to their commencement of work to allow City to review their qualifications and approve to their participation on the Project in its sole and reasonable discretion.

**3.3.2 Qualification and License.** All architects, engineers, experts and other consultants retained by Designer 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.

**3.3.3 Standards and Insurance.** All architects, engineers, experts and other consultants hired by Designer 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, Designer's agreements with its consultants shall contain a provision making them subject to all provisions stipulated in this Agreement.

3.3.4 Assignments or Staff Changes. Designer shall promptly obtain written City approval of any assignment, reassignment or replacement of such architects, engineers, experts and consultants, or of other staff changes of key personnel working on the Project. As provided in the Agreement, any changes in Designer's consultants and key personnel shall be subject to approval by City.

3.3.5 Draftsman and Clerical Support. Draftsmen and clerical personnel shall be retained by Designer at Designer's sole expense.

### **3.4 Standard of Care.**

3.4.1 Standard of Care. Designer shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals qualified to perform the Services in the same discipline in the State of California, and shall be responsible to City for damages sustained by the City and delays to the Project as specified in the indemnification provision of this Agreement. Without limiting the foregoing, Designer shall be fully responsible to the City for any increased costs incurred by the City as a result of any such delays in the design or construction of the Project. Designer represents and maintains that it is skilled in the professional calling necessary to perform the Services. Designer warrants and 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, Designer 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. As provided for in the indemnification provisions of this Agreement, Designer shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Designer's failure to comply with the standard of care provided for herein.

3.4.2 Performance of Employees. 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 Designer and shall not be re-employed to perform any of the Services or to work on the Project.

### **3.5 Laws and Regulations.**

3.5.1 Knowledge and Compliance. Designer shall keep itself fully informed of and in compliance with all applicable local, state and federal laws, rules and regulations in any manner affecting the performance of the Services or the Project, and shall give all notices required of the Designer by law. Designer shall be liable, pursuant to the standard of care and indemnification provisions of this Agreement, for all violations of such laws and regulations in connection with its Services. If the Designer performs any work knowing it to be contrary to such laws, rules and regulations, Designer shall be solely responsible for all costs arising therefrom.

Designer shall defend, indemnify and hold City, its officials, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.5.2 Drawings and Specifications. Designer shall cause all drawings and specifications to conform to any applicable requirements of federal, state and local laws, rules and regulations, including the Uniform Building Code, in effect as of the time the drawings and specifications are prepared or revised during the latest phase of the Services described in Exhibit "A" attached hereto. Any significant revisions made necessary by changes in such laws, rules and regulations after this time may be compensated as Additional Services which were not known or reasonably should not have been known by Designer. Designer shall cause the necessary copies of such drawings and specifications to be filed with any governmental bodies with approval jurisdiction over the Project, in accordance with the Services described in Exhibit "A" attached hereto. For the preparation of all such drawings and specifications, the Designer shall use Computer Aided Design Drafting ("CADD") (e.g., AutoCAD) or other technology acceptable to the Designer and City.

3.5.3 Americans with Disabilities Act. Designer 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"). Designer 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 the City with its interpretation of such inconsistencies and conflicting interpretations. Unless Designer brings such inconsistencies and conflicting interpretations to the attention of the City and requests City's direction on how to proceed, the Designer's interpretation of such inconsistencies and conflicting interpretations shall be the sole responsibility and liability of Designer, and the Designer shall correct all plans, specifications and other documents prepared for the Project at no additional cost if its interpretations are shown to be incorrect. In the event that the Designer request's City's direction on how to proceed with respect to any inconsistent and/or conflicting interpretation, the Designer shall be responsible to the City only pursuant to the indemnification provisions of this Agreement.

3.5.4 Permits, Approvals and Authorizations. Designer 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. Designer 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.

3.5.5 Water Quality Management and Compliance.

(a) Compliance with Water Quality Laws, Ordinances and Regulations. Designer shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Services including, without limitation, all applicable provisions of the City's ordinances regulating water quality and storm water; the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); and any and all regulations, policies, or permits issued pursuant to any such authority. Designer shall additionally comply with the lawful requirements of the City, and any other municipality, drainage district, or other local agency with

jurisdiction over the location where the Services are to be conducted, regulating water quality and storm water discharges.

(b) Standard of Care. Designer warrants that all employees and subcontractors shall have sufficient skill and experience to perform the work assigned to them without impacting water quality in violation of the laws, regulations and policies described in Sections 3.5.5(a) of this Agreement. Designer further warrants that it, its employees and subcontractors will receive adequate training, as determined by the City, regarding these requirements as they may relate to the Services.

(c) Liability for Non-compliance.

(i) Indemnity: Failure to comply with laws, regulations, and ordinances listed in Sections 3.5.5(a) of this Agreement is a violation of federal and state law. Notwithstanding any other indemnity contained in this Agreement, Designer agrees to indemnify and hold harmless the City, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which the City, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the laws, regulations, and ordinances listed above, arising out of or in connection with the Services, except for liability resulting from the sole established negligence, willful misconduct or active negligence of the City, its officials, officers, agents, employees or authorized volunteers.

(ii) Defense: City reserves the right to defend any enforcement action or civil action brought against the City for Designer's failure to comply with any applicable water quality law, regulation, or policy. Designer hereby agrees to be bound by, and to reimburse the City for the costs associated with, any settlement reached between the City and the relevant enforcement entity.

(iii) Damages: City may seek damages from Designer for delay in completing the Services caused by Designer's failure to comply with the laws, regulations and policies described in Section 3.5.5(a) of this Agreement, or any other relevant water quality law, regulation, or policy.

### 3.5.6 Air Quality.

(a) Compliance with Air Quality Laws, Ordinances, and Regulations. Contractor must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the California Air Resources Board (CARB). Contractor shall specifically be aware of the CARB limits and requirements' application to "portable equipment", which definition is considered by CARB to include any item of equipment with a fuel-powered engine. Contractor shall indemnify City against any fines or penalties imposed by CARB or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Contractor, its subcontractors, or others for whom Contractor is responsible under its indemnity obligations provided for in this Agreement.

## 3.6 **Independent Contractor.**

3.6.1 Control and Payment of Subordinates. City retains Designer on an independent contractor basis and Designer is not an employee of City. Designer 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 Designer shall also not be employees of City, and shall at all times be under Designer's exclusive direction and control. Designer 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. Designer 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.

### **3.7 Schedule of Services.**

3.7.1 Designer Services. Designer shall fully and adequately complete the Services described in this Agreement and in Exhibit "A" attached hereto and incorporated herein by reference.

3.7.2 Timely Performance Standard. Designer shall perform all Services hereunder 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, Designer shall perform its Services so as to allow for the full and adequate completion of the Project within the time required by the City and within any completion schedules adopted for the Project. Designer agrees to 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.

3.7.3 Performance Schedule. Designer shall prepare an estimated time schedule for the performance of Designer's Services, to be adjusted as the Project proceeds. Such schedule shall be subject to the City's review and approval, which approval shall not be unreasonably withheld, and shall include allowances for periods of time required for City's review and approval of submissions, and for approvals of authorities having jurisdiction over Project approval and funding. If City and Designer cannot mutually agree on a performance schedule, City shall have the authority to immediately terminate this Agreement. The schedule shall not be exceeded by Designer without the prior written approval of City. If the Designer's Services are not completed within the time provided by the agreed upon performance schedule, or any milestones established therein, it is understood, acknowledged and agreed that the City will suffer damage for which the Designer will be responsible pursuant to the indemnification provision of this Agreement.

3.7.4 Excusable Delays. Any delays in Designer's work caused by the following shall be added to the time for completion of any obligations of Designer: (1) the actions of City or its employees; (2) the actions of those in direct contractual relationship with City; (3) the actions of any governmental agency having jurisdiction over the Project; (4) the actions of any parties not within the reasonable control of the Designer; and (5) Force Majeure Event. Neither the City nor the Designer shall be liable for damages, liquidated or otherwise, to the other on account of such delays. Such a non-compensable adjustment shall be Designer's sole and exclusive remedy for such delays and the Designer will not receive an adjustment to the contract price or any other compensation. A Force Majeure Event shall mean an event that materially affects a party's performance and is one or more of the following: (1) Acts of God or other natural disasters occurring at the project site; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in

the issuance of permits or approvals by governmental authorities that are required for the work); (4) pandemics, epidemics or quarantine restrictions; and (5) strikes and other organized labor action occurring at the project site and the effects thereof on the work, only to the extent such strikes and other organized labor action are beyond the control of Designer and its subcontractors, of every tier, and to the extent the effects thereof cannot be avoided by use of replacement workers. For purposes of this section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety, and other actions of the City in its capacity as a municipal authority.

3.7.5 Request for Excusable Delay Credit. The Designer shall, within fifteen (15) calendar days of the beginning of any excusable delay, notify the City in writing of the causes of delay (unless City grants in writing a further period of time to file such notice prior to the date of final payment under the Agreement). City will then ascertain the facts and the extent of the delay, and grant an extension of time for completing the Services when, in its sole judgment, the findings of fact justify such an extension. The City's findings of fact thereon shall be final and conclusive on the parties. Extensions of time shall apply only to that portion of the Services affected by the delay and shall not apply to other portions of the Services not so affected. The sole remedy of Designer for extensions of time shall be an extension of the performance time at no cost to the City. If Additional Services are required as a result of an excusable delay, the parties shall mutually agree thereto pursuant to the Additional Services provision of this Agreement. Should Designer make an application for an extension of time, Designer shall submit evidence that the insurance policies required by this Agreement remain in effect during the requested additional period of time.

### **3.8 Additional Designer Services.**

3.8.1 Request for Services. At City's request, Designer may be asked to perform services not otherwise included in this Agreement, not included within the basic services listed in Exhibit "A" attached hereto, and/or not customarily furnished in accordance with generally accepted design practice.

3.8.2 Definition. As used herein, "Additional Services" mean: (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 for the Designer to perform at the execution of this Agreement; or (2) any work listed as Additional Services in Exhibit "A" attached hereto. Designer shall not perform, nor be compensated for, Additional Services without prior written authorization from City and without an agreement between the City and Designer as to the compensation to be paid for such services. City shall pay Designer for any approved Additional Services, pursuant to the compensation provisions herein, so long as such services are not made necessary through the fault of Designer pursuant to the indemnification provision of this Agreement.

3.8.3 Examples of Additional Services. Such Additional Services shall not include any redesign or revisions to drawings, specifications or other documents when such revisions are necessary in order to bring such documents into compliance with applicable laws, rules, regulations or codes of which Designer was aware or should have been aware pursuant to the laws and regulations provision of this Agreement above. Such Additional Services may include, but shall not be limited to:

(a) Separately Bid Portions of Project. Plan preparation and/or administration of work on portions of the Project separately bid.

(b) Furniture and Interior Design. Assistance to City, if requested, for the selection of moveable furniture, equipment or articles which are not included in the Construction Documents.

(c) Fault of Contractor. Services caused by delinquency, default or insolvency of contractor, or by major defects in the work of the contractor, provided that any such services made necessary by the failure of Designer to detect and report such matters when it reasonably should have done so shall not be compensated.

(d) Inconsistent Approvals or Instructions. Revisions in drawings, specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given and are due to causes beyond the control of Designer.

(e) Legal Proceedings. Serving as an expert witness on City's behalf or attending legal proceedings to which the Designer is not a party.

(f) Damage Repair. Supervision of repair of damages to any structure.

(g) Extra Environmental Services. Additional work required for environmental conditions (e.g. asbestos or site conditions) not already contemplated within the Designer's services for the Project.

**3.9 City Responsibilities.** City's responsibilities shall include the following:

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

3.9.2 Project Survey. If required pursuant to the scope of the Project and if requested by Designer, City shall furnish Designer with, or direct Designer to procure at City's expense, a survey of the Project site prepared by a registered surveyor or civil engineer, any other record documents which shall 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.

3.9.3 Bid Phase. Distribute Construction Documents to bidders and conduct the opening and review of bids for the Project.

3.9.4 Testing. Retain consultant(s) to conduct chemical, mechanical, soils, geological or other tests required for proper design of the Project, and furnish such surveys, borings, test pits, and other tests as may be necessary to reveal conditions of the site which must be known to determine soil condition or to ensure the proper development of the required drawings and specifications.

3.9.5 Required Inspections and Tests. Retain consultant(s) to conduct materials testing and inspection or environmental/hazardous materials testing and inspection pursuant to any applicable laws, rules or regulations.



3.9.6 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 approval jurisdiction over the Project.

3.9.7 City's Representative. The City hereby designates Charles E. McNeely, Interim City Manager or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. Representative hereby designates Daniel Hernandez, Agency Director of Public Works, Operations, and Maintenance, or his or her designee, as the City's contact for the implementation of the Services hereunder. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.9.8 Review and Approved Documents. Review all documents submitted by Designer, including change orders and other matters requiring approval by the City Council or other officials. City shall advise Designer 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 above.

### **3.10 Compensation.**

3.10.1 Designer's Compensation for Basic Services. City shall pay to Designer, for the performance of all Services rendered under this Agreement, the total not to exceed amount of Seventy One Thousand Five Hundred Seventy Five Dollars (\$71,575.00) ("Total Compensation"). This Total Compensation amount shall be based upon, and may be adjusted according to, the fee schedule and related terms and conditions attached hereto as Exhibit "B" and incorporated herein by reference. The Total Compensation, as may be adjusted upon mutual agreement, shall constitute complete and adequate payment for Services under this Agreement.

3.10.2 Payment for Additional Services. At any time during the term of this Agreement, City may request that Designer perform Additional Services. As used herein, Additional Services means 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. Any additional work in excess of this amount must be approved by the City. If authorized, such Additional Services will be compensated at the rates and in the manner set forth in Exhibit "C" attached hereto and incorporated herein by reference, unless a flat rate or some other form of compensation is mutually agreed upon by the parties. If City requires Designer to hire consultants to perform any Additional Services, Designer shall be compensated therefore at the rates and in the manner set forth in Exhibit "C" attached hereto and incorporated herein by reference, unless a flat rate or some other form of compensation is mutually agreed upon by the parties. City shall have the authority to review and approve the rates of any such consultants. In addition, Designer shall be reimbursed for any expenses incurred by such consultants pursuant to the terms and conditions of Section 3.10.3.

3.10.3 Reimbursable Expenses. Reimbursable expenses are in addition to compensation for the Services and Additional Services. Designer shall not be reimbursed for any expenses unless authorized in writing by City, which approval may be evidenced by inclusion in Exhibit "C" attached hereto. Such reimbursable expenses shall include only those expenses which are reasonably and necessarily incurred by Designer in the interest of the Project. Designer shall be required to acquire prior written consent in order to obtain reimbursement for the following: (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 \$1,000; and (5) other costs, fees and expenses in excess of \$1,000.

3.10.4 Payment to Designer. Designer's compensation and reimbursable expenses shall be paid by City to Designer no more often than monthly. Such periodic payments shall be made based upon the percentage of work completed, and in accordance with the phasing and funding schedule provided in Exhibit "B" and the compensation rates indicated in Exhibit "C" attached hereto and incorporated herein by reference. In order to receive payment, Designer shall present to City an itemized statement which indicates Services performed, percentage of Services completed, method for computing the amount payable, and the amount to be paid at the address listed in Section 3.29. The statement shall describe the amount of Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement, as well as those expenses for which reimbursement is requested for that statement period. The amount paid to Designer shall never exceed the percentage amounts authorized by the phasing and funding schedule located in Exhibit "B" attached hereto. City shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon pursuant to the provisions of Civil Code Section 3320. Disputed amounts shall be resolved by the parties in a mutually agreeable manner.

Payments made for Additional Services shall be made in installments, not more often than monthly, proportionate to the degree of completion of such services or in such other manner as the parties shall specify when such services are agreed upon, and in accordance with any authorized fee or rate schedule. In order to receive payment, Designer shall present to City an itemized statement which indicates the Additional Services performed, percentage of Additional Services completed, method for computing the amount payable, and the amount to be paid. The statement shall describe the amount of Additional Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon pursuant to the provisions of Civil Code Section 3320. Disputed amounts shall be resolved by the parties in a mutually agreeable manner.

Upon cancellation or termination of this Agreement, Designer shall be compensated as set forth in the termination provision herein.

3.10.5 Withholding Payment to Designer. The City may withhold payment, in whole or in part, 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 to the extent arising out of or caused by the negligence, recklessness, or willful misconduct protected under the indemnification provisions of this Agreement. Failure by City to deduct any sums from a progress payment shall not constitute a waiver of the City's right to such sums. 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 Designer is liable under the Agreement or state law. Payments to the Designer for compensation and reimbursable expenses due shall not be contingent on the construction, completion or ultimate success of the Project. Payment to the Designer shall not be withheld, postponed, or made contingent upon receipt by the City of offsetting reimbursement or credit from parties not within the Designer's reasonable control.

3.10.6 Prevailing Wages. Designer is aware of 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. If the Services are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Designer agrees to fully comply with and to require its consultants to fully comply with such Prevailing Wage Laws. City shall provide Designer with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Designer shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Designer’s principal place of business and at the Project site. Designer shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure of the Designer or its consultants to comply with the Prevailing Wage Laws. It shall be mandatory upon the Designer and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

**3.10.7 Registration.** If the Services are being performed as part of an applicable “public works” or “maintenance” project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Designer and all subconsultants performing such Services must be registered with the Department of Industrial Relations. Designer shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

**3.10.8 Labor Compliance.** This Project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Designer’s sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Designer or any subcontractor that affect Designer’s performance of Services, including any delay, shall be Designer’s sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Designer caused delay and shall not be compensable by the City. Designer shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Designer or any subcontractor.

### **3.11 Notice to Proceed.**

Designer shall not proceed with performance of any Services under this Agreement unless and until the City provides a written notice to proceed.

### **3.12 Termination, Suspension and Abandonment.**

**3.12.1 Grounds for Termination; Designer’s Termination for Cause.** City hereby reserves the right to suspend or abandon, at any time and for any reason, all or any portion of the

Project and the construction work thereon, or to terminate this Agreement at any time with or without cause. Designer shall be provided with at least seven (7) days advanced written notice of such suspension, abandonment or termination. In the event of such suspension, abandonment or termination, Designer shall be paid for Services and reimbursable expenses rendered up to the date of such suspension, abandonment or termination, pursuant to the schedule of payments provided for in this Agreement, less any claims against or damages suffered by City as a result of the default, if any, by Designer. Designer hereby expressly waives any and all claims for damages or compensation arising under this Agreement, except as set forth herein, in the event of such suspension, abandonment or termination. Designer may terminate this Agreement for substantial breach of performance by the City such as failure to make payment to Designer as provided in this Agreement.

**3.12.2 City's Suspension of Work.** If Designer's Services are suspended by City, City may require Designer to resume such Services within ninety (90) days after written notice from City. When the Project is resumed, the Total Compensation and schedule of Services shall be equitably adjusted upon mutual agreement of the City and Designer.

**3.12.3 Documents and Other Data.** Upon suspension, abandonment or termination, Designer shall provide to City all preliminary studies, sketches, working drawings, specifications, computations, and all other Project Documents, as defined below, to which City would have been entitled at the completion of Designer's Services under this Agreement. Upon payment of the amount required to be paid to Designer pursuant to the termination provisions of this Agreement, City shall have the rights, as provided in this Agreement hereinafter, to use such Project Documents prepared by or on behalf of Designer under this Agreement. Designer shall make such documents available to City upon request and without additional compensation other than as may be approved as a reimbursable expense.

**3.12.4 Employment of other Designers.** 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 similar to those terminated.

### **3.13 Ownership and Use of Documents; Confidentiality.**

**3.13.1 Ownership.** All plans, specifications, original or reproducible transparencies of working drawings and master plans, preliminary sketches, design 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 magnetically or otherwise recorded on computer diskettes (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 Designer or other applicable subcontractors or consultants, 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, Designer shall provide to City copies of all Project Documents required by City. In addition, Designer 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, Designer shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

3.13.2 Right to Use. Designer 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 Designer, for the following purposes:

- (a) The construction of all or part of this Project.
- (b) The repair, renovation, modernization, replacement, reconstruction or expansion of this Project at any time;
- (c) The construction of another project by or on behalf of the City for its ownership and use;

City is not bound by this Agreement to employ the services of Designer 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 Designer 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 Designer.

Any use or reuse by City of the Project Documents on any project other than this Project without employing the services of Designer 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 Designer's seal from the Project Documents and hold harmless Designer 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.

3.13.3 License. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify or reuse any and all Project Documents and any intellectual property rights therein. Designer shall require any and all subcontractors and consultants to agree in writing that City is granted a non-exclusive and perpetual license for the work of such subcontractors or consultants performed pursuant to this Agreement.

3.13.4 Right to License. Designer represents and warrants that Designer has the legal right to license any and all copyrights, designs and other intellectual property embodied in the Project Documents that Designer prepares or causes to be prepared pursuant to this Agreement. Designer shall indemnify and hold City harmless pursuant to the indemnification provisions of this Agreement for any breach of this Section. Designer 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 Designer and provided to Designer by City.

3.13.5 Confidentiality. All Project Documents, either created by or provided to Designer in connection with the performance of this Agreement, shall be held confidential by Designer to the extent they are not subject to disclosure pursuant to the Public Records Act. All Project Documents shall not, without the written consent of City, be used or reproduced by Designer for any purposes other than the performance of the Services. Designer 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. Nothing furnished to Designer which is otherwise known to Designer or is generally known, or has become known, to the related industry shall be deemed confidential. Designer 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.

### **3.14 Indemnification.**

3.14.1 To the fullest extent permitted by law, Designer shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Designer, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Designer's services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Designer's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Designer, the City, its officials, officers, employees, agents, or volunteers.

3.14.2 If Designer's obligation to defend, indemnify, and/or hold harmless arises out of Designer's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Designer's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Designer, and, upon Designer obtaining a final adjudication by a court of competent jurisdiction, Designer's liability for such claim, including the cost to defend, shall not exceed the Designer's proportionate percentage of fault.

**3.15 Insurance.** Designer shall not commence work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this Section. In addition, Designer shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required under this section.

3.15.1 Types of Insurance Required. As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder, and without limiting the indemnity provisions of the Agreement, Designer shall, at its expense, procure and maintain in full force and effect for the duration of the Agreement the following policies of insurance. If the existing policies do not meet the insurance requirements set forth herein, Designer agrees to amend, supplement or endorse the policies to do so.

3.15.2 Additional Insured. The City of San Bernardino, its officials, officers, employees, agents, and volunteers shall be named as additional insureds on Designer's and its subconsultants' policies of commercial general liability and automobile liability insurance using the endorsements and forms specified herein or exact equivalents.

#### 3.15.3 Commercial General Liability

(a) The Designer shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the City.

(b) Coverage for Commercial General Liability insurance shall be at least as broad as the following: Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01) or exact equivalent. Commercial General Liability Insurance must include coverage for the following:

- (1) Bodily Injury and Property Damage

- (2) Personal Injury/Advertising Injury
- (3) Premises/Operations Liability
- (4) Products/Completed Operations Liability
- (5) Aggregate Limits that Apply per Project
- (6) Explosion, Collapse and Underground (UCX) exclusion deleted
- (7) Contractual Liability with respect to this Contract
- (8) Broad Form Property Damage
- (9) Independent Consultants Coverage

(c) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

(d) The policy shall give City, the City Council and each member of the City Council, its officers, employees, agents and City designated volunteers additional insured status using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(e) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the City, and provided that such deductibles shall not apply to the City as an additional insured.

#### 3.15.4 Automobile Liability

(a) At all times during the performance of the work under this Agreement, the Designer shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the City.

(b) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

(c) The policy shall give City, the City Council and each member of the City Council, its officers, employees, agents and City designated volunteers additional insured status.

(d) Subject to written approval by the City, the automobile liability program may utilize deductibles, provided that such deductibles shall not apply to the City as an additional insured, but not a self-insured retention.

#### 3.15.5 Workers' Compensation/Employer's Liability

(a) Designer certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(b) To the extent Designer has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, the Designer shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer's Liability Coverage in amounts indicated herein. Designer shall require all subconsultants to obtain and maintain, for the period required by this Agreement, workers' compensation coverage of the same type and limits as specified in this Section.

#### 3.15.6 Professional Liability (Errors and Omissions)

(a) At all times during the performance of the work under this Agreement the Designer shall maintain professional liability or Errors and Omissions insurance appropriate to its profession, in a form and with insurance companies acceptable to the City and in an amount indicated herein. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Designer. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

#### 3.15.7 Privacy/Network Security (Cyber)

(a) At all times during the performance of work under this Agreement, the Designer shall maintain privacy/network security insurance, in a form and with insurance companies acceptable to the City, for: (1) privacy breaches, (2) system breaches, (3) denial or loss of service, and (4) the introduction, implantation or spread of malicious software code.

#### 3.15.8 Minimum Policy Limits Required

(a) The following insurance limits are required for the Agreement:

##### Combined Single Limit

Commercial General Liability	\$2,000,000 per occurrence/ \$4,000,000 aggregate for bodily injury, personal injury, and property damage
Automobile Liability	\$1,000,000 per occurrence for bodily injury and property damage
Employer's Liability	\$1,000,000 per occurrence



Professional Liability	\$1,000,000 per claim and aggregate (errors and omissions)
Cyber Liability	\$1,000,000 per occurrence and aggregate

(b) Defense costs shall be payable in addition to the limits.

(c) Requirements of specific coverage or limits contained in this Section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as Additional Insured pursuant to this Agreement.

### 3.15.9 Evidence Required

(a) Prior to execution of the Agreement, the Designer shall file with the City evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 00 01 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Acord Form 25-S or equivalent), together with required endorsements. All evidence of insurance shall be signed by a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

### 3.15.10 Policy Provisions Required

(a) Designer shall provide the City at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Designer shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Designer shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the City at least ten (10) days prior to the effective date of cancellation or expiration.

(b) The Commercial General Liability Policy and Automobile Policy shall each contain a provision stating that Designer's policy is primary insurance and that any insurance, self-insurance or other coverage maintained by the City or any named insureds shall not be called upon to contribute to any loss.

(c) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Designer shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Designer shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(d) All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers or shall specifically allow Designer or others providing insurance evidence in compliance with these specifications to waive their right of

recovery prior to a loss. Designer hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

(e) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Designer from liability in excess of such coverage, nor shall it limit the Designer's indemnification obligations to the City and shall not preclude the City from taking such other actions available to the City under other provisions of the Agreement or law.

#### 3.15.11 Qualifying Insurers

(a) All policies required shall be issued by acceptable insurance companies, as determined by the City, which satisfy the following minimum requirements: Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and admitted to transact in the business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

#### 3.15.12 Additional Insurance Provisions

(a) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Designer, and any approval of said insurance by the City, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Designer pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(b) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Designer or City will withhold amounts sufficient to pay premium from Designer payments. In the alternative, City may cancel this Agreement.

(c) The City may require the Designer to provide complete copies of all insurance policies in effect for the duration of the Project.

(d) Neither the City nor the City Council, nor any member of the City Council, nor any of the officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

#### 3.15.13 Subconsultant Insurance Requirements

(a) Designer shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the City that they have secured all insurance required under this Section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the City as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Designer, City may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

### **3.16 Records.**

Designer shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Designer shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Designer shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of five (5) years from the date of final payment under this Agreement.

### **3.17 Standardized Manufactured Items.**

Designer shall cooperate and consult with City in the use and selection of manufactured items on the Project, including but not limited to, paint, hardware, plumbing, mechanical and electrical equipment, fixtures, roofing materials and floor coverings. All such manufactured items shall be standardized to City's criteria to the extent such criteria do not interfere with building design.

### **3.18 Limitation of Agreement.**

This Agreement is limited to and includes only the work included in the Project described herein. Any additional or subsequent construction at the site of the Project, or at any other City site, will be covered by, and be the subject of, a separate Agreement for design services between City and the designer chosen therefor by City.

### **3.19 Mediation.**

Disputes arising from this Agreement may be submitted to mediation if mutually agreeable to the parties hereto. The type and process of mediation to be utilized shall be subject to the mutual agreement of the parties.

### **3.20 Successors and Assigns.**

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each party to this Agreement. However, Designer shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

### **3.21 Asbestos Certification.**

Designer shall certify to City, in writing and under penalty of perjury, that to the best of its knowledge, information and belief no asbestos-containing material or other material deemed to be hazardous by the state or federal government was specified as a building material in any construction document that the Designer prepares for the Project. Designer shall require all consultants who prepare any other documents for the Project to submit the same written certification. Designer shall also assist the City in ensuring that contractors provide City with certification, in writing and under penalty of perjury, that to the best of their knowledge, information and belief no material furnished, installed or incorporated into the Project contains asbestos or any other material deemed to be hazardous by the state or federal government. These certifications shall be part of the final Project submittal. Designer shall include statements in its

specifications that materials containing asbestos or any other material deemed to be hazardous by the state or federal government are not to be included.

**3.22 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.

**3.23 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 Bernardino County.

**3.24 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.

**3.25 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.

**3.26 Non-Waiver.**

None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is specifically specified in writing.

**3.27 Safety.**

Designer shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Designer 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.

**3.28 Harassment Policy.**

Designer shall provide a copy of the City's Harassment Policy to each of its employees assigned to perform the tasks under this Agreement. Designer shall submit to the City's Personnel Manager a statement signed by each of its employees who are assigned to perform the Services under this Agreement certifying receipt of City's Harassment Policy and certifying that they have read the Harassment Policy. A finding by the City that any of Designer's employees has harassed a City employee shall be grounds for appropriate discipline, up to and including such employee's removal from performance of this Agreement at City's request.

**3.29 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:**

City of San Bernardino  
Vanir Tower, 290 North D Street  
San Bernardino, California 92401  
Attn: Interim City Manager

**DESIGNER:**

Miller Architectural Corporation  
1177 Idaho Street, Suite 200  
Redlands, California 92374  
Attn: Kathy Oswalt

With a Copy to:

City of San Bernardino  
Vanir Tower, 290 North D Street  
San Bernardino, CA 92401  
Attn: City Attorney

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

**3.30 Time of Essence.**

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

**3.31 City's Right to Employ Other Consultants.**

City reserves right to employ other consultants, including designers, in connection with this Project or other projects.

**3.32 Prohibited Interests.**

3.32.1 Solicitation. Designer maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Designer, to solicit or secure this Agreement. Further, Designer 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 Designer, 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.

3.32.2 Conflict of Interest. For the term of this Agreement, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

**3.33 Equal Opportunity Employment.**

Designer represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or any other classification protected by federal or state law.

Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Designer shall also comply with all relevant provisions of City's minority business enterprise program, affirmative action plan or other related programs or guidelines currently in effect or hereinafter enacted.

### **3.34 Labor Certification.**

By its signature hereunder, Designer 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.

### **3.35 Subcontracting.**

As specified in this Agreement, Designer 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.

### **3.36 Supplemental Conditions.**

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

### **3.37 Electronic Signature.**

Each Party acknowledges and agrees that this Agreement may be executed by electronic or digital signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature.

### **3.38 Entire Agreement.**

This Agreement, with its exhibits, contains the entire 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.

**[SIGNATURES ON FOLLOWING PAGE]**

**SIGNATURE PAGE FOR DESIGN SERVICES AGREEMENT  
BETWEEN THE CITY OF SAN BERNARDINO  
MILLER ARCHITECTURAL CORPORATION**

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

**CITY OF SAN BERNARDINO**

**MILLER  
CORPORATION**

**ARCHITECTURAL**

APPROVED BY:

\_\_\_\_\_  
Charles E. McNeely  
Interim City Manager

\_\_\_\_\_  
Signature

ATTESTED BY:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Genoveva Rocha, CMC  
City Clerk

\_\_\_\_\_  
Title

APPROVED AS TO FORM:

\_\_\_\_\_  
Best Best & Krieger LLP  
City Attorney

**EXHIBIT A**  
**DESIGNER'S SCOPE OF SERVICES**

**1. GENERAL REQUIREMENTS.**

**1.1 Basic Services.** Designer agrees to perform all the necessary professional design, engineering (e.g. mechanical, electrical, plumbing, structural, site engineering, and any other necessary engineering services mutually agreeable to the parties) and construction administration services for the Project in a timely and professional manner, consistent with the standards of the profession, including those provided for herein.

**1.2 Exclusions from Basic Services.** The following services shall be excluded from the basic services listed above: N/A

**1.3 Additional Services.** Designer shall perform the following Additional Services for the Project: N/A

**1.4 Communication with City.** Designer shall participate in consultations and conferences with 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. Designer 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.

**1.5 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 Designer will be fully aware of the duties and responsibilities of the construction manager. The Designer 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 Designer shall request clarification from the City in writing if the Designer should have any questions regarding the authority of the construction manager.

**2. INITIAL PLANNING PHASE.**

During the initial planning phase of the Project, Designer 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.

**2.2 Meeting Budget and Project Goals.** Designer shall notify City in writing of potential complications, cost overruns, unusual conditions, and general needs that potentially impact the Project budget and time line, including the City's Preliminary Construction Budget. Designer shall use its best judgment in determining the balance between the size, type and quality of construction to achieve a satisfactory solution within the Project's budget and construction



allowance. It shall be the duty of the Designer to design the Project within budget. As discussed herein, including in Section 7.3, if the lowest responsive and responsible bid for the Project exceeds the budget by the stated amount, Designer 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.** As indicated in Section 3.5.4 of the Agreement, Designer 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.

### **3. SCHEMATIC PLAN PHASE.**

During the schematic plan phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:

**3.1 Funding Documents.** Designer 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.

**3.2 Schematic Plans.** In cooperation with City, Designer shall prepare preliminary plans and studies, 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 design concept of the buildings ("Schematic Plans"). Designer shall incorporate the functional requirements of City into the Schematic Plans. The Schematic Plans shall meet all laws, rules and regulations of the State of California. The Schematic Plans 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 design drawings for the Project shall be in a form suitable for reproduction.

**3.3 Preliminary Project Budget.** Designer 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 ("Designer's Preliminary Project Budget"). The purpose of the Designer'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 Designer perceives site considerations which render the Project expensive or cost prohibitive, Designer shall disclose such conditions in writing to City immediately. As discussed herein, including in Section 7.3, if the lowest responsive and responsible bid for the Project exceeds the budget by more than the stated amount, Designer 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 Designer shall provide a preliminary written time schedule for the performance of all construction work on the Project.

**3.4 Copies of Schematic Plans and Other Documents.** Designer, at its own expense, shall provide a complete set of the Schematic Plans described herein for City's review and approval. Additionally, at City's expense, Designer 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. DESIGN DEVELOPMENT PHASE.**

During the design development phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:

**4.1 Design Development Documents.** Once City provides Designer with specific written approval of the Schematic Plans described herein, Designer shall prepare design development documents consisting of: (1) site and floor plans; (2) elevations; and (3) any other drawings and documents sufficient to fix and describe the types and makeup of materials, as well as the size 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 Council for approval.

**4.2 Copies of Design Development and Other Documents.** Designer, 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, Designer 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 Updated Project Budget.** Designer 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 ("Designer's Updated Project Budget").

**4.4 Timetable.** Designer shall provide a written timetable for full and adequate completion of the Project to City.

**4.5 Application for Approvals.** Designer shall assist City in applying for and obtaining required approvals from all federal, state, regional or local agencies concerned with the Project. Designer shall furnish and process all design 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.** Designer 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.

#### **5. FINAL WORKING DRAWINGS AND SPECIFICATIONS.**

During the final working drawings and specifications phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:

**5.1 Final Working Drawings and Specifications.** Once City provides Designer with specific written approval of the Design Development Documents described herein, Designer shall prepare such complete working drawings and specifications as are necessary for developing complete bids and for properly executing the Project work in an efficient and thorough manner ("Final Working Drawings and Specifications"). Such Final Working Drawings and Specifications shall be developed from the Schematic Plans and Design Development Documents approved by City. The Final Working Drawings and Specifications shall set forth in detail all of the following:

(1) the Project construction work to be done; (2) the materials, workmanship, finishes, and equipment required for the architectural, structural, mechanical, and electrical systems; and (3) the utility service connection equipment and site work. As indicated in Section 3.9.2 of the Agreement, City may be requested to supply Designer with the necessary information to determine the proper location of all improvements on and off site, including record drawings ("as-built drawings") in City's possession. Designer 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 as-built drawings and provide any supplemental information to Designer which may not be shown on the as-built drawings.

**5.2 Form.** The Final Working Drawings and Specifications must be in such form as will enable Designer and City to secure the required permits and approvals from all federal, state, regional or local agencies concerned with the Project. In addition, the Final Working Drawings and Specifications 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. The Final Working Drawings and Specifications shall be clear and legible so that uniform copies may be on standard architectural size paper, properly indexed and numbered, and shall be capable of being clearly copied and assembled in a professional manner by Designer.

**5.3 Approval and Revisions.** City shall review, study, and check the Final Working Drawings and Specifications presented to it by Designer, and request any necessary 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. Designer shall make all City-requested changes, additions, deletions, and corrections in the Final Working Drawings and Specifications 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 Designer's professional judgment. Designer shall bring any such conflicts and/or inconsistencies to the attention of City. The parties agree that Designer, and not the City, possesses the requisite expertise to determine the constructability of the Final Working Drawings and Specifications. However, the City reserves the right to conduct one or more constructability review processes with the Final Working Drawings and Specifications, and to hire an independent designer or other consultant to perform such reviews. Any such independent constructability review shall be at City's expense. Designer shall make all City-requested changes, additions, deletions, and corrections in the Final Working Drawings and Specifications 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 Designer's professional judgment. If such changes, additions, deletions or corrections are inconsistent with prior City direction, Designer shall make such alterations and be compensated therefore pursuant to the Additional Services provision of this Agreement.

**5.4 Costs of Construction.** It is understood by Designer that should the Final Working Drawings and Specifications be ordered by City, City shall specify the sum of money set aside to cover the total cost of construction of the work, exclusive of Designer's fees. Should it become evident that the total construction cost will exceed the specified sum, Designer 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.

**5.5 Copies of Final Working Drawings and Specifications and Other Documents.** Designer, at its own expense, shall provide a complete set of the Final Working Drawings and Specifications described herein for City's review and approval. Additionally, at City's expense, Designer 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.

## **6. CONSTRUCTION CONTRACT DOCUMENTS.**

During the construction contract documents phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:

**6.1 Bid and Contract Documents.** If so required by City, Designer 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, 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.

**6.2 Final Estimate.** At the time of delivery of these bid and construction documents, which shall include the Final Working Drawings and Specifications (collectively referred to herein as the "Construction Documents"), Designer shall provide City with its final estimate of probable construction cost ("Designer's Final Estimate"). As discussed herein, including in Section 7.3, it shall be the Designer's duty to design the Project within budget.

## **7. BID PHASE.**

During the bid phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:

**7.1 Reproducible Construction Documents.** Once City provides Designer with specific written approval of the Construction Documents and Designer's Final Estimate, Designer shall provide to City one set of reproducible Construction Documents.

**7.2 Distribution of Contract Documents and Review of Bids.** Designer shall assist City in distributing the Construction Documents to bidders and conducting the opening and review of bids for the Project.

**7.3 Over Budget.** If the apparent lowest responsive and responsible bid on the Project exceeds the Designer's Final Estimate by more than five percent (5%), City may request Designer to amend, at Designer's sole cost and expense, the Final Drawings and Specifications in order to rebid the Project and receive a lowest responsive and responsible bid equal to or less than the Designer's Final Estimate. All revisions necessary to bring the lowest responsive and responsive bid within the Designer's Final Estimate, including any omissions, deferrals or alternates, shall be made in consultation with, and subject to the approval of, the City.

## **8. CONSTRUCTION PHASE.**

During the construction phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:

**8.1 Observation.** The Project Designer shall observe work executed from the Final Working Drawings and Specifications in person, provided that City may, in its discretion, consent to such observation by another competent representative of Designer.

**8.2 General Administration.** Designer shall provide general administration of the Construction Documents and the work performed by the contractors.

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

**8.4 Site Visits of Contractor's Work.** Designer shall conduct site visits to observe each contractors' 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.

**8.5 Site Visits of Inspector's Work.** Designer shall conduct site visits to communicate and observe the activities of the City inspectors. Such site visits shall be conducted as often as is mutually acceptable to Designer and City. Designer shall direct the City inspectors and the Project contractors to coordinate the preparation of record drawings indicating dimensions and location of all "as-built" conditions, including but not limited to, underground utility lines.

**8.6 Coordination of Designer's Consultants.** Designer shall cause all architects, engineers and other consultants, as may be hired by Designer 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.

**8.7 Reports.** Designer shall 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.

**8.8 Construction Meetings; Minutes.** Designer 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 necessary for the progress of the Project work, according to the City's sole discretion, but no less than weekly.

**8.9 Written Reports.** Designer 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.

**8.10 Written Records.** Designer 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.

**8.11 Material and Test Reports.** Designer shall check and process, in a timely manner, all required material and test reports for the Project work. In addition, Designer 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 and City.

**8.12 Review and Response to Submissions.** Designer 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. Designer's review and response shall be done in such a manner so as to ensure the timely and uninterrupted progress of the Project work.

**8.13 Rejection of Work.** Designer shall promptly reject, as discussed with City, work or materials which do not conform to the Construction Documents. Designer shall immediately notify the City and contractor(s) of such rejections. Designer 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.

**8.14 Substitutions.** Designer 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. Designer's consultation shall be done in such a manner so as to ensure the timely and uninterrupted progress of the Project work.

**8.15 Revised Documents and Drawings.** Designer 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.

**8.16 Change Requests and Material Changes.** Designer 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. Designer 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 Designer 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 Designer shall review all change orders prepared by such person, execute them and deliver them to the City for authorization if they meet with the Designer's approval, or submit them to the City with recommendations for revision or denial if necessary. Designer 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. Designer may order, on its own responsibility and pending City Council approval, changes necessary to meet construction emergencies, if written approval of City's Representative is first secured.

**8.17 Applications for Payment.** Designer shall examine, verify and approve contractor's applications for payment, and shall issue certificates for payment in amounts approved by the City's inspector.

**8.18 Final Color and Product Selection.** Designer shall coordinate final color and product selection with City's original design concept.

**8.19 Substantial Completion.** Designer shall determine the date of substantial completion, in consultation with the City.

**8.20 Punch List.** After determining that the Project is substantially complete, Designer 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"). Designer shall notify contractor in

writing that all Punch List Items must be corrected prior to final acceptance of the Project and final payment. Designer shall also notify City of all Punch List Items.

**8.21 Warranties.** Designer 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. Designer shall coordinate and provide these materials to the City.

**8.22 Certificate of Completion.** Designer shall participate in any further inspections of the Project necessary to issue Designer's Certificate of Completion and final certificate for payment.

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

## **9. AS-BUILT DRAWINGS.**

During the as-built drawings phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:

**9.1 As-Built Drawings and Specifications.** Not later than thirty (30) days after substantial completion of the Project, before receipt of final payment, Designer shall review and forward the Final Working Drawings and Specifications, 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 "as-built" set of Final Working Drawings and Specifications ("As-Built Drawings and Specifications"). The As-Built 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. Designer shall personally review and certify that the As-Built Drawings and Specifications are a correct representation of the information supplied to Designer by any inspectors and the contractor, and shall obtain certifications from any inspectors and the contractor that the drawings are correct.

**9.2 Approval.** Once City provides Designer with specific written approval of the As-Built Drawings and Specifications, Designer shall forward to City the complete set of original As-Built Drawings and Specifications or a complete set of reproducible duplicate As-Built 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 Designer's final payment, Designer 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 As-Built Drawings and Specifications as required herein; and (4) Designer's Certificate of Completion.

## **10. WARRANTY PERIOD.**

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

**10.1 Advice.** Designer shall provide advice to City on apparent deficiencies in the Project during any applicable warranty periods for the Project.



**EXHIBIT B**  
**FEE AND PHASING/FUNDING SCHEDULES**

**1. FEE SCHEDULE.**

Designer will invoice City on a monthly cycle based on the following fee schedule. Designer will include with each invoice a detailed progress report that indicates the amount of budget spent on each phase and the total amount spent against the Total Compensation. Designer will inform City regarding any out-of-scope work being performed by Designer for which Designer intends to seek compensation from City.

**2. PHASING/FUNDING SCHEDULE.**

Progress payments towards Total Compensation shall never exceed the following amounts as of the phase indicated:

Initial Planning Phase:	\$5,625.00
Schematic Plan Phase:	\$7,625.00
Design Development Phase:	\$11,500.00
Final Working Drawings & Specifications Phase:	\$2,850.00
Construction Contract Documents Phase:	\$35,975.00
Bid Phase:	\$1,600.00
Construction Phase:	\$3,850.00
As-Built Drawings Phase:	\$0
Warranty Period Phase:	\$1,550.00
Reimbursable Expenses	\$1,000.00

## EXHIBIT C

### COMPENSATION RATES AND REIMBURSABLE EXPENSES

#### 1. HOURLY COMPENSATION RATES.

Senior Principal           \$242.00/hour  
Court/Arbitration Appearance \$289.00/hour  
Deposition       \$315.00 - First Hour  
\$284.00 - Each Additional Hour  
Principal (Architecture Division)       \$186.00/hour  
Associate (Architecture Division)       \$163.00/hour  
Principal (Interiors Division)   \$158.00/hour  
Senior Project Manager       \$145.00/hour  
Project Manager       \$135.00/hour  
Senior Technician       \$126.00/hour  
Intermediate Technician       \$88.00/hour  
Senior Clerk/Executive Assistant/Office Mgr. \$87.00/hour  
Junior Technician       \$79.00/hour  
Administrative Assistant/Marketing Assistant \$84.00/hour  
Secretarial/Clerical/Intern       \$65.00/hour  
Archive Retrieval Fee \$210.00/Flat Fee  
Drone Photography/Remote Aerial Survey   \$263.00/hour

Overtime for hourly personnel will be charged at the base rate of 1.5 per hour for time in excess of 8 hours per weekday or for work on Saturdays, Sundays, and holidays.

#### 2. REIMBURSABLE EXPENSES.

1. Out of pocket expenses, (i.e., photocopies, film development, shipping, blueprints): cost plus 15%.

2. In-house Services:

Large Format \$ 2.40 per 24" x 36" sheet  
Black & White: \$ 3.35 per 30" x 42" sheet  
Large Format \$7.10 per 24" x 36" sheet  
Color: \$9.20 per 30" x 42" sheet  
Photocopies: Black & White: \$0.33 per 8-1/2" x 11"       page  
Black & White: \$0.56 per 11" x 17"       page  
Color: \$1.82 per 8-1/2" x 11" page  
Color: \$3.10 per 11" x 17"       page  
Black & White \$0.83 per 12" x 18"       page  
Color \$3.65 per 12" x 18"       page  
Presentation Materials: \$21.00 per 30 x 40 Foam Board  
CD with Files: \$52.00  
Upload Data: \$52.00

3. Mileage: \$.70 per mile.

4. For work which requires overnight lodging, a per diem charge will be made appropriate to the area, based on actual costs.

5. Outside consultants not included in base fee and plan check fees shall be billed at direct cost plus 15%. INVOICING

Reimbursable expenses shall not exceed the amount outlined in Exhibit "B", without the prior written consent of City.

**3. ADDITIONAL SERVICES.**

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

**4. ADDITIONAL CONSULTANTS.**

If City requires Designer to hire consultants to perform any Additional Services, Designer shall be compensated therefore at the Designer's actual hourly rates plus 0%. Owner shall have the authority to review and approve the rates of any such consultants.