

ATTACHMENT B

PROFESSIONAL SERVICES AGREEMENT WITH GRIFFIN STRUCTURES, INC. FOR CONSTRUCTION MANAGEMENT SERVICES FOR THE CENTRAL LIBRARY LECTURE HALL

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into as of this 27th day of September, 2022 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and GRIFFIN STRUCTURES, INC., a California corporation ("Consultant"), whose address is 1 Technology Drive, Suite 1829, Irvine, California 92618, and is made with reference to the following:

RECITALS

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.
- B. City desires to engage Consultant to provide construction management services for the Central Library Lecture Hall ("Project").
- C. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the professional services described in this Agreement.
- D. City has solicited and received a proposal from Consultant, has reviewed the previous experience and evaluated the expertise of Consultant, and desires to retain Consultant to render professional services under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM

The term of this Agreement shall commence on the Effective Date, and shall terminate on October 1, 2025, unless terminated earlier as set forth herein.

2. SERVICES TO BE PERFORMED

Consultant shall diligently perform all the services described in the Scope of Services attached hereto as Exhibit A and incorporated herein by reference ("Services" or "Work"). City may elect to delete certain Services within the Scope of Services at its sole discretion.

3. TIME OF PERFORMANCE

3.1 Time is of the essence in the performance of Services under this Agreement and Consultant shall perform the Services in accordance with the schedule included in

Exhibit A. In the absence of a specific schedule, the Services shall be performed to completion in a diligent and timely manner. The failure by Consultant to strictly adhere to the schedule set forth in Exhibit A, if any, or perform the Services in a diligent and timely manner may result in termination of this Agreement by City.

3.2 Notwithstanding the foregoing, Consultant shall not be responsible for delays due to causes beyond Consultant's reasonable control. However, in the case of any such delay in the Services to be provided for the Project, each party hereby agrees to provide notice within two (2) calendar days of the occurrence causing the delay to the other party so that all delays can be addressed.

3.3 Consultant shall submit all requests for extensions of time for performance in writing to the Project Administrator as defined herein not later than ten (10) calendar days after the start of the condition that purportedly causes a delay. The Project Administrator shall review all such requests and may grant reasonable time extensions for unforeseeable delays that are beyond Consultant's control.

3.4 For all time periods not specifically set forth herein, Consultant shall respond in the most expedient and appropriate manner under the circumstances, by hand-delivery or mail.

4. COMPENSATION TO CONSULTANT

4.1 City shall pay Consultant for the Services on a time and expense not-to-exceed basis in accordance with the provisions of this Section and the Schedule of Billing Rates attached hereto as Exhibit B and incorporated herein by reference. Consultant's compensation for all Work performed in accordance with this Agreement, including all reimbursable items and subconsultant fees, shall not exceed **Six Hundred Eighty Thousand Dollars and 00/100 (\$680,000.00)**, without prior written authorization from City. No billing rate changes shall be made during the term of this Agreement without the prior written approval of City.

4.2 Consultant shall submit monthly invoices to City describing the Work performed the preceding month. Consultant's bills shall include the name of the person who performed the Work, a brief description of the Services performed and/or the specific task in the Scope of Services to which it relates, the date the Services were performed, the number of hours spent on all Work billed on an hourly basis, and a description of any reimbursable expenditures. City shall pay Consultant no later than thirty (30) calendar days after approval of the monthly invoice by City staff.

4.3 City shall reimburse Consultant only for those costs or expenses specifically identified in Exhibit B to this Agreement or specifically approved in writing in advance by City.

4.4 Consultant shall not receive any compensation for Extra Work performed without the prior written authorization of City. As used herein, "Extra Work" means any Work that is determined by City to be necessary for the proper completion of the Project, but which is not included within the Scope of Services and which the parties did not

reasonably anticipate would be necessary at the execution of this Agreement. Compensation for any authorized Extra Work shall be paid in accordance with the Schedule of Billing Rates as set forth in Exhibit B.

5. PROJECT MANAGER

5.1 Consultant shall designate a Project Manager, who shall coordinate all phases of the Project. This Project Manager shall be available to City at all reasonable times during the Agreement term. Consultant has designated Jon Hughes to be its Project Manager. Consultant shall not remove or reassign the Project Manager or any personnel listed in Exhibit A or assign any new or replacement personnel to the Project without the prior written consent of City. City's approval shall not be unreasonably withheld with respect to the removal or assignment of non-key personnel.

5.2 Consultant, at the sole discretion of City, shall remove from the Project any of its personnel assigned to the performance of Services upon written request of City. Consultant warrants that it will continuously furnish the necessary personnel to complete the Project on a timely basis as contemplated by this Agreement.

5.3 If Consultant is performing inspection services for City, the Project Manager and any other assigned staff shall be equipped with a cellular phone to communicate with City staff. The Project Manager's cellular phone number shall be provided to City.

6. ADMINISTRATION

This Agreement will be administered by the Public Works. City's Director of Public Works or designee shall be the Project Administrator and shall have the authority to act for City under this Agreement. The Project Administrator shall represent City in all matters pertaining to the Services to be rendered pursuant to this Agreement.

7. CITY'S RESPONSIBILITIES

To assist Consultant in the execution of its responsibilities under this Agreement, City agrees to provide access to and upon request of Consultant, one copy of all existing relevant information on file at City. City will provide all such materials in a timely manner so as not to cause delays in Consultant's Work schedule.

8. STANDARD OF CARE

8.1 All of the Services shall be performed by Consultant or under Consultant's supervision. Consultant represents that it possesses the professional and technical personnel required to perform the Services required by this Agreement, and that it will perform all Services in a manner commensurate with community professional standards and with the ordinary degree of skill and care that would be used by other reasonably competent practitioners of the same discipline under similar circumstances. All Services shall be performed by qualified and experienced personnel who are not employed by City. By delivery of completed Work, Consultant certifies that the Work conforms to the

requirements of this Agreement, all applicable federal, state and local laws, and legally recognized professional standards.

8.2 Consultant represents and warrants to City that it has, shall obtain, and shall keep in full force and effect during the term hereof, at its sole cost and expense, all licenses, permits, qualifications, insurance and approvals of whatsoever nature that is legally required of Consultant to practice its profession. Consultant shall maintain a City of Newport Beach business license during the term of this Agreement.

8.3 Consultant shall not be responsible for delay, nor shall Consultant be responsible for damages or be in default or deemed to be in default by reason of strikes, lockouts, accidents, acts of God, or the failure of City to furnish timely information or to approve or disapprove Consultant's Work promptly, or delay or faulty performance by City, contractors, or governmental agencies.

9. HOLD HARMLESS

9.1 To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers and employees (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to any breach of the terms and conditions of this Agreement, any Work performed or Services provided under this Agreement including, without limitation, defects in workmanship or materials or Consultant's presence or activities conducted on the Project (including the negligent, reckless, and/or willful acts, errors and/or omissions of Consultant, its principals, officers, agents, employees, vendors, suppliers, consultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable, or any or all of them).

9.2 Notwithstanding the foregoing, nothing herein shall be construed to require Consultant to indemnify the Indemnified Parties from any Claim arising from the sole negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorneys' fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Consultant.

10. INDEPENDENT CONTRACTOR

It is understood that City retains Consultant on an independent contractor basis and Consultant is not an agent or employee of City. The manner and means of conducting the Work are under the control of Consultant, except to the extent they are limited by statute, rule or regulation and the expressed terms of this Agreement. No civil

service status or other right of employment shall accrue to Consultant or its employees. Nothing in this Agreement shall be deemed to constitute approval for Consultant or any of Consultant's employees or agents, to be the agents or employees of City. Consultant shall have the responsibility for and control over the means of performing the Work, provided that Consultant is in compliance with the terms of this Agreement. Anything in this Agreement that may appear to give City the right to direct Consultant as to the details of the performance of the Work or to exercise a measure of control over Consultant shall mean only that Consultant shall follow the desires of City with respect to the results of the Services.

11. COOPERATION

Consultant agrees to work closely and cooperate fully with City's designated Project Administrator and any other agencies that may have jurisdiction or interest in the Work to be performed. City agrees to cooperate with the Consultant on the Project.

12. CITY POLICY

Consultant shall discuss and review all matters relating to policy and Project direction with City's Project Administrator in advance of all critical decision points in order to ensure the Project proceeds in a manner consistent with City goals and policies.

13. PROGRESS

Consultant is responsible for keeping the Project Administrator informed on a regular basis regarding the status and progress of the Project, activities performed and planned, and any meetings that have been scheduled or are desired.

14. INSURANCE

Without limiting Consultant's indemnification of City, and prior to commencement of Work, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement or for other periods as specified in this Agreement, policies of insurance of the type, amounts, terms and conditions described in the Insurance Requirements attached hereto as Exhibit C, and incorporated herein by reference.

15. PROHIBITION AGAINST ASSIGNMENTS AND TRANSFERS

Except as specifically authorized under this Agreement, the Services to be provided under this Agreement shall not be assigned, transferred contracted or subcontracted out without the prior written approval of City. Any of the following shall be construed as an assignment: The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Consultant, or of the interest of any general partner or joint venturer or syndicate member or cotenant if Consultant is a partnership or joint-venture or syndicate or co-tenancy, which shall result in changing the control of Consultant. Control means fifty percent (50%) or more of the voting power or twenty-five percent (25%) or more of the assets of the corporation, partnership or joint-venture.

16. SUBCONTRACTING

The subcontractors authorized by City, if any, to perform Work on this Project are identified in Exhibit A. Consultant shall be fully responsible to City for all acts and omissions of any subcontractor. Nothing in this Agreement shall create any contractual relationship between City and any subcontractor nor shall it create any obligation on the part of City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise required by law. City is an intended beneficiary of any Work performed by the subcontractor for purposes of establishing a duty of care between the subcontractor and City. Except as specifically authorized herein, the Services to be provided under this Agreement shall not be otherwise assigned, transferred, contracted or subcontracted out without the prior written approval of City.

17. OWNERSHIP OF DOCUMENTS

17.1 Each and every report, draft, map, record, plan, document and other writing produced, including but not limited to, websites, blogs, social media accounts and applications (hereinafter "Documents"), prepared or caused to be prepared by Consultant, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Consultant or any other party. Additionally, all material posted in cyberspace by Consultant, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Consultant or any other party. Consultant shall, at Consultant's expense, provide such Documents, including all logins and password information to City upon prior written request.

17.2 Documents, including drawings and specifications, prepared by Consultant pursuant to this Agreement are not intended or represented to be suitable for reuse by City or others on any other project. Any use of completed Documents for other projects and any use of incomplete Documents without specific written authorization from Consultant will be at City's sole risk and without liability to Consultant. Further, any and all liability arising out of changes made to Consultant's deliverables under this Agreement by City or persons other than Consultant is waived against Consultant, and City assumes full responsibility for such changes unless City has given Consultant prior notice and has received from Consultant written consent for such changes.

17.3 All written documents shall be transmitted to City in formats compatible with Microsoft Office and/or viewable with Adobe Acrobat.

18. OPINION OF COST

Any opinion of the construction cost prepared by Consultant represents the Consultant's judgment as a design professional and is supplied for the general guidance of City. Since Consultant has no control over the cost of labor and material, or over

competitive bidding or market conditions, Consultant does not guarantee the accuracy of such opinions as compared to Consultant or contractor bids or actual cost to City.

19. CONFIDENTIALITY

All Documents, including drafts, preliminary drawings or plans, notes and communications that result from the Services in this Agreement, shall be kept confidential unless City expressly authorizes in writing the release of information.

20. INTELLECTUAL PROPERTY INDEMNITY

Consultant shall defend and indemnify City, its agents, officers, representatives and employees against any and all liability, including costs, for infringement or alleged infringement of any United States' letters patent, trademark, or copyright, including costs, contained in Consultant's Documents provided under this Agreement.

21. RECORDS

Consultant shall keep records and invoices in connection with the Services to be performed under this Agreement. Consultant shall maintain complete and accurate records with respect to the costs incurred under this Agreement and any Services, expenditures and disbursements charged to City, for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such records and invoices shall be clearly identifiable. Consultant shall allow a representative of City to examine, audit and make transcripts or copies of such records and invoices during regular business hours. Consultant shall allow inspection of all Work, data, Documents, proceedings and activities related to the Agreement for a period of three (3) years from the date of final payment to Consultant under this Agreement.

22. WITHHOLDINGS

City may withhold payment to Consultant of any disputed sums until satisfaction of the dispute with respect to such payment. Such withholding shall not be deemed to constitute a failure to pay according to the terms of this Agreement. Consultant shall not discontinue Work as a result of such withholding. Consultant shall have an immediate right to appeal to the City Manager or designee with respect to such disputed sums. Consultant shall be entitled to receive interest on any withheld sums at the rate of return that City earned on its investments during the time period, from the date of withholding of any amounts found to have been improperly withheld.

23. ERRORS AND OMISSIONS

In the event of errors or omissions that are due to the negligence or professional inexperience of Consultant which result in expense to City greater than what would have resulted if there were not errors or omissions in the Work accomplished by Consultant, the additional design, construction and/or restoration expense shall be borne by

Consultant. Nothing in this Section is intended to limit City's rights under the law or any other sections of this Agreement.

24. CITY'S RIGHT TO EMPLOY OTHER CONSULTANTS

City reserves the right to employ other Consultants in connection with the Project.

25. CONFLICTS OF INTEREST

25.1 Consultant or its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "Act") and/or Government Code §§ 1090 et seq., which (1) require such persons to disclose any financial interest that may foreseeably be materially affected by the Work performed under this Agreement, and (2) prohibit such persons from making, or participating in making, decisions that will foreseeably financially affect such interest.

25.2 If subject to the Act and/or Government Code §§ 1090 et seq., Consultant shall conform to all requirements therein. Failure to do so constitutes a material breach and is grounds for immediate termination of this Agreement by City. Consultant shall indemnify and hold harmless City for any and all claims for damages resulting from Consultant's violation of this Section.

26. NOTICES

26.1 All notices, demands, requests or approvals, including any change in mailing address, to be given under the terms of this Agreement shall be given in writing, and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided.

26.2 All notices, demands, requests or approvals from Consultant to City shall be addressed to City at:

Attn: Director of Public Works
Public Works
City of Newport Beach
100 Civic Center Drive
PO Box 1768
Newport Beach, CA 92658

26.3 All notices, demands, requests or approvals from City to Consultant shall be addressed to Consultant at:

Attn: Jon Hughes
Griffin Structures, Inc.
1 Technology Drive, Suite I-829
Irvine, CA 92618

27. CLAIMS

27.1 Unless a shorter time is specified elsewhere in this Agreement, before making its final request for payment under this Agreement, Consultant shall submit to City, in writing, all claims for compensation under or arising out of this Agreement. Consultant's acceptance of the final payment shall constitute a waiver of all claims for compensation under or arising out of this Agreement except those previously made in writing and identified by Consultant in writing as unsettled at the time of its final request for payment. Consultant and City expressly agree that in addition to any claims filing requirements set forth in the Agreement, Consultant shall be required to file any claim Consultant may have against City in strict conformance with the Government Claims Act (Government Code sections 900 et seq.).

27.2 To the extent that Consultant's claim is a "Claim" as defined in Public Contract Code section 9204 or any successor statute thereto, the Parties agree to follow the dispute resolution process set forth therein. Any part of such "Claim" remaining in dispute after completion of the dispute resolution process provided for in Public Contract Code section 9204 or any successor statute thereto shall be subject to the Government Claims Act requirements requiring Consultant to file a claim in strict conformance with the Government Claims Act. To the extent that Contractor/Consultant's claim is not a "Claim" as defined in Public Contract Code section 9204 or any successor statute thereto, Consultant shall be required to file such claim with the City in strict conformance with the Government Claims Act (Government Code sections 900 et seq.).

28. TERMINATION

28.1 In the event that either party fails or refuses to perform any of the provisions of this Agreement at the time and in the manner required, that party shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of two (2) calendar days, or if more than two (2) calendar days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within two (2) calendar days after receipt of written notice of default, specifying the nature of such default and the steps necessary to cure such default, and thereafter diligently take steps to cure the default, the non-defaulting party may terminate the Agreement forthwith by giving to the defaulting party written notice thereof.

28.2 Notwithstanding the above provisions, City shall have the right, at its sole and absolute discretion and without cause, of terminating this Agreement at any time by giving no less than seven (7) calendar days' prior written notice to Consultant. In the event of termination under this Section, City shall pay Consultant for Services satisfactorily performed and costs incurred up to the effective date of termination for which Consultant has not been previously paid. On the effective date of termination, Consultant shall deliver to City all reports, Documents and other information developed or accumulated in the performance of this Agreement, whether in draft or final form.

29. PREVAILING WAGES

29.1 Pursuant to the applicable provisions of the Labor Code of the State of California, not less than the general prevailing rate of per diem wages including legal holidays and overtime Work for each craft or type of workman needed to execute the Work contemplated under the Agreement shall be paid to all workmen employed on the Work to be done according to the Agreement by the Consultant and any subcontractor. In accordance with the California Labor Code (Sections 1770 et seq.), the Director of Industrial Relations has ascertained the general prevailing rate of per diem wages in the locality in which the Work is to be performed for each craft, classification, or type of workman or mechanic needed to execute the Agreement. A copy of said determination is available by calling the prevailing wage hotline number (415) 703-4774, and requesting one from the Department of Industrial Relations. The Consultant is required to obtain the wage determinations from the Department of Industrial Relations and post at the job site the prevailing rate or per diem wages. It shall be the obligation of the Consultant or any subcontractor under him/her to comply with all State of California labor laws, rules and regulations and the parties agree that the City shall not be liable for any violation thereof.

29.2 Unless otherwise exempt by law, Consultant warrants that no contractor or subcontractor was listed on the bid proposal for the Services that it is not currently registered and qualified to perform public work. Consultant further warrants that it is currently registered and qualified to perform "public work" pursuant to California Labor Code section 1725.5 or any successor statute thereto and that no contractor or subcontractor will engage in the performance of the Services unless currently registered and qualified to perform public work.

30. STANDARD PROVISIONS

30.1 Recitals. City and Consultant acknowledge that the above Recitals are true and correct and are hereby incorporated by reference into this Agreement.

30.2 Compliance with all Laws. Consultant shall, at its own cost and expense, comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted. In addition, all Work prepared by Consultant shall conform to applicable City, county, state and federal laws, rules, regulations and permit requirements and be subject to approval of the Project Administrator and City.

30.3 Waiver. A waiver by either party of any breach, of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

30.4 Integrated Contract. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein.

30.5 Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Agreement and the Scope of Services or any other attachments attached hereto, the terms of this Agreement shall govern.

30.6 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

30.7 Amendments. This Agreement may be modified or amended only by a written document executed by both Consultant and City and approved as to form by the City Attorney.

30.8 Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

30.9 Controlling Law and Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange, State of California.

30.10 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, sexual orientation, age or any other impermissible basis under law.

30.11 No Attorneys' Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorneys' fees.

30.12 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**

Date: 9/14/22

By:  _____
Aaron C. Harp
City Attorney

9/13/22 DAG

**CITY OF NEWPORT BEACH,
a California municipal corporation**

Date: _____

By: _____
Kevin Muldoon
Mayor

ATTEST:

Date: _____

By: _____
Leilani I. Brown
City Clerk

**CONSULTANT: Griffin Structures, Inc., a
California corporation**

Date: _____

By: _____
Jon Hughes
Executive Vice President

Date: _____

By: _____
Kelly Boyle
Secretary

[END OF SIGNATURES]

Attachments: Exhibit A – Scope of Services
 Exhibit B – Schedule of Billing Rates
 Exhibit C – Insurance Requirements

EXHIBIT A

SCOPE OF SERVICES

I. PRE-CONSTRUCTION PHASE

- **Constructability Review**

- Perform constructability review of the project contract documents.
- Provide input for methods of construction.
- Evaluate duration of construction.
- Review the Architect's contract document submissions and provide written comments on adherence to the City's requirements, schedule, budget, constructability, and value engineering recommendations.
- Coordinate with the various disciplines, including civil, grading, demolition, structural, architectural mechanical, electrical, HVAC, plumbing, interior finishes, FF&E, and landscape and oversee all activities.
- Provide value engineering review and recommendations during the design process.

- **Cost Evaluation/Adjustment**

- Advise the City and Architect if it appears that the Construction Cost may exceed the budgeted amount as set forth in the Project Budget and make recommendations for corrective action to bring the Construction costs with the City Budget.

II. PLAN CHECK AND BIDDING PHASE

- **Pre-Qualification of Bidders**

- Assist City with pre-qualifying contractors for various components for each projects per criteria set forth by the City.
- Make suggestion as to what trades should be considered through a formal prequalification process (may only be specific to the LLH Project).

- **Public Relations Activities**

- Assist the City in public relations including, but not limited to, preparing information of each project and attending site, internal and public meetings.
- Consultant will be the point of contact for the community during all phases of construction in regards to any questions, complaints, safety issues, noise problems, dust problems and similar matters.

- **Contractor Bidding**

- Oversee contractor bidding, including pre-bid site walk and bidder orientation, coordination of inquiries, oversee bid RFI's and the issuance of addenda, and bid evaluations.
- Assist City in recommendations for award and preparation of staff report for Council award.

- **Rebidding**

- Should the project require rebidding, Consultant will oversee the rebid process and support the City and project team to make the necessary modifications to the bid package in anticipation of a rebid process. Once the rebid process is initiated, Consultant will provide the same bid support as described above.

III. CONSTRUCTION PHASE

- **Pre-Construction Meeting**

- Prepare agenda and lead pre-construction meeting
- Attend pre-construction orientation meeting.
- Orient the successful contractors to the various reporting procedures and site rules prior to the commencement of actual construction.
- Prepare meeting minutes.

- **Contract Administration**

- Administer the construction Contract.
- Enforce and oversee Contractor preparation of construction staging areas on-site.
- Enforce and oversee Contractor preparation of site for construction.
- Enforce and oversee Contractor preparation of fencing, barricades or other items reasonably necessary for efficient construction.
- Provide management or related services to coordinate work of the contractors and the activities and responsibilities of the Architect and City to complete each project in accordance with the contract documents.

- **Construction Manager**

- Provide competent full time construction manager to oversee all activities in the field and serve as City's representative in the coordination of all activities of the project team.

- **Submittal Procedures**

- Establish and implement procedures with the City and Architect to coordinate and review shop drawing submittals.
- Coordinate and oversee Architectural review request for information (RFI), materials and samples, product data, change orders, payment requests, material delivery dates and other procedures.
- Maintain logs of all RFI, change orders, payment requests and other necessary documents.
- Establish a procedure for and collect certified payroll from the Contractors.

- **Meetings**

- Coordinate and conduct pre-construction, construction and weekly job site progress meetings with the contractors, Architect and City.
- Record, transcribe and distribute meeting minutes to all attendees, the City and all other appropriate parties.
- Assist in the resolution of any technical construction issues.
- Arrange and/or attend any other necessary meeting as required.

- **Quality Assurance/Quality Control (QA/QC)**

- Establish and implement a Quality Assurance management plan.
- Observe, verify and document the specified level of construction quality.
- Observe and track construction deficiencies and oversee corrections in accordance with project documents utilizing standardized field observation reports

- **Coordination of Technical Inspection & Testing**

- Work with contractors to coordinate all testing required by the Contract Documents, Architects, or other third parties to obtain the release of any required permit.
- Assist the City in selecting any special consultants or testing laboratories if needed.

- **Construction Observation**
 - Ensure the construction conforms to the approved plans and specifications.
 - Confirm the materials and equipment incorporated in the work are handled, stored and installed properly and adequately and in compliance with the Contract Documents.
 - Guard against defects and deficiencies and advise the City of any deviations, defects or deficiencies observed in the work.
- **Non-Conforming Work**
 - Review Contractors' recommendations for corrective action on observed non-conforming work.
 - Make recommendations to the City and Architect in instances where work is defective or not in conformance with the Contract Documents.
 - Observe the Contractors' work to verify all authorized changes are properly incorporated.
- **Exercise of Contract Prerogatives**
 - Advise and make recommendations to the City for implementing City's Contract prerogatives. Examples of recommendations are giving the Contractor notice to accelerate the progress when the schedule goals are in jeopardy due to Contractor's delay or withhold payments to Contractor to ensure Contract compliance.
- **Implementation of Master Project Schedule**
 - Establish, implement and update the Master Project Schedule to set timeline and milestones.
 - Manage and track the activities of Contractors such as sequences and duration, allocation of labor and materials, processing of shop drawings, product data and samples, delivery of products requiring long lead time procurement, and other items to ensure compliance with the City's occupancy requirements.
- **Monitor Estimates of Construction Cost**
 - Provide regular monitoring of the approved estimate of Construction Cost.
- **Construction Progress Review**
 - Maintain daily log documenting a record of weather, Contractors present on the site, number of workers, work accomplished, problems encountered, and relevant data or additional data as the City may require.
 - Prepare daily inspection records with pictures.

- **Maintain On-Site Records**
 - Verify and ensure all on-site drawings and Contract Documents are accurate and current.
- **Schedule of Values & Processing of Payments**
 - Review and recommend Contractors' schedule for the tasks included in that contractor's schedule of events.
 - Review and make recommendations to the City regarding payments to the contractors.
- **Evaluate Change Order Proposal Costs**
 - Evaluate Contractors' costs for proposed change orders and make a recommendation to the City regarding the acceptance of any proposals for a change order.
 - Facilitate negotiations on any change order costs and time extensions.
- **Change Order Reports**
 - Ensure and administer all change orders authorized and approved by the City.
 - Prepare and distribute a summary change order report on a monthly basis.
 - Identify and document the effect of the change order on the Contract price and Master Project Schedule.
- **Project Status Reports**
 - Prepare and distribute weekly Project Status Report.
 - Project Status Report will include an itemized summary and update of all key items necessary to adhere to the Master Project Schedule.

IV. PROJECT CLOSE-OUT & POST-CONSTRUCTION SERVICES

- **Completion of Contracts & Project**
 - Assist Architect in preparing a list of incomplete or unsatisfactory items (Punch-list) and prepare a schedule for the completion of each item.
 - Establish a 90 and 360-day Punch-List follow-up.
 - Prepare a summary of the status of each contractor and sub-contractor Assist the Architect to monitor completion of pending items.
- **As-Built Documents & Operation Manuals**
 - Verify accuracy of as-built documents.

- Review and coordinate final construction document specifications, shop drawings, and submittals.
- Ensure delivery of program warranties.
- Ensure delivery of operations and maintenance manuals.
- **Training Sessions**
 - Coordinate and schedule training sessions with manufacturers to provide training for the City maintenance and operations staff.
 - Document all City training sessions and arrange for supplementary information, where needed.
- **Initial Start-up & Testing**
 - Coordinate with Architect and City's maintenance staff to observe the Contractors' proper installation of utilities, operational systems and equipment.
 - Assist the City with the initial start-up and testing.
 - Manage the coordination and installation of the appropriate furniture, fixture and equipment.
- **Project As-Built, Close Out, & Warranties**
 - Review contractual requirements for as-built drawings, close out documents and warranties.
 - Document and compile all required documentation for deliver to the City.
 - Coordinate and assist City in the move-in.
- **User Complaints**
 - Assist with response to initial post-occupancy complaints regarding missing or malfunction building components and equipment and contractor/vendor warranty items.

V. SCHEDULE RECOVERY MANAGEMENT

- Consultant shall maintain strict adherence to the Contractor update requirements and by applying schedule analysis. Consultant shall help identify potential delays before they happen.
- Consultant shall implement key strategies to shift the critical path away from the potential issue at hand, which allows for the project to move forward while carefully addressing the challenge identified. In the rare occurrence where a recovery schedule is in fact needed,

Consultant's team will work closely with the project team to identify all possible scenarios that allow for a solution.

- This includes: reviewing trade stacking, access strategies, long lead installations, submittal review times, potential reorganization of phasing etc. In the end it is the Contractor's responsibility to deliver the project on time, and the Consultant will utilize every tool available to enforce that requirement.

VI. METHODOLOGY TO GENERATE BIDDER INTEREST

- Consultant shall use its database of Contractors to generate significant bidder interest. Typically, with a project of this complexity, a 2 phased approach that includes performing a Contractor prequalification phase followed by a bid phase will be used. It is during the prequalification phase that Consultant will work to maximize bidder interest.
 - This includes, but is not limited to the following; making direct calls to potential bidders, advertising the project on multiple publications, preparing a very attractive RFQ that incentivizes the bidders to participate, and constant follow through during the RFQ process.

VII. CONSTRUCTION DISRUPTION MITIGATION

- It might be said that ALL construction management is "construction disruption mitigation". Given the highly iterative and complex nature of construction projects, the myriad of participants in the process, and the depth of the supply chain required construction projects have a unique vulnerability to disrupting events.
- Consultant shall mitigate these potential disruptions by apply 3 key concepts at all times;
 - Clear and coherent communication with all team members
 - a fact-based forward-looking approach that seeks to identify potential issues 3-6 months in advance, and
 - a collaborative and team building management philosophy that engages the strengths of all members.
- By applying these principals, Consultant shall be able to maintain clean and manageable documentation, make actionable recommendations, early solutions to potential problems, maintain project schedule and ultimately deliver a project that is on or under budget.

EXHIBIT B

SCHEDULE OF BILLING RATES

Item No.	PROJECT PHASE	PRINCIPAL IN CHARGE	PROJECT EXECUTIVE	CONSTRUCTION MANAGER
		Jon Hughes \$240/hr.	Robert Godfrey \$225/hr.	Cody Roth \$205/hr.
1	PRECONSTRUCTION SERVICES	24	270	90
1.1	Constructability Review	Incl	Incl	Incl
1.2	Cost Evaluation/Adjustment	Incl	Incl	Incl
1.3	Pre-Qualification of Bidders	Incl	Incl	Incl
1.4	Public Relations Activities	Incl	Incl	Incl
1.5	Pre-Bid Site Walk	Incl	Incl	Incl
1.6	Coordination and Inquiries	Incl	Incl	Incl
1.7	Addenda Review	Incl	Incl	Incl
1.8	Contracts and Mobilization			
2	CONSTRUCTION MANAGEMENT	60	150	2580
2.1	Pre-Construction Meeting	Incl	Incl	Incl
2.2	Contract Administration	Incl	Incl	Incl
2.3	Full Time Construction Manager	Incl	Incl	Incl
2.4	Submittal Procedures	Incl	Incl	Incl
2.5	Meetings	Incl	Incl	Incl
2.6	Quality Assurance	Incl	Incl	Incl
2.7	Coordination of Technical Inspections and Testing	Incl	Incl	Incl
2.8	Construction Observation	Incl	Incl	Incl
2.9	Non-Conforming Work	Incl	Incl	Incl
2.10	Exercise of Contract Prerogatives	Incl	Incl	Incl
2.11	Implementation of Master Project Schedule	Incl	Incl	Incl
2.12	Monitor Estimates of Construction Cost	Incl	Incl	Incl
2.13	Construction Progress Review	Incl	Incl	Incl
2.14	Maintain On-Site Records	Incl	Incl	Incl
2.15	Schedule of Values and Processing Payments	Incl	Incl	Incl
2.16	Evaluate Change Order Proposal Costs	Incl	Incl	Incl
2.17	Change Order Reports	Incl	Incl	Incl
2.18	Project Status Reports	Incl	Incl	Incl
3	TASK 4: PROJECT CLOSEOUT	4	4	90
3.1	Completion of Contracts and Project	Incl	Incl	Incl
3.2	As-Built Documents & Operation Manuals	Incl	Incl	Incl
3.3	Training Sessions	Incl	Incl	Incl
3.4	Initial Start-Up and Testing	Incl	Incl	Incl
3.5	Project As-Built, Close Out, and Warranties	Incl	Incl	Incl
3.6	User Complaints	Incl	Incl	Incl
	Total Hours	88	424	2760
	Subtotals	\$21,120	\$95,400	\$565,800
	DESIGN & PROJECT/CONSTRUCTION MANAGEMENT TOTAL	NO CHARGE		\$661,200
4	REIMBURSABLE COSTS			\$18,800
4.1	Submittal Exchange			\$10,000
4.2	Insurance			\$6,600
4.3	Misc. Printing and Office Supplies			\$2,200
	GRAND TOTAL			\$680,000

EXHIBIT C

INSURANCE REQUIREMENTS – PROFESSIONAL SERVICES

1. Provision of Insurance. Without limiting Consultant's indemnification of City, and prior to commencement of Work, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City. Consultant agrees to provide insurance in accordance with requirements set forth here. If Consultant uses existing coverage to comply and that coverage does not meet these requirements, Consultant agrees to amend, supplement or endorse the existing coverage.
2. Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.
3. Coverage Requirements.
 - A. Workers' Compensation Insurance. Consultant shall maintain Workers' Compensation Insurance, statutory limits, and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000) each accident for bodily injury by accident and each employee for bodily injury by disease in accordance with the laws of the State of California, Section 3700 of the Labor Code.

Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its City Council, boards and commissions, officers, agents, volunteers and employees.
 - B. General Liability Insurance. Consultant shall maintain commercial general liability insurance, and if necessary umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) general aggregate. The policy shall cover liability arising from premises, operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
 - C. Automobile Liability Insurance. Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit each accident.

- D. Professional Liability (Errors & Omissions) Insurance. Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the Effective Date of this Agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the Services required by this Agreement.
4. Other Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:
- A. Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City, its City Council, boards and commissions, officers, agents, volunteers and employees or shall specifically allow Consultant or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers from each of its subconsultants.
- B. Additional Insured Status. All liability policies including general liability, excess liability, pollution liability, and automobile liability, if required, but not including professional liability, shall provide or be endorsed to provide that City, its City Council, boards and commissions, officers, agents, volunteers and employees shall be included as insureds under such policies.
- C. Primary and Non Contributory. All liability coverage shall apply on a primary basis and shall not require contribution from any insurance or self-insurance maintained by City.
- D. Notice of Cancellation. All policies shall provide City with thirty (30) calendar days' notice of cancellation (except for nonpayment for which ten (10) calendar days' notice is required) or nonrenewal of coverage for each required coverage.
5. Additional Agreements Between the Parties. The parties hereby agree to the following:
- A. Evidence of Insurance. Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least

fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

- B. City's Right to Revise Requirements. City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving Consultant sixty (60) calendar days' advance written notice of such change. If such change results in substantial additional cost to Consultant, City and Consultant may renegotiate Consultant's compensation.
- C. Right to Review Subcontracts. Consultant agrees that upon request, all agreements with subcontractors or others with whom Consultant enters into contracts with on behalf of City will be submitted to City for review. Failure of City to request copies of such agreements will not impose any liability on City, or its employees. Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a format at least as broad as CG 20 38 04 13.
- D. Enforcement of Agreement Provisions. Consultant acknowledges and agrees that any actual or alleged failure on the part of City to inform Consultant of non-compliance with any requirement imposes no additional obligations on City nor does it waive any rights hereunder.
- E. Requirements not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.
- F. Self-insured Retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-

insurance will not be considered to comply with these requirements unless approved by City.

- G. City Remedies for Non-Compliance. If Consultant or any subconsultant fails to provide and maintain insurance as required herein, then City shall have the right but not the obligation, to purchase such insurance, to terminate this Agreement, or to suspend Consultant's right to proceed until proper evidence of insurance is provided. Any amounts paid by City shall, at City's sole option, be deducted from amounts payable to Consultant or reimbursed by Consultant upon demand.
- H. Timely Notice of Claims. Consultant shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.
- I. Consultant's Insurance. Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.