

Date: July 29, 2016

File: 7.776.063

Mr. Bill Hansell.  
District Manager  
Muir Beach Community Services  
19 Seacape Drive  
Muir Beach, CA 94965

Sent via email: [bill.hansell@muirbeachcsd.com](mailto:bill.hansell@muirbeachcsd.com)

**RE: MBCSD: SUNSET WAY WATER MAIN  
IMPROVEMENT NEEDS ASSESSMENT**

Dear Bill:

CSW/Stuber-Stroeh Engineering Group, Inc. (CSW|ST2) appreciates the opportunity to present our proposal to provide civil engineering service for the Sunset Way Water Main improvement project located in Muir Beach, California. The following comprises our proposed scope of services, fees, and schedule.

**SCOPE OF SERVICES FOR NEEDS ASSESSMENT**

CSW|ST2 agrees to provide the following professional services as requested and may include but not be limited to the following:

- a. Review project plans to identify immediate needs and opportunities for phasing improvements;
- b. Review Water Master Plan document for consistency with proposed project;
- c. Site Observations to assess existing condition of drainage, pavement, and water facilities;
- d. Review of opportunities for available funding and grants;
- e. Review of service/repair records for integrity and reliability of existing system;
- f. Analysis of annual construction cost increases;
- g. Review fire service needs with local fire;
- h. Cost impacts resulting from emergency repairs;
- i. Hydraulic analysis demonstrating changes to pressure and flow.

We will assist the District with identifying the level of assessment needed to determine when moving forward with the proposed project will best serve the community.

Any services beyond those specifically outlined above will be billed as Additional Services. The inclusion of Additional Services to the Scope of Work will require written amendment to the contract to be signed by the client and CSW|ST2 before the Additional Services are to be provided (see Additional Services section, below).

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**FEES**

CSW|ST2 agrees to provide the services described above on a time and expense basis, in accordance with our current Hourly Rates and Billing Policy, a copy of which is enclosed. We suggest you allow the following initial budget of \$5,000.

Invoices for services rendered will be issued on a monthly basis. Payment terms are net 30 days from the date of the invoice. Late payments are subject to interest charges at the rate of 18% per annum.

Reimbursable costs for printing, supplies, agency submittal/permit fees, travel and other miscellaneous or incidental expenses will be billed in addition to the amounts shown above in accordance with our enclosed Billing Policy.

“Additional Services” that have not been included in this proposal because of undefined or unknown work scope can be added to our scope of work by issuance of a confirmation when the scope is defined. Additional Services will be performed on a time and expense basis or fixed fee based upon a defined scope of work. Additional services will be billed in accordance with our then current Hourly Rates and Billing Policy.

**CLIENT TO PROVIDE**

The following is a list of items to be provided to us in order to perform the above Scope of Services:

- Executed Contract
- Project Manager to serve as single point of contact
- Access to the site
- Payment of all Government, Agency or other fees

**ADDITIONAL SERVICES**

CSW|ST2 agrees to perform all of the items listed in the Scope of Services. However, the following items are excluded from the Scope of Services of this contract. They may be added at the request of the Owner as a revision to this proposal, or under a future proposal or amendment. Fees for these services will be billed on a time and expense basis, in accordance with our then current Hourly Rates and Billing Policy, with a budget estimate provided or for a fixed fee based upon a defined scope of work. Additional items CSW|ST2 can provide include (but are not limited to):

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- Feasibility Studies
- Civil Engineering Design
- Attendance at Public/Neighborhood Meetings

### **EXCLUSIONS**

The following items are specifically excluded from the Scope of Services of this contract. These services are not provided by CSW|ST2. CSW|ST2 would be willing to assist the client in locating a consultant to supply these services.

- Geotechnical Engineering (Investigation, Report, Services)
- Potholing/Excavation for observation

### **SCHEDULE**

CSW|ST2 can begin work immediately after receiving the signed work authorizations, the initialed CSW/Stuber-Stroeh Engineering Group, Inc. Terms and Conditions of Agreement and any Client Provided items listed in this contract.

If this proposal is acceptable, please sign both copies of the enclosed Work Confirmation, complete the attached Request for Project Information form, and initial each of the remaining forms at the bottom of the page. Once all of the forms have been signed, completed, or initialed, please return both sets of documents to our office as your authorization to proceed. We will return a signed set to you for your records.

If you have any questions or wish to modify the Scope of Services, please call me at (415) 883-9850 or contact me via email at [WayneL@cswst2.com](mailto:WayneL@cswst2.com).

CSW|ST2 provides services for a variety of agencies and clientele in this vicinity. To our knowledge, none present a conflict of interest to our serving on this project team. If you have specific concerns, please call and I will provide any additionally required information.

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Thank you for considering CSW | ST2 to assist you in the development of your project. We look forward to working with you and your team.

Sincerely,

CSW/STUBER-STROEH ENGINEERING GROUP, INC.



Wayne F. Leach  
R.C.E. # 54309

WFL:xxx  
Enclosures



## WORK CONFIRMATION

**File Number:** 7.776.063 **Client No.:** **Contact:** Bill Hansell  
**CLIENT NAME:** Muir Beach Community Services District **Phone:** (415) 524-7588  
**Address:** 19 Seacape Drive **Fax:**  
**City, State, Zip:** Muir Beach, CA 94965 **Email:** Bill.hansell@muirbeachcsd.com

**BILLING INFO. (If Different from Client):**

**Bill to Name:** CLIENT **Attn:**  
**Address:** **Phone:**  
**City, State, Zip:** **Fax:**

**PROJECT NAME:** MBCSD: SUNSET WATER MAIN IMPROVEMENT NEEDS ASSESSMENT

**Project Address:** Sunset Way from Hwy 1 to End **City:** Muir Beach  
**Description of Work:** Professional services as described in our revised proposal dated July 29, 2016 (copy attached).  
**Client Will Provide:** Items specified in our revised proposal dated July 29, 2016 (copy attached).  
**Client to be Provided With:** Professional services as described in our revised proposal dated July 29, 2016 (copy attached).  
**Other Comments:**

**BILLING INFORMATION:** **Work will be Invoiced:** Monthly: ☒ Upon Completion: ☐  
**Fixed Fee:** \$ **Budget Estimate:** ☒ \$ 5,000  
**Billing Basis for Proposed Work (Check One):** % Complete: ☐ Hourly Rates\*: ☒ Other (Explain Below): ☐  
**Other Information:**

\*Hourly rates will be in conformity with Hourly Rates and Billing Policy Schedule, effective June 1, 2016, a copy of which is attached and made an integral part of this Agreement.

This proposal is valid for 30 days from the date of the attached Proposal Letter.

IN WITNESS WHEREOF, the parties hereto have accepted, made and executed this agreement upon the terms, conditions, and provisions above stated and on the attached CSW/Stuber-Stroeh Engineering Group, Inc. Contract Terms and Conditions.

Agreed to at Novato, California.

MBCSD

CSW/STUBER-STROEH ENGINEERING GROUP, INC.

By: \_\_\_\_\_

By: \_\_\_\_\_

Wayne F. Leach, R.C.E. # 54309

Date: \_\_\_\_\_

Date: \_\_\_\_\_

PROJECT NO.: 7.776.063

**HOURLY RATES AND BILLING POLICY**

Effective June 1, 2016 the following hourly rates will be charged for services rendered. (Rates subject to change):

CIVIL AND STRUCTURAL ENGINEERING		HOURLY RATES	LAND PLANNING / LANDSCAPE ARCHITECTURE		HOURLY RATES
Principal		\$ 216.00	Principal		\$ 216.00
Engineer Manager		\$ 206.00	Senior Planner	\$ 196.00 -	\$ 206.00
Project Engineer V		\$ 184.00	Planner V		\$ 184.00
Project Engineer IV		\$ 173.00	Planner IV		\$ 168.00
Project Engineer III		\$ 162.00	Planner III	\$ 158.00 -	\$ 162.00
Project Engineer II		\$ 146.00	Planner II		\$ 141.00
Project Engineer I		\$ 141.00	Planner I		\$ 124.00
Senior Engineer	\$ 196.00 -	\$ 206.00	Landscape Architect V		\$ 163.00
Engineer V		\$ 151.00	Landscape Architect IV		\$ 146.00
Engineer IV		\$ 130.00	Landscape Architect III		\$ 125.00
Engineer III		\$ 118.00	Landscape Architect II		\$ 102.00
Engineer II		\$ 102.00	Landscape Architect I		\$ 93.00
Engineer I		\$ 93.00	Landscape Designer III		\$ 113.00
Senior Designer		\$ 173.00	Landscape Designer II		\$ 96.00
Designer V		\$ 141.00	Landscape Designer I		\$ 93.00
Designer IV		\$ 130.00			
Designer III		\$ 118.00			
Designer II		\$ 108.00			
Designer I		\$ 102.00			
Technician IV		\$ 102.00			
Technician III		\$ 98.00			
Technician II		\$ 93.00			
Technician I		\$ 78.00			
Project Assistant II		\$ 81.00			
Project Assistant I		\$ 71.00			
SURVEYING		HOURLY RATES	ENVIRONMENTAL PLANNING		HOURLY RATES
Survey Supervisor		\$ 183.00	Senior Environmental Planner		\$ 155.00
Project Surveyor		\$ 162.00	Environmental Planner II		\$ 135.00
Survey Technician		\$ 108.00	Environmental Planner I		\$ 124.00
Two-Man Survey Party		\$ 250.00			

Expert Witness / Arbitration Services are available at a negotiated rate.

All expenses for transportation will be charged at cost plus service charges at the rate of 10%.

Filing fees, checking fees, prints, and other outside costs (such as agency submittal/permit fees etc.) will be charged at cost, plus service charges at the rate of 10%.

Billing will be monthly. Invoices are due and payable upon presentation. Interest at the rate of 1.5% per month commencing thirty (30) days after invoice date will be charged on delinquent accounts.

CSW/Stuber-Stroeh Engineering Group, Inc. reserves the right to suspend work on any project when invoices have not been paid within thirty (30) days after having been rendered.

Client Initials	Consultant Initials

## CSW/STUBER-STROEH CONTRACT TERMS AND CONDITIONS

**Project No.: 7.776.063**

**MBCSD (Client) and CSW/Stuber-Stroeh Engineering Group, Inc. (Consultant)** agree that the following provisions shall be part of this agreement (this Agreement):

1. Client and Consultant agree to cooperate with each other in order to fulfill their responsibilities and obligations under this Agreement. Both Client and Consultant shall endeavor to maintain good working relationships among members of the project team.
2. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of Client and Consultant.
3. This Agreement shall not be assigned by either Client or Consultant without the prior written consent of the other.
4. This Agreement contains the entire Agreement between Client and Consultant relating to the project and the provision of services for the project. Any prior Agreements, 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.
5. Consultant's or Client's waiver of any term, condition or covenant shall not constitute the waiver of any other term, condition or covenant. Consultant's or Client's waiver of any breach of this Agreement shall not constitute the waiver of any other breach of the Agreement.
6. 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.
7. This Agreement shall be governed by and construed in accordance with the laws of the State of California.
8. If the scope of services includes Consultant's assistance in applying for governmental permits or approvals, Consultant's assistance shall not constitute a representation, warranty or guarantee that such permits or approvals will be acted upon favorably by any governmental agency.
9. Upon Consultant's request, Client shall execute and deliver, or cause to be executed and delivered, such additional information, documents or money to pay governmental fees and charges which are necessary for Consultant to perform services pursuant to the terms of this Agreement.
10. Client acknowledges all reports, plans, specifications, field data and notes and other documents, including all documents on electronic media, prepared by Consultant are instruments of service, and shall remain the property of Consultant and may be used by Consultant without the consent of Client. Upon request and payment of all costs involved, Client is entitled to a copy of all final plans and specifications for use in connection with the project for which the plans and specifications have been prepared. Client acknowledges that its right to utilize final plans and specifications and the services of Consultant 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, and Client has performed all its obligations under this Agreement.
11. Client agrees not to use or permit any other person to use plans, specifications, drawings, cost estimates, reports or other documents prepared by Consultant which plans, specifications, drawings, cost estimates, reports or other documents are not final and which are not signed and stamped or sealed by Consultant. Client shall be responsible for any such use of non-final plans, specifications, drawings, cost estimates, reports or other documents not signed and stamped or sealed by Consultant. Client hereby waives any claim for liability against Consultant for such use and shall defend, indemnify, and hold harmless Consultant for any such claims by third parties. Client further agrees that final plans, specifications, drawings, cost estimates, reports or other documents are for the exclusive use of Client and may be used by Client only



for the project described on Page 1 of 8 of this Agreement. Such final plans, specifications, drawings, cost estimates, reports or other documents may not be changed or used on a different project without written authorization or approval by Consultant. If signed check-prints are required to be submitted with a stamp or seal, they shall not be considered final for purposes of this Paragraph.

12. In accepting and utilizing any drawings, reports and data on any form of electronic media generated and furnished by Consultant, Client covenants and agrees that all such electronic files are instruments of service of Consultant, who shall be deemed the author, and shall retain all common law, statutory law and other rights, including copyrights.

Client agrees not to reuse these electronic files, in whole or in part, for any purpose or project other than the project that is the subject of this Agreement. Client agrees not to transfer these electronic files to others without the prior written consent of Consultant. Client further agrees to waive all claims against Consultant resulting in any way from any unauthorized changes or reuse of the electronic files for any other project by anyone other than Consultant.

Client and Consultant agree that any electronic files furnished by either party shall conform to the CADD specifications listed in Exhibit for **AutoCAD Civil 3D**. Any changes to the CADD specifications by either Client or Consultant are subject to review and acceptance by the other party. Additional services by Consultant made necessary by changes to the CADD or other software specifications shall be compensated for as additional services.

Electronic files furnished by either party shall be subject to an acceptance period of fifteen (15) days during which the receiving party agrees to perform appropriate acceptance tests. The party furnishing the electronic file shall correct any discrepancies or errors detected and reported within the acceptance period. After the acceptance period the electronic files shall be deemed to be accepted and neither party shall have any obligation to correct errors or maintain electronic files.

Client is aware that differences may exist between the electronic files delivered and the printed hard copy construction documents. In the event of a conflict between the signed construction documents prepared by Consultant and electronic files, the signed and stamped or sealed hard copy construction documents shall govern.

In addition, Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Consultant, its officers, directors, employees, agents and subconsultants against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from any changes made by anyone other than Consultant or from any reuse of the electronic files without the prior written consent of Consultant.

Under no circumstances shall delivery of electronic files for use by Client be deemed a sale by Consultant, and Consultant makes no warranties, either express or implied, of merchantability and fitness for any particular purpose. In no event shall Consultant be liable for indirect or consequential damages as a result of Client's use or reuse of the electronic files.

13. Consultant makes no representations concerning soils or geological conditions unless specifically included in writing in this Agreement, or by amendments to this Agreement, and shall not be responsible for any liability that may arise out of the making of or failure to make soils or geological surveys, subsurface soils or geological tests, or general soils or geological testing.
14. Client acknowledges Consultant has the right to complete all services agreed to be rendered pursuant to this Agreement. In the event this Agreement is terminated before the completion of all services, unless Consultant is solely 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 by Consultant are suspended, abandoned, or otherwise terminated, Client shall pay Consultant all fees and charges for services provided prior to termination, not to exceed the contract limits specified herein, if any. 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 pursuant to Paragraph 29. Client acknowledges if project services are terminated for the convenience of Client, Consultant is entitled to reasonable termination costs and expenses, to be paid by Client as extra services pursuant to Paragraph 29.
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 ALTA survey statements attached to this Agreement and incorporated herein by reference. In the event Consultant is required to sign a statement or certificate which differs from the ALTA



survey statements contained in the attachment to this Agreement, 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 to this Agreement.

16. If the scope of services to be provided by Consultant pursuant to the terms of this Agreement includes the preparation of grading plans but excludes construction staking services, Client acknowledges that such staking services normally include coordinating civil engineering services and the preparation of record drawings based upon information provided by others, and Client will be required to retain such services from another consultant or pay Consultant pursuant to this Agreement for such services as extra services in accordance with Paragraph 29.
17. Unless the scope of services to be provided by Consultant expressly includes Consultant's assistance in determinations regarding the application of prevailing wages, Client and Consultant acknowledge that it is Client's exclusive responsibility to determine whether the project, which is the subject of this Agreement, is a "public work" as defined in California Labor Code Section 1720, or whether prevailing wage rates are to be paid to certain workers in connection with the project, or determine the rate of prevailing wages to be paid certain workers. Consultant will develop its schedule of labor rates in reliance on the determinations of Client. In the event of a dispute regarding whether the project is a "public work", whether prevailing wages are to be paid, or the amount of prevailing wages to be paid to individual workers, Client agrees to pay Consultant for any and all additional costs and expenses (including additional wages, penalties & interest) incurred by Consultant and further agrees to the maximum extent permitted by law to defend, indemnify and hold harmless Consultant, its officers, directors, employees, agents and subconsultants from all damages, liabilities or costs, including reasonable attorneys' fees and costs, arising from or related to the Client's determinations regarding the application of or payment of prevailing wages.
18. If the scope of services contained in this Agreement does not include construction-phase services for this project, Client acknowledges such construction-phase services will be provided by Client or by others and Client assumes all responsibility for interpretation of the contract documents and for construction observation and supervision and waives any claim against Consultant that may in any way be connected thereto. In addition, Client agrees to indemnify and hold Consultant harmless from any loss, claim, or cost, including reasonable attorneys' fees and costs of defense, arising or resulting from the performance of such services by other persons or entities and from any and all claims arising from the modification, clarification, interpretation, adjustments or changes made to the contract documents to reflect changed field or other conditions, except for claims arising from the sole negligence or willful misconduct of Consultant.
19. If the scope of work of Consultant includes the rendition of professional services for a project which is a common interest development subject to the provisions of Civil Code section 1375, Client agrees to reimburse Consultant for all costs associated with Consultant's participation in the pre-litigation process described in Civil Code Section 1375. Further, Client agrees to pay Consultant's fees for time incurred participating in the pre-litigation process. These fees and costs shall be paid as extra services in accordance with Paragraph 29. Such extra services shall be paid at Consultant's normal hourly rates in effect at the time Consultant participates in the pre-litigation process. For purposes of this Paragraph, a "common interest development" shall be a common interest development as defined in Civil Code section 1375.

Client agrees, to the maximum extent permitted by law, to defend, indemnify and hold harmless Consultant, its officers, directors, employees, agents and subconsultants from all damages, liabilities or costs, including reasonable attorneys' fees and costs, arising from or related to Consultant's participation in the pre-litigation process pursuant to Civil Code section 1375.

Client agrees that if Client receives a Notice of Commencement of Legal Proceedings pursuant to Civil Code section 1375, Client will notify Consultant within 10 days of Client's receipt of the Notice of Commencement of Legal Proceedings, provided the Notice of Commencement of Legal Proceedings either identifies Consultant as a potentially responsible party or the face of the Notice contains information which identifies Consultant's potential responsibility. If Client does not timely notify Consultant, then Client agrees, to the maximum extent permitted by law, to defend, indemnify and hold harmless Consultant, its officers, directors, employees, agents and subconsultants from all damages, liabilities or costs, including reasonable attorneys' fees and costs, arising from or related to Client's failure to timely notify Consultant.

20. 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. If the suspension of performance of Consultant's obligation pursuant to this Agreement continues for a period in excess of ninety (90) days, Consultant shall have the right to terminate all services pursuant to this Agreement.
21. This Agreement shall not be construed to alter, affect or waive any design professional's lien, mechanic's lien or stop notice right which Consultant may have for the performance of services pursuant to this Agreement. Client agrees to provide to Consultant the present name and address of the record owner of the property upon which the project is to be located. Client also agrees to provide Consultant with the name and address of any and all lenders who may loan money on the project and who are entitled to receive a preliminary notice.
22. 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 to receiving payment for services.
23. The Consultant shall not be required to execute any documents subsequent to the signing of this Agreement that in any way might, in the judgment of the Consultant, increase the Consultant's contractual or legal obligations or risk, or adversely affect the availability or cost of its professional or general liability insurance. Nor shall Consultant be required to sign any documents, requested by any party, including the Client, that would result in the Consultant's having to certify, guarantee, warrant or state the existence of conditions whose existence the Consultant cannot ascertain. The Client also agrees not to make resolution of any dispute with the Consultant or payment of any money due to the Consultant, in any way contingent upon the Consultant's signing any such certification, guarantee, warranty or statement.
24. All fees and other charges due Consultant will be billed monthly and shall be due at the time of billing unless specified otherwise in this Agreement. If Client fails to pay Consultant within thirty (30) days after invoices are rendered, Consultant shall have the right in its sole discretion to consider such default in payment a material breach of this entire Agreement, and, upon written notice, Consultant's duties, obligations and responsibilities under this Agreement may be suspended or terminated. In such event, Client shall promptly pay Consultant for all outstanding fees and charges due Consultant at the time of suspension or termination. If Consultant elects to suspend or terminate Consultant's services pursuant to this provision, Consultant is entitled to reasonable suspension or termination costs or expenses.
25. Client agrees that all billings from Consultant to Client are correct 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 billing.
26. Client agrees to pay a monthly late payment charge, which will be the lesser of one and one-half percent (1-1/2%) 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 billing.
27. If Consultant, pursuant to this Agreement, produces plans, specifications, or other documents and/or performs field services, and such plans, specifications, or other documents and/or field services are required by any governmental agency, and such governmental agency changes its ordinances, codes, 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 in accordance with Paragraph 29.
28. 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 increase in the cost of living, during the lifetime of this Agreement, a percentage increase shall be applied to all remaining fees and charges to reflect the increased costs.

29. Client agrees that if Client requests services not specified in the scope of services described in this Agreement, Client will pay for all such additional services as extra services pursuant to this Agreement, in accordance with Consultant's billing rates utilized for this Agreement.
30. In the event that any staking or record monuments are 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 in accordance with Paragraph 29.
31. 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. Such clarifications, adjustments, modifications and other changes shall be paid for by Client as extra services in accordance with Paragraph 29.
32. Client shall pay the costs of all checking and inspection fees, zoning and annexation application fees, assessment fees, soils or geotechnical engineering fees, soils or geotechnical 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 similar charges not specifically covered by the terms of this Agreement.
33. 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, or a Corner Record pursuant to Business and Professions Code section 8773, all of the costs of preparation, examination and filing for the Record of Survey or Corner Record will be paid by Client as extra services in accordance with Paragraph 29
34. 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 instruments of service promptly, faulty performance by Client or other contractors or governmental agencies. When such delays beyond Consultant's reasonable control occur, Client agrees Consultant shall not be responsible for damages nor shall Consultant be deemed to be in default of this Agreement. Further, when such delays occur, Client agrees that, to the extent such delays cause the Consultant to perform extra services, such services shall be paid for by Client as extra services in accordance with Paragraph 29.
35. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Client nor the Consultant, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other incidental, indirect or consequential damage that either party may have incurred from any cause or action.
36. 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. Client agrees that it is the responsibility of Client to maintain in good standing all governmental approvals or permits and to timely apply for any necessary extensions thereof.
37. If the scope of services requires Consultant to estimate quantities, such estimates are made on the basis of Consultant's experience and qualifications and represent Consultant's judgment as a professional generally familiar with the industry. However, such estimates are only estimates and shall not constitute representations, warranties or guarantees of the quantities of the subject of the estimate. If the scope of services requires Consultant to provide its opinion of probable construction costs, such opinion is to be made on the basis of Consultant's experience and qualifications and represents Consultant's best judgment as to the probable construction costs. However, since Consultant has no control over costs or the price of labor, equipment or materials, or over the contractor's method of pricing, such opinions of probable construction costs do not constitute representations, warranties or guarantees of the accuracy of such opinions, as compared to bid or actual costs.



38. Estimates of land areas provided under this Agreement are not intended to be, nor should they be considered to be, precise. The estimate will be performed pursuant to generally accepted standards of professional practice in effect at the time of performance.
39. 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.
40. Consultant makes no warranty, either express or implied, as to its findings, recommendations, plans, specifications, or professional advice except that the services were performed pursuant to generally accepted standards of professional practice in effect at the time of performance.
41. In the event (1) Client agrees to, authorizes, or permits changes in the plans, specifications or documents prepared by Consultant, which changes are not consented to in writing by Consultant, or (2) Client agrees to, authorizes or permits construction of unauthorized changes in the plans, specifications or documents prepared by Consultant, which changes are not consented to in writing by Consultant, or (3) Client does not follow recommendations prepared by Consultant pursuant to this Agreement, which changed recommendations are not consented to in writing by Consultant: Client acknowledges that the unauthorized 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, agents, employees and subconsultants from and against all claims, demands, damages or costs, including attorneys' fees, arising from the unauthorized changes.
42. Client agrees that in accordance with generally accepted construction practices, the construction contractor and construction subcontractors 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, and that this requirement shall apply continuously and not be limited to normal working hours. Neither the professional activities of Consultant nor the presence of Consultant or his or her employees or subconsultants at a construction site shall relieve the contractor and its subcontractors of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the work of construction in accordance with the contract documents and applicable health or safety requirements of any regulatory agency or of state law.
43. Client agrees to require its contractor and subcontractors to review the plans, specifications and documents prepared by Consultant prior to the commencement of construction-phase work. If the contractor and/or subcontractors determine there are deficiencies, conflicts, errors, omissions, code violations, improper uses of materials, or other deficiencies in the plans, specifications and documents prepared by Consultant, contractors and subcontractors shall notify Client so those deficiencies may be corrected by Consultant prior to the commencement of construction-phase work.
44. If during the construction phase of the project Client discovers or becomes aware of changed field or other conditions which necessitate clarifications, modifications or other changes to the plans, specifications, estimates or other documents prepared by Consultant, Client agrees to notify Consultant and retain Consultant to prepare the necessary changes or modifications before construction activities proceed. Further, Client agrees to require a provision in its construction contracts for the project which requires the contractor to promptly notify Client of any changed field or other conditions so that Client may in turn notify Consultant pursuant to the provisions of this Paragraph. Any extra work performed by Consultant pursuant to this Paragraph shall be paid for as extra services pursuant to Paragraph 29.
45. Client agrees to purchase and maintain, or cause Contractor to purchase and maintain, during the course of construction, builder's risk "all risk" insurance which will name Consultant as an additional named insured as its interest may appear.
46. 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, suspend or terminate work on the project until such time as Client retains a qualified 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.

47. Client hereby agrees to bring no cause of action on any basis whatsoever against Consultant, its officers and directors, principals, employees, agents and subconsultants if such claim or cause of action in any way would involve 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 any hazardous or toxic materials. Client further agrees to defend, indemnify and hold harmless Consultant, its officers, directors, principals, employees and subconsultants 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 Consultant pursuant to this Agreement, except claims caused by the sole negligence or willful misconduct of Consultant.
48. Client agrees to defend, indemnify and hold harmless Consultant, its officers, directors, principals, employees and subconsultants from and against all claims, losses, damages and cost caused by, arising out of, or relating to, the presence of any fungus, mildew, mold or resulting allergens, provided that such claim, loss, damage or cost is not due to the sole negligence or willful misconduct of Consultant.
49. In the event of any litigation arising from or related to the services provided under this Agreement, the prevailing party will be entitled to recovery of all reasonable costs incurred, including staff time, court costs, attorneys' fees, experts' fees and other related expenses up to a maximum of \$50,000.
50. Client agrees that in the event Consultant 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 place of business is located, and Client waives the right to bring, try or remove such litigation to any other county or judicial district.
51. (a) Except as provided in subdivisions (b) and (c), in an effort to resolve any conflicts that arise during the design or construction of the project or following completion of the project, Client and Consultant agree that all disputes between them arising out of or relating to this Agreement shall be submitted to nonbinding mediation, unless the parties mutually agree otherwise.  
  
Client and Consultant further agree to include a similar mediation provision in all Agreements with independent contractors and consultants retained for the project 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) shall not preclude or limit Consultant's right 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) shall not preclude or limit Consultant's right to record, perfect or enforce applicable mechanic's lien or stop notice remedies.
52. Client agrees to limit the liability of Consultant, its principals, employees and 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.
53. This Agreement, and any and all obligations and services contained in this Agreement, is intended for the sole benefit of the Parties, and is not intended to create any rights in or responsibilities to any third parties except as expressly agreed to in writing by both Parties.
54. Consultant's services shall be performed consistent with the prevailing standard of care and skill ordinarily exercised by similarly-situated design professionals acting with reasonable care under similar circumstances at the same time and place. Client acknowledges that this standard is not a warranty or guaranty of perfection and that choices, revisions, and progressive completion and clarifications are an expected part of any design and construction process.
55. Client shall provide Consultant with all available and relevant project information at the outset of the Project, and as promptly as such information is received during the course of the Project. Such information shall include, but not be limited to:

- Property history including construction, maintenance, and repair;
- Records of as-built conditions, surveys and inspections;
- Project program; and
- Project constraints such as financing and schedule

Consultant shall be entitled to rely on the completeness and accuracy of any such information received from Client except to the extent Consultant knows it to be inaccurate. Consultant shall have no responsibility or liability for any inefficiencies or deficiencies related to or resulting from information which was available to Client but not provided to Consultant, and may be entitled to additional compensation in the event such information is provided after the start of services.

56. Client shall provide all necessary project consultants and professionals, except where expressly provided in this Agreement. Consultant may rely on the accuracy and completeness of the work product and information provided by each such Client-retained consultant, except where Consultant knows the information to be incorrect. Consultant shall coordinate its portion of the Project with the Client-retained consultants, but only for consistency with the Consultant's work product. Consultant shall not be responsible for the content of the Client-retained consultant's work product or errors, omissions, or other deficiencies therein.
57. Client and Consultant agree that inspection, maintenance, and normal repair are the exclusive obligation of the owner of a structure. Consultant shall have no responsibility for the inspection, maintenance, and normal repair of any portion of the Project, and shall have no financial or other responsibility for damages arising out of the failure to inspect, maintain, or repair the Project.
58. Client shall require all contractors and subcontractors to defend, indemnify, and hold harmless Client and Consultant from any and all claims, losses, suits, damages, and liabilities, including attorney's fees and costs, arising in any way from such contractors' or subcontractors' services or work product, except to the extent caused by Consultant's sole negligence.
59. Consultant agrees to provide services on this project due to Client's assurance that the project shall not now or in the future become a condominium. In the event that the project is converted into condominiums, the following provisions will apply:

To the maximum extent permitted by law, Client shall indemnify, assume the defense of and hold harmless the Consultant, its agents, employees and consultants from and against any and all liability including but not limited to all attorney fees and other costs of defense, arising out of or alleged to arise out of or in any way connected with the project which is the subject of this contract or the activities carried out pursuant to this contract, or from conditions pre-existing at said project including the concurrent negligence of the Consultant, its agents, employees and consultants, excepting only such claims or losses determined by a court or other forum of competent jurisdiction to arise out of the sole negligence or willful misconduct of the party seeking indemnification hereunder. This provision shall survive termination of this Agreement.

## **NOTE:**

This should not be considered as legal advice. Consult your attorney for application of this language to any specific contract or project. Note also that the terms "Client" and "Consultant" are used above. Make sure you use the actual terms used in the rest of the Agreement to identify the parties.

*Additional pages may be included for additional provisions as agreed upon by both the client and consultant.*