



January 5, 2024

0.07

David Zevely, District Manager
Burney Water District
20222 Hudson Street
Burney, CA 96013
districtmanager@burneywater.org

Dear David,

Subject: Burney Water District (District) Water System Improvement Project
Proposal for Engineering Design and Construction Services

PACE Engineering, Inc. (PACE) is pleased to respond to your request to provide engineering design and construction services for the subject project. The project consists of PACE completing the following Scope of Services:

Phase 100 – Design Development

PACE will review the anticipated project scope, update costs, and attend an initial project coordination meeting with District staff to fine-tune the design elements and walk through the proposed locations. PACE will complete topographic and boundary surveys of the well and booster pump station sites and will prepare 30% construction drawings of all improvements for the District's review and comment. Once accepted by the District, the basis of design will be established. Changes to the basis of design beyond this point can be accommodated; however, there may be an additional fee depending on the impact of the change. PACE intends to subcontract with Materials Testing, Inc. and/or KC Engineering Company for completion of a geotechnical report.

Drinking Water State Revolving Fund (DWSRF) funding administration during construction is required as part of this project. Costs included in the attached fee account for PACE completing status reports and submitting them to the District. It is anticipated this will be on a quarterly basis until construction begins, at which time it will be on a monthly basis concurrent with contractor pay estimates. Costs anticipate the District will submit all disbursement requests to DWSRF.

Phase 200 – Construction Documents

PACE will provide three intermediate milestone meetings, typically at 30%, 60%, and 90%, which will include providing drawings, specifications, and cost estimates for the District's review and comment. Comments will be incorporated, and changes will be made as necessary. PACE will also coordinate with DWSRF and State Water Resources Control Board (SWRCB) Division of Drinking Water (DDW) upon completion of the 90% drawings and specifications and incorporate all comments received from the funding and regulatory agencies into final construction documents suitable for public bidding. PACE will assist the District in obtaining all permits necessary for completion of the project. The construction bid package will meet all requirements of the District, funding, and regulatory agencies.

Phase 300 – Services During Bidding

PACE will assist the District with bidding and award of the project. This will include conducting a pre-bid job walk, responding to bidder technical questions, and issuing addenda as needed. PACE will assist the District in examining bids to ensure bids meet project qualifications and Disadvantaged Business Enterprises Good Faith Efforts. PACE will assist in determining the lowest, responsive, responsible bidder to recommend to DWSRF and the District's Board of Directors for award of the construction contract.

Phase 400 – Construction Administration

PACE will oversee construction management and construction observation of the project. This will include, but not be limited to, the following: review of material submittals to ensure they meet project specifications and DWSRF American Iron and Steel requirements, conduct a pre-construction meeting, complete on-site construction observation and materials testing, monitor environmental mitigation measures associated with construction practices, complete field reports, prepare pay estimates, provide change order oversight, prepare Record Drawings, and complete a final report of construction completion acceptable to DWSRF. PACE intends to subcontract with ENPLAN for adherence to construction mitigation measures identified in the Notice of Exemption on an as-needed basis. Costs for this work are included in the attached fee.

In PACE's experience, full-time construction observation is needed during significant water projects such as this one. As such, the attached fee includes costs for one full-time resident project representative to provide construction observation for the duration of the project, from the start of construction through final acceptance testing.

PACE has included costs in the attached fee to provide supervisory control and data acquisition (SCADA) programming services on the Water System Improvement Project that will integrate with the new wastewater SCADA system.

DWSRF requires State and Davis Bacon prevailing wage rates be enforced in accordance with California Labor Compliance Code. While it is ultimately the responsibility of the project Owner to verify the code is being followed, PACE often completes the prevailing wage monitoring portion of projects for the Owner. Costs for this effort have been included in the attached fee.

Phase 500 – Post-Construction Engineering Services

In PACE's experience, it is invaluable to operations staff for the engineers and operators familiar with the improvements to take part in this startup learning process. There are inevitably questions from operations staff that arise and problems that must be worked through when new processes and controls first get placed into operation and for a short time thereafter. As such, the attached fee includes costs for PACE to provide startup services for the first few months of operation.

Costs have been included in the attached fee for PACE to complete an operations and maintenance (O&M) manual for the resulting upgraded water system, as well as development of Standard Operating Procedures, Water Construction Standards, and a Water Rate Study.

PACE proposes to provide the Scope of Services included in attached Exhibit A – Engineering Fee, for a lump-sum engineering services fee of \$2,970,000. This fee anticipates construction will take no longer than 15 months. Should construction be delayed, additional costs may be needed on a time-and-expense basis. Please find attached our fee schedules.

PACE appreciates the opportunity to work with the District on this important infrastructure project. We are ready to proceed with the project as soon as the District provides authorization by executing the enclosed Engineering Agreement and returning one signed copy to PACE. Please call me with any questions you have regarding this proposal.

Sincerely,



Laurie McCollum
Principal Engineer

Enclosures

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**EXHIBIT A
BURNEY WATER DISTRICT
WATER SYSTEM IMPROVEMENT PROJECT
ENGINEERING SERVICES LUMP-SUM FEE
JANUARY 5, 2023**

PHASE	DESCRIPTION	L. McCollum QA/QC	Project Mngr	Project Engr	Structural Engr	Electrical Engr	Staff Engr	Survey Mngr	Survey (Prev. Wage)	Construction Observation (Prev. Wage)	Programmer	Office Staff	KC Engineering Subconsultant Costs	ENPLAN Subconsultant Costs	Category Subtotal
Workdays													Cost ¹		
100	DESIGN DEVELOPMENT														
	Project management and design meetings	4.0	8.0	4.0	2.0	2.0	2.0								\$ 38,448
	Complete status reports and final report to District for submission to DWSRF	2.0	6.0	12.0											\$ 31,520
	Boundary and topographic surveys		1.0	1.0				5.0	8.0						\$ 43,144
	Geotechnical investigation		2.0	2.0									\$ 15,000		\$ 21,416
	Prepare 30% construction drawings	2.0	10.0	30.0	2.0	4.0	20.0								\$ 102,992
	Phase 100 - Design Development Subtotal:	8.0	27.0	49.0	4.0	6.0	22.0	5.0	8.0	0.0	0.0	0.0			\$ 237,520
200	CONSTRUCTION DOCUMENTS														
	Project management and design meetings	2.0	10.0	4.0	2.0	2.0	2.0								\$ 38,128
	Permitting		2.0	2.0											\$ 6,416
	Prepare 50% construction drawings	2.0	20.0	30.0	20.0	20.0	30.0	2.0	4.0						\$ 218,624
	Prepare 90% construction drawings, contract specifications, and preliminary cost estimate	2.0	30.0	60.0	10.0	40.0	50.0				20.0	8.0			\$ 346,672
	Prepare final construction drawings, contract specifications, and cost estimate	1.0	20.0	30.0	4.0	20.0	30.0				10.0	4.0			\$ 187,552
	Phase 200 - Construction Documents Subtotal:	7.0	82.0	126.0	36.0	82.0	112.0	2.0	4.0	0.0	30.0	12.0			\$ 797,400
300	SERVICES DURING BIDDING														
	Assist District with advertisement of the project	0.5	0.5	1.0								0.5			\$ 3,632
	Conduct pre-bid job walk		1.0	1.0											\$ 3,208
	Answer questions during bidding	0.5	4.0	6.0	2.0	2.0									\$ 24,208
	Issue addendums		2.0	4.0	1.0	1.0						0.5			\$ 13,336
	Review bids and recommend award to apparent low bidder		0.5	1.0											\$ 2,296
	Phase 300 - Services During Bidding Subtotal:	1.0	8.0	13.0	3.0	3.0	0.0	0.0	0.0	0.0	0.0	1.0			\$ 46,680
400	CONSTRUCTION ADMINISTRATION														
	Project management and coordination meetings	4.0	20.0	16.0	10.0	10.0	10.0					0.5			\$ 118,480
	Conduct pre-construction meeting		2.0	2.0											\$ 6,760
	Issue submittal checklist		2.0	2.0			2.0								\$ 9,184
	Review submittals	2.0	10.0	20.0	6.0	20.0	30.0								\$ 142,032
	Coordinate construction survey and staking		1.0	2.0				2.0	4.0						\$ 23,568
	Respond to Contractor's RFIs during construction	4.0	30.0	40.0	10.0	20.0	10.0				10.0				\$ 206,096
	Review Contractor's monthly pay estimates		4.0	10.0											\$ 21,136
	Provide change order oversight	4.0	30.0	40.0	10.0	20.0	20.0				10.0	2.0			\$ 221,312
	Provide construction environmental mitigation monitoring and coordination ²	1.0	2.0	4.0									\$ 30,000		\$ 41,168
	Resident Project Representative	2.0	10.0	20.0	6.0	10.0				325.0					\$ 657,872
	Provide programming services		10.0			10.0					90.0				\$ 184,960
	Provide prevailing wage monitoring		2.0	6.0			14.0								\$ 31,328
	Prepare Notice of Completion		0.5	1.0											\$ 2,296
	Prepare Record Drawings		2.0	4.0	1.0	1.0	6.0								\$ 21,296
	Phase 400 - Construction Administration Subtotal:	17.0	125.5	167.0	43.0	91.0	92.0	2.0	4.0	325.0	110.0	2.5			\$ 1,687,490
500	POST-CONSTRUCTION ENGINEERING SERVICES														
	Project management and coordination meetings	2.0	10.0	4.0	2.0	2.0	2.0								\$ 38,128
	Provide startup services	1.0	4.0	4.0											\$ 14,816
	Prepare WWTP O&M manual	2.0	8.0	16.0	2.0	4.0					8.0				\$ 57,792
	Warranty inspections		1.0	2.0											\$ 4,592
	Standard operating procedures	2.0	4.0	10.0							2.0				\$ 26,480
	Water construction standards	2.0	4.0	6.0							2.0				\$ 20,944
	Rate Study	2.0	6.0	12.0							5.0				\$ 34,960
	Project closeout		1.0	1.0											\$ 3,208
	Phase 500 - Post-Construction Engineering Services Subtotal:	11.0	38.0	55.0	4.0	6.0	2.0	0.0	0.0	0.0	0.0	17.0			\$ 200,920
	TOTAL PERSON-DAYS:	44.0	280.5	410.0	90.0	188.0	228.0	9.0	16.0	325.0	140.0	32.5			\$ 2,970,000
	LABOR COST PER DAY:	\$ 1,984	\$ 1,824	\$ 1,384	\$ 1,824	\$ 1,984	\$ 1,384	\$ 1,984	\$ 3,752	\$ 1,776	\$ 1,632	\$ 688			
	LABOR COST PER CLASSIFICATION:	\$ 87,296	\$ 511,632	\$ 567,440	\$ 164,160	\$ 372,992	\$ 315,552	\$ 17,856	\$ 60,032	\$ 577,200	\$ 228,480	\$ 22,360			

TOTAL ENGINEERING SERVICES LUMP-SUM FEE: \$ 2,970,000

Notes: 1. Refer to PACE's fee schedules.
2. Additional costs may be required if active bird nests are found during construction.



5155 VENTURE PARKWAY
 REDDING, CA 96002
 (530) 244-0202

FEE SCHEDULE

RATES FOR PROFESSIONAL SERVICES

Effective through December 31, 2024

LABOR CLASSIFICATION	BILLING CLASS	HOURLY RATE
Senior Engineering Consultant	E8	\$263
Managing Engineer	E7	\$263
Principal Engineer/Surveyor	E6/LS6	\$248
Senior Engineer/Surveyor	E5/LS5	\$228
Associate Engineer/Surveyor	E4/LS4	\$204
Staff Engineer/Surveyor - Grade 3	E3/LS3	\$184
Staff Engineer/Surveyor - Grade 2	E2/LS2	\$173
Staff Engineer/Surveyor - Grade 1	E1/LS1	\$157
Technician 4	T4	\$173
Technician 3	T3	\$156
Technician 2	T2	\$141
Technician 1	T1	\$123
One-Man Survey Crew	SC1	\$289
Two-Man Survey Crew	SC2	\$367
Two-Man Survey Crew (O/T)	SC2x	\$434
Three-Man Survey Crew	SC3	\$453
Admin. Clerk 3	AD3	\$97
Admin. Clerk 2	AD2	\$86
Admin. Clerk 1	AD1	\$79

EXPENSES	
Meals and Lodging:	At cost (out-of-town and overnight work only).
Vehicle Transportation:	Included in hourly rates unless specifically indicated otherwise in Agreement. Hourly labor rates are applicable during travel to and from job site.
Express Mail/Federal Express:	At cost.
Outside Services and Fees:	At cost plus 10% administrative fee.
Equipment:	Included in hourly rate unless specifically indicated otherwise in Agreement.
Rates for expert witness services will be as set forth in the Engineering Agreement.	
Rates are effective through the date shown above and are subject to annual revisions. Services will be billed at the hourly rates in place at the time service is provided.	
Refer to Prevailing Wage Fee Schedule for hourly rates on prevailing wage projects.	



5155 VENTURE PARKWAY
 REDDING, CA 96002
 (530) 244-0202

FEE SCHEDULE

RATES FOR PREVAILING WAGE PROFESSIONAL SERVICES

Effective through December 31, 2024

LABOR CLASSIFICATION	HOURLY RATE
Prevailing Wage Group 2 - Construction Observer	\$222
Prevailing Wage Group 2 - Construction Observer (O/T)	\$262
Prevailing Wage Group 2 - Construction Observer (Double-Time)	\$301
Prevailing Wage One-Man Survey Crew	\$341
Prevailing Wage Two-Man Survey Crew	\$469
Prevailing Wage Two-Man Survey Crew (O/T)	\$555
Prevailing Wage Two-Man Survey Crew (2x O/T)	\$639
Prevailing Wage Three-Man Survey Crew	\$620
Prevailing Wage Three-Man Survey Crew (O/T)	\$730

EXPENSES	
Meals and Lodging:	At cost (out-of-town and overnight work only).
Vehicle Transportation:	Included in hourly rates unless specifically indicated otherwise in Agreement. Hourly labor rates are applicable during travel to and from job site.
Express Mail/Federal Express:	At cost.
Outside Services and Fees:	At cost plus 10% administrative fee.
Equipment:	Included in hourly rate unless specifically indicated otherwise in Agreement.
Rates are effective through the date shown above and are subject to annual revisions. Services will be billed at the hourly rates in place at the time service is provided.	

ENGINEERING AGREEMENT

This agreement has been entered into at Redding, California on the CLIENT signature date set forth below and is by and between the CLIENT as listed below and PACE Engineering, Inc., hereinafter called the CONSULTANT.

CLIENT: Burney Water District **PHONE:** (530) 335-3582

ATTENTION: David Zevely, District Manager **EMAIL:** dzevely@burneywater.org

ADDRESS: 20222 Hudson Street, Burney, CA 96013

PROJECT TITLE: Burney Water District (District) Water System Improvement Project

APN: _____ **CLIENT PROJECT NO:** _____

PROJECT DESCRIPTION:

Provide engineering services as stated below.

SCOPE OF SERVICES BY CONSULTANT:

See attached proposal letter dated January 5, 2024.

The CONSULTANT agrees to perform the above-described services for the CLIENT. The CLIENT agrees to compensate CONSULTANT for such services as follows:

- Lump-sum amount payable per Item 21: \$2,970,000
- At the CONSULTANT'S STANDARD RATES. (See attached Exhibit __) Estimated Fee: _____
- Other. Describe: _____
- Special Billing Instructions: See proposal letter for breakdown of fee.

This Agreement is subject to the Standard Provisions 1 through 50 contained herein and the terms and conditions contained in exhibits attached herewith and made a part hereof. Other exhibits not identified above are as follows: _____

IN WITNESS WHEREOF, the parties hereto have accepted, made, and executed this Agreement upon the terms, conditions, and provisions hereinafter stated on pages 1 through 4 and on the referenced attached exhibits.

CONSULTANT:

License No.: C 77274

By: 

Name/Title: Laurie McCollum, Principal Engineer

Date: January 5, 2024

CLIENT:

By: _____

Print Name: David Zevely

Title: District Manager Date: _____

Special District

Form of doing business: Owner, Partnership, Corporation

Standard Provisions of Agreement

1. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of Client and Consultant.
2. This Agreement shall not be assigned by either Client or Consultant without the prior written consent of the other.
3. This Agreement contains the entire Agreement between Client and Consultant relating to the project and the provision of services to the project. Any prior agreement, promises, negotiations or representations not expressly set forth in this Agreement are of no force or effect. Subsequent modifications to this Agreement shall be in writing and signed by both Client and Consultant.
4. Consultant's waiver of any term, condition, or covenant, or breach of any term, condition, or covenant, shall not constitute the waiver of any other term, condition, or covenant, or the breach of any other term, condition, or covenant.
5. If any term, condition, or covenant of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall be valid and binding on Client and Consultant.
6. This Agreement shall be governed by and construed in accordance with the laws of the State of California.
7. Consultant shall only act as an advisor in all governmental relations.
8. All original papers, documents, drawings and other work product of Consultant, and copies thereof, produced by Consultant pursuant to this Agreement shall remain the property of Consultant and may be used by Consultant without the consent of Client. Upon request and payment of the costs involved, Client is entitled to a copy of all papers, documents, and drawings provided Client's account is paid current.
9. Client acknowledges that its right to utilize the services and work product provided pursuant to this Agreement will continue only so long as Client is not in default pursuant to the terms and conditions of this Agreement. Client further acknowledges that Consultant has the unrestricted right to use the services provided pursuant to this Agreement as well as all work product provided pursuant to this Agreement.
10. Client and Consultant agree to cooperate with each other in every way on the project.
11. Upon request, Client shall execute and deliver, or cause to be executed and delivered, such additional instruments, documents, governmental fees and charges which are necessary to perform the terms of this Agreement.
12. Consultant makes no representations concerning soil conditions unless specifically included in writing in this Agreement, and he is not responsible for any liability that may arise out of the making or failure to make soil surveys, or sub-surface soil tests, or general soil testing.
13. Client agrees not to use or permit any other person to use plans, drawings, or other work product prepared by Consultant, which plans, drawings, or other work product are not final and which are not signed, and stamped or sealed by Consultant. Client agrees to be liable and responsible for any such use of nonfinal plans, drawings, or other work product not signed and stamped or sealed by Consultant and waives liability against Consultant for their use. Client further agrees that final plans, drawings or other work product are for the exclusive use of Client and may be used by Client only for the project described on the face hereof. Such final plans, drawings or other work product may not be changed nor used on a different project without the written authorization or approval by Consultant. If Consultant's work product exists in electronic or computerized format, or is transferred in electronic or computerized format, the stamp, seal and signature shall be original and may not be a computer-generated copy, photocopy, or facsimile transmission of the original.
14. Consultant has a right to complete all services agreed to be rendered pursuant to this contract. In the event this Agreement is terminated before the completion of all services, unless Consultant is responsible for such early termination, Client agrees to release Consultant from all liability for services performed. In the event all or any portion of the services or work product prepared or partially prepared by Consultant be suspended, abandoned, or terminated, Client shall pay Consultant for all fees, charges, and services provided for the project, not to exceed any contract limit specified herein. Client acknowledges if the project services are suspended and restarted, there will be additional charges due to suspension of the services which shall be paid for by Client as extra services.
15. If the scope of services to be provided by Consultant pursuant to the terms of this agreement includes an ALTA survey, Client agrees that Consultant may sign one of the two ALTA Survey Statements attached hereto and incorporated herein by reference. In the event that Consultant is required to sign a statement or certificate which differs from the ALTA Survey Statements contained in the attachment, Client hereby agrees to indemnify and hold Consultant harmless from any and all liability arising from or resulting from the signing of any statement which differs from those statements contained in the attachment.
16. If the scope of services to be provided by Consultant pursuant to the terms of this Agreement include the preparation of grading plans but exclude construction staking services, Client acknowledges that such staking services normally include coordinating civil engineering services and the preparation of as-built drawings pursuant to Uniform Building Code Appendix, Chapter 33 or local grading ordinances and Client will be required to retain such services from another Consultant or pay Consultant pursuant to this Agreement for such services as extra work in accordance with Provision 26.
17. Consultant shall be entitled to immediately, and without notice, suspend the performance of any and all of its obligations pursuant to this Agreement if Client files a voluntary petition seeking relief under the United States Bankruptcy Code or if there is an involuntary bankruptcy petition filed against Client in the United States Bankruptcy Court, and that petition is not dismissed within fifteen (15) days of its filing. Any suspension of services made pursuant to the provisions of this paragraph shall continue until such time as this Agreement has been fully and properly assumed in accordance with the applicable provisions of the United States Bankruptcy Code and in compliance with the final order or judgment issued by the Bankruptcy Court.
18. This Agreement shall not be construed to alter, affect or waive any lien or stop notice right which Consultant may have for the performance of services pursuant to this Agreement. Client agrees to separately provide to Consultant the present name and address of the record owner of the property on which the project is to be located. Client also agrees to separately provide Consultant with the name and address of any and all lenders who would loan money on the project and who are entitled to receive a preliminary notice.
19. If payment for Consultant's services is to be made on behalf of Client by a third-party lender, Client agrees that Consultant shall not be required to indemnify the third-party lender, in the form of an endorsement or otherwise, as a condition of receiving payment for services.
20. If Client fails to pay Consultant within thirty (30) days after invoices are rendered, Client agrees Consultant shall have the right to consider such default in payment a material breach of this entire Agreement, and upon written notice, the duties, obligations, and responsibilities of Consultant under this Agreement are suspended or terminated. In such event, Client shall promptly pay Consultant for all fees, charges, and services provided by Consultant.

21. All fees and other charges will be billed monthly and shall be due at the time of billing unless otherwise specified in this Agreement. For lump sum work the amount due shall be based upon the Consultant's estimate of the percent complete at the time that the invoice is prepared.

22. Client agrees that the periodic billings from Consultant to Client are correct, conclusive, and binding on Client unless Client, within ten (10) days from the date of receipt of such billing, notifies Consultant in writing of alleged inaccuracies, discrepancies, or errors in the billing.

23. Client agrees to pay a monthly late payment charge, which will be the lesser of, one and one-fourth percent (1¼%) per month or a monthly charge not to exceed the maximum legal rate, which will be applied to any unpaid balance commencing thirty (30) days after the date of the original billing.

24. If Consultant, pursuant to this Agreement, produces plans, specifications, or other documents and/or performs field services, and such plans, specifications, and other documents and/or field services are required by one or more governmental agency, and one or more such governmental agency changes its ordinances, policies, procedures or requirements after the date of this Agreement, any additional office or field services thereby required shall be paid for by Client as extra services.

25. In the event Consultant's fee schedule changes due to any increase of costs such as the granting of wage increases and/or other employee benefits to field or office employees due to the terms of any labor agreement, or rise in the cost of living, during the lifetime of this Agreement, a percentage increase shall be applied to all remaining compensation.

26. Client agrees that if Client requests services not specified pursuant to the scope of services description within this Agreement, Client agrees to pay for all such additional services as extra work.

27. In the event the staking is destroyed, damaged or disturbed by an act of God or parties other than Consultant, the cost of restaking shall be paid for by Client as extra services.

28. Client acknowledges that the design services performed pursuant to this Agreement are based upon field and other conditions existing at the time these services were performed. Client further acknowledges that field and other conditions may change by the time project construction occurs and clarification, adjustments, modifications and other changes may be necessary to reflect changed field or other conditions. If the scope of services pursuant to this Agreement does not include construction staking services by Consultant for this project, or if subsequent to this Agreement Client retains other persons or entities to provide such staking services; or if the scope of services pursuant to this Agreement does not include onsite construction review, construction management, observation of construction of engineering structures, or other construction services for this project, or if subsequent to this Agreement Client retains other persons or entities to provide such construction services, then Client acknowledges that such services will be performed by others, and that Client will defend, indemnify, and hold Consultant harmless from any and all claims arising from or resulting from the performance of such services by other persons or entities except claims caused by the sole negligence or willful misconduct of Consultant; and from any and all claims arising from or resulting from clarifications, adjustments, modifications or other changes which may be necessary to reflect changed field or other conditions except claims caused by the sole negligence or willful misconduct of Consultant.

29. Client shall pay the costs of checking and inspection fees, zoning and annexation application fees, assessment fees, soils engineering fees, soils testing fees, aerial topography fees, and all

other fees, permits, bond premiums, applicable taxes on professional services, title company charges, blueprints and reproductions, and all other charges not specifically covered by the terms of this Agreement.

30. Client acknowledges and agrees that if Consultant provides surveying services, which services require the filing of a Record of Survey in accordance with Business and Professions Code Section 8762, that all of the costs of preparation, examination and filing for the Record of Survey will be paid by Client as extra work in accordance with Provision 26.

31. Consultant is not responsible for delay caused by activities or factors beyond Consultant's reasonable control, including but not limited to, delays by reason of strikes, lockouts, work slowdowns, or stoppages, accidents, acts of God, failure of Client to furnish timely information or approve or disapprove of Consultant's services or work product promptly, faulty performance by Client or other contractors or governmental agencies. When such delays beyond Consultant's reasonable control occur, Client agrees Consultant is not responsible in damages nor shall Consultant be deemed to be in default of this Agreement.

32. Consultant shall not be liable for damages resulting from the actions or inactions of governmental agencies including, but not limited to, permit processing, environmental impact reports, dedications, general plans and amendments thereto, zoning matters, annexations or consolidations, use or conditional use permits, project or plan approvals, and building permits. The Client agrees that it is the responsibility of the Client to maintain in good standing all government approvals and permits and to apply for any extensions thereof.

33. Consultant makes no representation concerning the estimated quantities and probable costs made in connection with maps, plans, specifications, reports or drawings other than that all such costs are estimates only and actual costs will vary. It is the responsibility of Client to verify costs.

34. Client acknowledges that Consultant is not responsible for the performance of work by third parties including, but not limited to, the construction contractor and its subcontractors.

35. Consultant makes no warranty, either expressed or implied, as to his findings, recommendations, plans, specifications, or professional advice except that the services or work product were performed pursuant to generally accepted standards of practice in effect at the time of performance.

36. Estimates of land areas provided under this Agreement are not to be considered precise unless Consultant specifically agrees to provide the precise determination of such areas.

37. In the event the Client agrees to, permits, authorizes, constructs or permits construction of changes in the plans, specifications and documents or does not follow recommendations or reports prepared by Consultant pursuant to this Agreement, which changes are not consented to in writing by Consultant, Client acknowledges that the changes and their effects are not the responsibility of Consultant and Client agrees to release Consultant from all liability arising from the use of such changes and further agrees to defend, indemnify and hold harmless Consultant, its officers, directors, principals, agents and employees from and against all claims, demands, damages or costs arising from the changes and their effects.

38. Client agrees that in accordance with generally accepted construction practices, construction contractor will be required to assume sole and complete responsibility for job site conditions during the course of construction of the project, including safety of all persons and property; that this requirement shall be made to apply continuously and not be limited to normal working hours.

39. In the event Client discovers or becomes aware of changed field or other conditions which necessitate clarification, adjustments, modifications or other changes during the construction phase of the project, Client agrees to notify Consultant and engage Consultant to prepare the necessary clarifications, adjustments, modifications or other changes to Consultant's services or work product before construction activities commence or further activity proceeds. Further, Client agrees to have a provision in its construction contracts for the project which requires the contractor to notify Client of any changed field or other conditions so that Client may in turn notify Consultant pursuant to the provisions of this paragraph.

40. Client agrees to limit the liability of Consultant, its principals, employees and their subconsultants, to Client and to all contractors and subcontractors on the project, for any claim or action arising in tort, contract or strict liability, to the sum of \$50,000 or Consultant's fee, whichever is greater. Client and Consultant acknowledge that this provision was expressly negotiated and agreed upon.

41. Client agrees to purchase and maintain, during the course of construction, builder's risk "all risk" insurance which will name Consultant as an additional insured as their interest may appear.

42. Client acknowledges that Consultant's scope of services for this project does not include any services related in any way to asbestos and/or hazardous or toxic materials. Should Consultant or any other party encounter such materials on the job site, or should it in any other way become known that such materials are present or may be present on the job site or any adjacent or nearby areas which may affect Consultant's services, Consultant may, at its option, terminate work on the project until such time as Client retains a specialist contractor to abate and/or remove the asbestos and/or hazardous or toxic materials and warrant that the job site is free from any hazard which may result from the existence of such materials.

43. The Client hereby agrees to bring no claim for negligence, breach of contract, strict liability, indemnity, delays or otherwise against the Consultant, its principals, employees, and agents if such claim, in any way, would involve the Consultant's services for the investigation, detection, abatement, replacement, use or specification, or removal of products, materials or processes containing asbestos, asbestos cement pipe, and/or hazardous or toxic materials. Client further agrees to defend, indemnify and hold harmless Consultant, its officers, directors, principals, employees and agents from any asbestos and/or hazardous or toxic material related claims that may be brought by third parties as a result of the services provided by the Consultant pursuant to this Agreement except claims caused by the sole negligence or willful misconduct of the Consultant.

44. If any action at law or equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement or in any way connected with the performance of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, which fees may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which he may be entitled.

45. Client agrees that in the event Client institutes litigation to enforce or interpret the provisions of this Agreement, such litigation is to be brought and adjudicated in the appropriate court in the county in which Consultant's principal place of business is located, and Client waives the right to bring, try or remove such litigation to any other county or judicial district.

46. (a) Except for the provision of subdivision (b) and subdivision (c), and in an effort to resolve any conflicts that arise during the

design or construction of the project or following the completion of the project, the client and the Consultant agree that all disputes between them arising out of or relating to this Agreement shall be submitted to nonbinding mediation or other form of Alternative Dispute Resolution as agreed to by the parties.

The Client and the Consultant further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and with other successive third parties including but not limited to construction contractors, lenders and homeowner associations and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, subconsultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

(b) Subdivision (a) does not preclude or limit consultant's right to elect to file an action for collection of fees if the amount in dispute is within the jurisdiction of the small claims court.

(c) Subdivision (a) does not preclude or limit consultant's right to elect to perfect or enforce applicable mechanics lien remedies.

47. (a) Notwithstanding any other provision of this Agreement and except for the provisions of (b) and (c), if a dispute arises regarding Consultant's fees pursuant to this contract, and if the fee dispute cannot be settled pursuant to Provision 46, such dispute shall be settled by binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

(b) Subdivision (a) does not preclude or limit Consultant's right to elect to file an action for collection of fees if the amount in dispute is within the jurisdiction of the small claims court.

(c) Subdivision (a) does not preclude or limit Consultant's right to elect to perfect or enforce applicable mechanics lien remedies.

48. Client agrees to reimburse the Consultant for any time and expense incurred for depositions or appearances at any legal proceedings requested by Client or duly authorized attorney, or when required by a subpoena or court action, as may be required from the Consultant performing work under this Agreement. Client agrees to indemnify and reimburse the Consultant for costs and expenses that may result in legal actions taken against the Consultant unless it is determined by a court of law that the Consultant was negligent in his services leading to such action. Consultant shall be paid by Client for such time and expense at his normal charge-out rate for professional services applicable at the time.

49. Any applicable statute of limitations pertaining to all causes of action, latent or patent, shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of Substantial Completion.

50. In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics may vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed underground conditions may occur that could affect total project cost and/or execution. These conditions and cost/execution effects are not the responsibility of Consultant.