

**AGREEMENT
BETWEEN OWNER AND LANDSCAPE ARCHITECT
FOR
PROFESSIONAL SERVICES**

TASK ORDER EDITION

THIS IS AN AGREEMENT effective as of _____ (“Effective Date”) between

Southern Sandoval County Arroyo Flood Control Authority _____ (“Owner”) and

_____ (“Engineer”).

From time to time Owner may request that Landscape Architect provide professional services for Specific Projects. Each engagement will be documented by a Task Order. This Agreement sets forth the general terms and conditions which shall apply to all Task Orders duly executed under this Agreement.

Owner and Landscape Architect further agree as follows:

ARTICLE 1 – SERVICES OF LANDSCAPE ARCHITECT

1.01 *Scope*

- A. Landscape Architect’s services will be detailed in a duly executed Task Order for each Specific Project. The general format of a Task Order is shown in Attachment 1 to this Agreement. Each Task Order will indicate the specific services to be performed and deliverables to be provided. Basic and Additional Services that may be included in a Task Order are set forth in Exhibit A, "Landscape Architect's Services."
- B. This Agreement is not a commitment by Owner to Landscape Architect to issue any Task Orders.
- C. Landscape Architect shall not be obligated to perform any prospective Task Order unless and until Owner and Landscape Architect agree as to the particulars of the Specific Project, including the scope of Landscape Architect's services, time for performance, Landscape Architect's compensation, and all other appropriate matters.

1.02 *Task Order Procedure*

- A. Owner and Landscape Architect shall agree on the scope, time for performance, and basis of compensation for each Task Order. Each duly executed Task Order shall be subject to the terms and conditions of this Agreement.
- B. Landscape Architect will commence performance as set forth in the Task Order.

ARTICLE 2 – OWNER’S RESPONSIBILITIES

2.01 *General*

- A. Owner shall have the responsibilities set forth herein, in Exhibit B, "Owner's Responsibilities," and in each Task Order.
- B. Owner shall compensate Landscape Architect as set forth in each Task Order, pursuant to the applicable terms of Exhibit C.
- C. Owner shall be responsible for, and Landscape Architect may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner to Landscape Architect pursuant to this Agreement. Landscape Architect may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement.

ARTICLE 3 – TERM; TIMES FOR RENDERING SERVICES

3.01 *Term*

- A. This Agreement shall be effective and applicable to Task Orders issued hereunder for one (1) year from the Effective Date of the Agreement.
- B. The parties may extend or renew this Agreement annually, with or without changes, by written instrument establishing a new term, for up to three (3) additional years.

3.02 *Times for Rendering Services*

- A. The times for performing services or providing deliverables will be stated in each Task Order. If no times are so stated, Landscape Architect will perform services and provide deliverables within a reasonable time.
- B. If, through no fault of Landscape Architect, such periods of time or dates are changed, or the orderly and continuous progress of Landscape Architect’s services is impaired, or Landscape Architect’s services are delayed or suspended, then the time for completion of Landscape Architect’s services, and the rates and amounts of Landscape Architect’s compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Specific Project, then the time for completion of Landscape Architect’s services, and the rates and amounts of Landscape Architect’s compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Landscape Architect’s performance of its services.
- E. If Landscape Architect fails, through its own fault, to complete the performance required in a Task Order within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.
- F. With respect to each Task Order, the number of Construction Contracts for Work designed or specified by Landscape Architect upon which the Landscape Architect's compensation has been

established shall be identified in the Task Order. If the Work designed or specified by Landscape Architect under a Task Order is to be performed or furnished under more than one prime contract, or if Landscape Architect's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), then Owner and Landscape Architect shall, prior to commencement of final design services, develop a schedule for performance of Landscape Architect's remaining services in order to sequence and coordinate properly such services as are applicable to the work under such separate Construction Contracts. This schedule is to be prepared and included in or become an amendment to the authorizing Task Order whether or not the work under such contracts is to proceed concurrently.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 *Invoices*

- A. *Preparation and Submittal of Invoices:* Landscape Architect shall prepare invoices in accordance with its standard invoicing practices, the terms of Exhibit C, and the specific Task Order. Landscape Architect shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 *Payments*

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Landscape Architect and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Landscape Architect for services and expenses within 30 days after receipt of Landscape Architect's invoice, then:
 - 1. the compounded amount due Landscape Architect will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and
 - 2. Landscape Architect may, after giving seven days written notice to Owner, suspend services under any Task Order issued until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Landscape Architect for any such suspension.
- C. *Disputed Invoices:* If Owner contests an invoice, Owner may withhold only that portion so contested, and must pay the undisputed portion.
- D. *Legislative Actions:* If after the Effective Date of a Task Order any governmental entity takes a legislative action that imposes sales or use taxes, fees, or charges on Landscape Architect's services or compensation under the Task Order, then the Landscape Architect may invoice such new taxes, fees, or charges as a Reimbursable Expense to which a factor of 1.0 shall be applied. Owner shall reimburse Landscape Architect for the cost of such invoiced new taxes, fees, and charges; such reimbursement shall be in addition to the compensation to which Landscape Architect is entitled under the terms of Exhibit C and the specific Task Order.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. Landscape Architect's opinions of probable Construction Cost are to be made on the basis of Landscape Architect's experience and qualifications and represent Landscape Architect's estimate as an experienced and qualified professional generally familiar with the construction industry. However, because Landscape Architect has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Landscape Architect cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Landscape Architect. If Owner requires greater assurance as to probable Construction Cost, Owner must employ an independent cost estimator as provided in Exhibit B.

5.02 *Designing to Construction Cost Limit*

- A. If a Construction Cost limit for a Specific Project is established between Owner and Landscape Architect in a Task Order, Landscape Architect's rights and responsibilities with respect thereto will be governed by Exhibit F, "Construction Cost Limit," to this Agreement.

5.03 *Opinions of Total Project Costs*

- A. The services, if any, of Landscape Architect with respect to Total Project Costs for a Specific Project shall be limited to assisting the Owner in collating the various cost categories which comprise Total Project Costs. Landscape Architect assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional landscape architects and related services performed or furnished by Landscape Architect under this Agreement will be the care and skill ordinarily used by members of the subject profession. Landscape Architect makes no warranties, express or implied, under this Agreement or otherwise, in connection with Landscape Architect's services.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Landscape Architect's services. Landscape Architect shall correct deficiencies in technical accuracy without additional compensation unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Landscape Architect shall serve as Owner's prime professional under each Task Order. Landscape Architect may employ such Consultants as Landscape Architect deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Landscape Architect and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

- E. *Compliance with Laws and Regulations, and Policies and Procedures:* Landscape Architect and Owner shall comply with applicable Laws and Regulations.
1. Prior to the Effective Date of each Task Order, Owner shall provide to Landscape Architect in writing any and all policies and procedures of Owner applicable to Landscape Architect's performance of services under such Task Order. Landscape Architect shall comply with such policies and procedures pursuant to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
 2. Each Task Order is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date of such Task Order. Changes after the Effective Date to these Laws and Regulations, or to Owner-provided written policies and procedures, may be the basis for modifications to Owner's responsibilities or to Landscape Architect's scope of services, times of performance, or compensation.
- F. Landscape Architect shall not be required to sign any documents, no matter by whom requested, that would result in Landscape Architect having to certify, guarantee, or warrant the existence of conditions whose existence Landscape Architect cannot ascertain within its services for that Specific Project. Owner agrees not to make resolution of any dispute with Landscape Architect or payment of any amount due to the Landscape Architect in any way contingent upon Landscape Architect signing any such certification.
- G. The General Conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2007 Edition) unless both parties mutually agree in a Task Order to use other General Conditions.
- H. Landscape Architect shall not at any time supervise, direct, control, or have authority over any contractor work, nor shall Landscape Architect have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a contractor to comply with Laws and Regulations applicable to such contractor's furnishing and performing of its work.
- I. Landscape Architect neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- J. Landscape Architect shall not provide or have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or for enforcement of construction insurance or surety bonding requirements.
- K. Landscape Architect shall not be responsible for the acts or omissions of any Contractor, Subcontractor, or Supplier, or of any of their agents or employees or of any other persons (except Landscape Architect's own employees and its Consultants) at a Site or otherwise furnishing or performing any of a Contractor's work; or for any decision made regarding the Contract Documents, or any application, interpretation, or clarification of the Contract Documents other than those made by Landscape Architect.

- L. While at a Site, Landscape Architect's employees and representatives shall comply with the specific applicable requirements of Contractor's and Owner's safety programs of which Landscape Architect has been informed in writing.

6.02 *Design Without Construction Phase Services*

- A. For each design performed or furnished, Landscape Architect shall be responsible only for those Construction Phase services that have been itemized and expressly required of Landscape Architect in the authorizing Task Order. With the exception of such expressly required services, Landscape Architect shall have no design, shop drawing review, or other obligations during construction and Owner assumes all responsibility for the application and interpretation of the Contract Documents, contract administration, construction observation and review, and all other necessary Construction Phase and professional services. Owner waives all claims against the Landscape Architect that may be in any way connected to Construction Phase professional services except for those services that are expressly required of Landscape Architect in the authorizing Task Order.

6.03 *Use of Documents*

- A. All Documents are instruments of service in respect to a Specific Project, and Landscape Architect shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Landscape Architect) whether or not the Specific Project is completed. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Landscape Architect or one of its Consultants.
- B. Either party to this Agreement may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.
- D. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.
- E. Owner may make and retain copies of Documents for information and reference in connection with use on the Specific Project by Owner. Landscape Architect grants Owner a limited license to use the Documents on the Specific Project, extensions of the Specific Project, and for related uses of the Owner, subject to receipt by Landscape Architect of full payment for all services relating to preparation of the Documents and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Specific Project unless completed by Landscape Architect, or for use or reuse by Owner or others on extensions of the Specific Project, on any other project, or for any other use or purpose, without written

verification or adaptation by Landscape Architect; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Landscape Architect, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Landscape Architect or its Consultants; (3) Owner shall indemnify and hold harmless Landscape Architect and Landscape Architect's Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Landscape Architect; and (4) such limited license to Owner shall not create any rights in third parties.

- F. If Landscape Architect at Owner's request verifies or adapts the Documents for extensions of the Specific Project or for any other purpose, then Owner shall compensate Landscape Architect at rates or in an amount to be agreed upon by Owner and Landscape Architect.

6.04 *Insurance*

- A. At all times when any Task Order is under performance, Landscape Architect shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Landscape Architect shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Landscape Architect which is applicable to a Specific Project.
- B. At all times when any Task Order is under performance, Owner shall procure and maintain insurance as set forth in Exhibit G.
- C. Owner shall require Contractors to purchase and maintain policies of insurance covering workers' compensation, general liability, property damage (other than to the Work itself), motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Landscape Architect's interests in the Project. Owner shall require Contractor to cause Landscape Architect and its Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractors.
- D. Owner and Landscape Architect shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Landscape Architect's services under any Task Order and at renewals thereafter during the life of this Agreement.
- E. All policies of property insurance relating to a Specific Project shall contain provisions to the effect that Landscape Architect's and Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Landscape Architect or its Consultants, or any insureds, additional insureds, or loss payees thereunder.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 30 days prior written notice has been given to Owner and Landscape Architect and to each other additional insured (if any) to which a certificate of insurance has been issued.
- G. Under the terms of any Task Order, or after commencement of performance of a Task Order, Owner may request that Landscape Architect or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Landscape

Architect shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner.

6.05 *Suspension and Termination*

A. *Suspension*

1. *By Owner:* Owner may suspend a Task Order upon seven days written notice to Landscape Architect.
2. *By Landscape Architect:* If Landscape Architect's services are substantially delayed through no fault of Landscape Architect, then Landscape Architect may, after giving seven days written notice to Owner, suspend services under a Task Order.

B. *Termination:* The obligation to provide further services under this Agreement, or under a Task Order, may be terminated:

1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement or any Task Order through no fault of the terminating party.
 - b. By Landscape Architect:
 - 1) upon seven days written notice if Owner demands that Landscape Architect furnish or perform services contrary to Landscape Architect's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Landscape Architect's services under a Task Order are delayed or suspended for more than 90 days for reasons beyond Landscape Architect's control.
 - 3) Landscape Architect shall have no liability to Owner on account of such termination.
 - c. Notwithstanding the foregoing, neither this Agreement nor the Task Order will terminate under Paragraph 6.05.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
2. For convenience,
 - a. By Owner effective upon Landscape Architect's receipt of notice from Owner.

- C. *Effective Date of Termination:* The terminating party under Paragraph 6.05.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Landscape Architect to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Task Order materials in orderly files.
- D. *Payments Upon Termination:*
1. In the event of any termination under Paragraph 6.05, Landscape Architect will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.E.
 2. In the event of termination by Owner for convenience or by Landscape Architect for cause, Landscape Architect shall be entitled, in addition to invoicing for those items identified in Paragraph 6.05.D.1, to invoice Owner and to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Landscape Architect's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.06 *Controlling Law:*

- A. This Agreement is to be governed by the law of the state or jurisdiction in which the Specific Project is located.

6.07 *Successors, Assigns, and Beneficiaries:*

- A. Owner and Landscape Architect each is hereby bound and the successors, executors, administrators, and legal representatives of Owner and Landscape Architect (and to the extent permitted by Paragraph 6.07.B the assigns of Owner and Landscape Architect) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.
- B. Neither Owner nor Landscape Architect may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Landscape Architect to any Contractor, Subcontractor, Supplier, other individual or entity, or to any surety for or employee of any of them.

2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Landscape Architect and not for the benefit of any other party.
3. The Owner agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in any Contract Documents prepared for any Specific Project under this Agreement.

6.08 *Dispute Resolution:*

- A. Owner and Landscape Architect agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights under law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.08.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights under law.

6.09 *Environmental Condition of Site:*

- A. With respect to each Task Order, Specific Project, and Site:
 1. Owner has disclosed to Landscape Architect in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.
 2. Owner represents to Landscape Architect that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Landscape Architect, exist at the Site.
 3. If Landscape Architect encounters or learns of an undisclosed Constituent of Concern at the Site, then Landscape Architect shall notify (a) Owner and (b) appropriate governmental officials if Landscape Architect reasonably concludes that doing so is required by applicable Laws or Regulations.
 4. It is acknowledged by both parties that Landscape Architect's scope of services does not include any services related to Constituents of Concern. If Landscape Architect or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Landscape Architect may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Specific Project affected thereby until Owner: (1) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
 5. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Landscape Architect's services under this Agreement, then the Landscape Architect shall have the option of (a) accepting an equitable adjustment in

its compensation or in the time of completion, or both; or (b) terminating this Agreement for cause on 30 days notice.

6. Owner acknowledges that Landscape Architect is performing professional services for Owner and that Landscape Architect is not and shall not be required to become an “owner,” “arranger,” “operator,” “generator,” or “transporter” of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Landscape Architect’s activities under this Agreement.

6.10 *Indemnification and Mutual Waiver*

- A. *Indemnification by Landscape Architect:* To the fullest extent permitted by law, Landscape Architect shall indemnify and hold harmless Owner, and Owner’s officers, directors, members, partners, agents, consultants, and employees from reasonable claims, costs, losses, and damages arising out of or relating to this Agreement, any Task Order, or any Specific Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Landscape Architect or Landscape Architect’s officers, directors, members, partners, agents, employees, or Consultants. **This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Landscape Architect in Exhibit I, “Limitations of Liability.”**
- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Landscape Architect and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations and to the extent (if any) required in Exhibit I, Limitations of Liability.
- C. *Environmental Indemnification:* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Landscape Architect and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under any Site, provided that (i) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (ii) nothing in this Paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *Percentage Share of Negligence:* To the fullest extent permitted by law, a party’s total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party’s negligence bears to the total negligence of Owner, Landscape Architect, and all other negligent entities and individuals.
- E. *Mutual Waiver:* To the fullest extent permitted by law, Owner and Landscape Architect waive against each other, and the other’s employees, officers, directors, members, agents, insurers,

partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to a Specific Project.

6.11 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Landscape Architect, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims:* To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion of each particular Specific Project.
- F. *Applicability to Task Orders:* The terms and conditions set forth in this Agreement apply to each Task Order as if set forth in the Task Order, unless specifically modified. In the event of conflicts between this Agreement and a Task Order, the conflicting provisions of the Task Order shall take precedence for that Task Order. The provisions of this Agreement shall be modified only by a written instrument. Such amendments shall be applicable to all Task Orders issued after the effective date of the amendment if not otherwise set forth in the amendment.
- G. *Non-Exclusive Agreement:* Nothing herein shall establish an exclusive relationship between Owner and Landscape Architect. Owner may enter into similar agreements with other professionals for the same or different types of services contemplated hereunder, and Landscape Architect may enter into similar or different agreements with other project owners for the same or different services contemplated hereunder.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto and any Task Order) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits or Task Order, or in the following provisions:
 - 1. *Addenda:* Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Documents.

2. *Additional Services:* Services to be performed for or furnished to Owner by Landscape Architect in accordance with a Task Order which are not included in Basic Services for that Task Order.
3. *Agreement:* This "Agreement between Owner and Landscape Architect for Professional Services – Task Order Edition" including those Exhibits listed in Article 8 and any duly executed Task Order.
4. *Application for Payment:* The form acceptable to Landscape Architect which is to be used by a Contractor in requesting progress or final payments for the completion of its Work and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
5. *Asbestos:* Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
6. *Basic Services:* Specified services to be performed for or furnished to Owner by Landscape Architect in accordance with a Task Order.
7. *Bid:* The offer or proposal of a bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
8. *Bidding Documents:* The advertisement or invitation to Bid, instructions to bidders, the Bid form and attachments, the Bid bond, if any, the proposed Contract Documents, and all Addenda, if any.
9. *Change Order:* A document recommended by Landscape Architect, which is signed by a Contractor and Owner to authorize an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times.
10. *Constituent of Concern:* Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; and (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
11. *Construction Agreement:* The written instrument which is evidence of the agreement, contained in the Contract Documents, between Owner and a Contractor covering the Work.
12. *Construction Contract:* The entire and integrated written agreement between Owner and Contractor concerning the Work.
13. *Construction Cost:* The cost to Owner of those portions of an entire Specific Project designed or specified by Landscape Architect. Construction Cost does not include costs of

services of Landscape Architect or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to properties; Owner's costs for legal, accounting, insurance counseling or auditing services; interest or financing charges incurred in connection with a Specific Project; or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.

14. *Consultants:* Individuals or entities having a contract with Landscape Architect to furnish services with respect to a Specific Project as Landscape Architect's independent professional associates, consultants, subcontractors, or vendors. The term Landscape Architect includes Landscape Architect's Consultants.
15. *Contract Documents:* Those items so designated in the Construction Contract, including the Drawings, Specifications, construction agreement, and general and supplementary conditions. Only printed or hard copies of the items listed in the Construction Contract are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
16. *Contract Price:* The moneys payable by Owner to a Contractor for completion of the Work in accordance with the Contract Documents and as stated in the Construction Agreement.
17. *Contract Times:* The numbers of days or the dates stated in a Construction Agreement to:
(i) achieve Substantial Completion, and (ii) complete the Work so that it is ready for final payment as evidenced by Landscape Architect's written recommendation of final payment.
18. *Contractor:* The entity or individual with which Owner has entered into the Construction Contract.
19. *Correction Period:* The time after Substantial Completion during which a Contractor must correct, at no cost to Owner, any Defective Work, normally one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee or specific provision of the Contract Documents.
20. *Defective:* An adjective which, when modifying the word Work, refers to Work that is unsatisfactory, faulty, or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to Landscape Architect's recommendation of final payment.
21. *Documents:* Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Landscape Architect to Owner pursuant to this Agreement.
22. *Drawings:* That part of the Contract Documents prepared or approved by Landscape Architect which graphically shows the scope, extent, and character of the Work to be performed by a Contractor. Shop Drawings are not Drawings as so defined.
23. *Effective Date of the Construction Agreement:* The date indicated in a Construction Agreement on which it becomes effective, but if no such date is indicated, it means the date

on which the Construction Agreement is signed and delivered by the last of the two parties to sign and deliver.

24. *Effective Date of the Agreement*: The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
25. *Effective Date of the Task Order*: The date indicated in the Task Order on which it becomes effective, but if no such date is indicated, it means the date on which the Task Order is signed and delivered by the last of the two parties to sign and deliver.
26. *Landscape Architect*: The individual or entity named as such in this Agreement.
27. *Field Order*: A written order issued by Landscape Architect which directs minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
28. *General Conditions*: That part of the Contract Documents which sets forth terms, conditions, and procedures that govern the Work to be performed or furnished by a Contractor with respect to a Specific Project.
29. *Hazardous Waste*: The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
30. *Laws and Regulations; Laws or Regulations*: Any and all applicable laws, rules, regulations, ordinances, codes, standards, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
31. *Owner*: The individual or entity with which Landscape Architect has entered into this Agreement and for which the Landscape Architect's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any construction contracts concerning the Project.
32. *PCBs*: Polychlorinated biphenyls.
33. *Petroleum*: Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
34. *Project*: The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
35. *Radioactive Materials*: Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
36. *Record Drawings*: The Drawings as issued for construction on which Landscape Architect, upon completion of the Work, has shown changes due to Addenda or Change Orders and other information which Landscape Architect considers significant based on record documents furnished by Contractor to Landscape Architect and which were annotated by Contractor to show changes made during construction.

37. *Reimbursable Expenses:* The expenses incurred directly by Landscape Architect in connection with the performing or furnishing of Basic and Additional Services for a Specific Project for which Owner shall pay Landscape Architect as indicated in Exhibit C.
38. *Resident Project Representative:* The authorized representative, if any, of Landscape Architect assigned to assist Landscape Architect at the Site of a Specific Project during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of the RPR agreed to by Owner. The duties and responsibilities of the RPR will be as set forth in each Task Order.
39. *Samples:* Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
40. *Shop Drawings:* All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for a Contractor and submitted by a Contractor to Landscape Architect to illustrate some portion of the Work.
41. *Site:* Lands or areas indicated in the Contract Documents for a Specific Project as being furnished by Owner upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for use of a Contractor.
42. *Specifications:* That part of the Contract Documents prepared by Landscape Architect consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work to be performed by a Contractor and certain administrative details applicable thereto.
43. *Specific Project:* An undertaking of Owner as set forth in a Task Order.
44. *Subcontractor:* An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at a Site.
45. *Substantial Completion:* The time at which the Work has progressed to the point where, in the opinion of Landscape Architect, the Work is sufficiently complete, in accordance with the Contract Documents, so that the Work can be utilized for the purposes for which it is intended.
46. *Supplementary Conditions:* That part of the Contract Documents which amends or supplements the General Conditions.
47. *Supplier:* A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.
48. *Task Order:* A document executed by Owner and Landscape Architect, including amendments if any, stating the scope of services, Landscape Architect's compensation, times for performance of services and other relevant information for a Specific Project.
49. *Total Project Costs:* The sum of the Construction Cost, allowances for contingencies, the total costs of services of Landscape Architect or other design professionals and consultants,

cost of land, rights-of-way, or compensation for damages to properties, or Owner's costs for legal, accounting, insurance counseling, or auditing services, or interest and financing charges incurred in connection with a Specific Project, or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement.

50. *Work*: The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents for a Specific Project. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by those Contract Documents.
51. *Work Change Directive*: A written directive to a Contractor signed by Owner upon recommendation of the Landscape Architect, ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits*

Exhibit A, Landscape Architect's Services [*NOTE: Services, tasks, and terms in Exhibit A are for reference in preparing specific Task Orders, and are contractually binding only to the extent expressly incorporated in a specific Task Order*].

Exhibit B, Owner's Responsibilities

Exhibit C, Payments to Landscape Architect for Services and Reimbursable Expenses

Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative

Exhibit E, Notice of Acceptability of Work

Exhibit F, Construction Cost Limit

Exhibit G, Insurance

Exhibit H, Dispute Resolution

Exhibit I, Limitations on Liability

Exhibit J, Special Provisions

Exhibit K, Amendment to Task Order (Not Included)

8.02 *Total Agreement*

- A. This Agreement (together with the Exhibits identified as included above) constitutes the entire agreement between Owner and Landscape Architect and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument based on the format provided in Exhibit K to this Agreement, "Amendment to Task Order."

8.03 *Designated Representatives*

- A. With the execution of this Agreement, Landscape Architect and Owner shall designate specific individuals to act as Landscape Architect's and Owner's representatives with respect to the services to be performed or furnished by Landscape Architect and responsibilities of Owner under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Agreement on behalf of each respective party. Each Task Order shall likewise designate representatives of the two parties.

8.04 *Landscape Architect's Certifications*

- A. Landscape Architect certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
 - 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on Page 1.

OWNER:

LANDSCAPE
ARCHITECT:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Landscape Architect
License or Firm's
Certificate No. _____

State of : _____

Date Signed: _____

Date Signed: _____

Address for giving notices:

Address for giving notices:

DESIGNATED REPRESENTATIVE
(Paragraph 8.03.A):

DESIGNATED REPRESENTATIVE
(Paragraph 8.03.A):

Title: _____

Title: _____

Phone Number: _____

Phone Number: _____

Facsimile Number: _____

Facsimile Number: _____

E-Mail
Address: _____

E-Mail
Address: _____

SUGGESTED FORM OF
TASK ORDER

This is Task Order No. _____, consisting of _____ pages.
--

Task Order

[NOTE TO USER: Modify as to scope, compensation, schedule, and other key items.]

In accordance with Paragraph 1.01 of the Agreement Between Owner and Landscape Architect for Professional Services – Task Order Edition, dated _____ ("Agreement"), Owner and Landscape Architect agree as follows:

1. Specific Project Data

A. Title: _____

B. Description: _____

C. Number of Construction Contracts

The Specific Project is anticipated to be constructed under _____ Construction Contracts.

2. Services of Landscape Architect

[Check all that apply.]

Study and Report Services

[After reviewing Part 1 of Exhibit A, Landscape Architect's Services, supplement or modify Part 1 as needed for the Specific Project and attach, reference, or insert specific text here.]

Design Services

[After reviewing Part 2 of Exhibit A, Landscape Architect's Services, supplement or modify Part 2 as needed for the Specific Project and attach, reference, or insert specific text here.]

Designing to a Construction Cost Limit

Under this Task Order Landscape Architect will design to a Construction Cost Limit, subject to the terms of Paragraph 5.02 of the Agreement and of Exhibit F to the Agreement. Exhibit F is expressly incorporated by reference. The Construction Cost Limit is \$_____. The bidding or negotiating contingency to be added to the Construction Cost Limit is _____ percent.

SUGGESTED FORM OF
TASK ORDER

Bidding or Negotiating Services

[After reviewing Part 3 of Exhibit A, Landscape Architect's Services, supplement or modify Part 3 as needed for the Specific Project and attach, reference, or insert specific text here.]

Construction and Commissioning Services

[After reviewing Part 4 of Exhibit A, Landscape Architect's Services, supplement or modify Part 4 as needed for the Specific Project and attach reference, or insert specific text here.]

Resident Project Representative Services

Landscape Architect will provide Resident Project Representative services pursuant to Part 4 of Exhibit A; Exhibit D is attached to this Task Order and expressly incorporated by reference.

[If RPR services are not in the scope of the Task Order, do not include any references to RPR services from Exhibit A in any attached, referenced, or inserted specific text regarding Construction Phase services and do not include Exhibit D with the Task Order.]

Other Services

[After reviewing Part 5 of Exhibit A, Landscape Architect's Services,, supplement or modify Part 5 as needed for the Specific Project and attach, reference, or insert specific text here.]

Additional Services Requiring an Amendment to Task Order

Part 6 of Exhibit A is incorporated by reference unless otherwise noted.

3. Owner's Responsibilities

Owner shall have those responsibilities set forth in Article 2 and in Exhibit B, subject to the following: *[Here state any additions or modifications to Exhibit B, for this Specific Project.]*

4. Times for Rendering Services

<u>Phase</u>	<u>Completion Date</u>
_____	_____
_____	_____
_____	_____

SUGGESTED FORM OF
TASK ORDER

5. Payments to Landscape Architect

A. Owner shall pay Landscape Architect for services rendered as follows:

<i>Category of Services</i>	<i>Compensation Method</i>	<i>Lump Sum, or Estimate of Compensation for Services</i>
Basic Services (Study and Report, Design, Bidding or Negotiating, Construction and Commissioning, Other Services)	Choose <u>One</u> : A. Lump Sum B. Standard Hourly Rates C. Direct Labor Costs Times a Factor (Factor: _____) D. <i>[Insert any other compensation method]</i>	
Resident Project Representative	Choose <u>One</u> : A. Lump Sum B. Standard Hourly Rates C. Direct Labor Costs Times a Factor (Factor: _____) D. <i>[Insert any other compensation method]</i>	
Additional Services Requiring an Amendment to Task Order	Choose <u>One</u> : A. [Omitted] B. Standard Hourly Rates C. Direct Labor Costs Times a Factor (Factor: _____) D. <i>[Insert any other compensation method]</i>	

B. The terms of payment are set forth in Article 4 of the Agreement and in Exhibit C.

6. Consultants:

7. Other Modifications to Agreement:

[Supplement or modify Agreement and Exhibits, if appropriate.]

8. Attachments:

9. Documents Incorporated By Reference:

10. Terms and Conditions: Execution of this Task Order by Owner and Landscape Architect shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Landscape Architect is authorized to begin performance upon its receipt of a copy of this Task Order signed by Owner.

The Effective Date of this Task Order is _____, _____.

OWNER:

LANDSCAPE
ARCHITECT:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Landscape Architect License
or Firm's Certificate No. _____
State of: _____

DESIGNATED REPRESENTATIVE FOR
TASK ORDER:

DESIGNATED REPRESENTATIVE FOR TASK
ORDER:

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____

Address: _____

E-Mail
Address: _____

E-Mail
Address: _____

Phone: _____

Phone: _____

Fax: _____

Fax: _____

This is **EXHIBIT A**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Landscape Architect for Professional Services – Task Order Edition** dated _____, _____.

Landscape Architect's Services

Introduction:

PART 1 – STUDY AND REPORT PHASE SERVICES

A1.01 Study and Report Phase

For each Task Order that includes study or report services, select from or supplement the following possible services:

A. The Landscape Architect shall:

1. Consult with Owner to define and clarify Owner's requirements for a Specific Project and available data.
2. Advise Owner as to the necessity of Owner's providing data or services of the types described in Exhibit B, and, if requested, assist Owner in obtaining such data and services.
3. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of a Specific Project designed or specified by Landscape Architect, including but not limited to mitigating measures identified in the environmental assessment.
4. Identify and evaluate up to three (3) alternate solutions available to Owner for a Specific Project, and, after consultation with Owner, recommend to Owner those solutions which in Landscape Architect's judgment meet Owner's requirements for a Specific Project.
5. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and those alternate solutions available to Owner which Landscape Architect recommends. The Report will be accompanied by:

Landscape Architect's opinion of Total Project Costs for each solution which is so recommended for a Specific Project with each component separately itemized, including the following, which will be separately itemized:

- a. opinion of probable Construction Cost,
- b. allowances for contingencies and for the estimated total costs of design, professional, and related services provided by Landscape Architect and,
- c. on the basis of information furnished by Owner, allowances for other items and services included within the definition of Total Project Costs.

6. Furnish the number of review copies of the Report to Owner within the time period set forth in the Task Order and review it with Owner.
7. Revise the Report in response to Owner's and other parties' comments, as appropriate, and furnish the number of final copies of the revised Report to the Owner within the time period set forth in the Task Order.

B. Landscape Architect's services under the Study and Report Phase will be considered complete on the date when the final copies of the revised Report have been delivered to Owner.

PART 2: DESIGN ACTIVITIES

A1.02 Preliminary Design Phase

For each Task Order that includes preliminary design services, select from or supplement the following possible services:

- A. Landscape Architect shall on the basis of the above acceptance, selection, and authorization:
 1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications and written descriptions of a Specific Project.
 2. Provide necessary field surveys and topographic and utility mapping for design purposes. Utility mapping will be based upon information obtained from utility owners.
 3. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.
 4. Based on the information contained in the Preliminary Design Phase documents, submit a current opinion of probable Construction Cost and any adjustments to Total Project Costs known to Landscape Architect, which will be itemized as provided in the Study and Report Phase Services section above.
 5. Furnish the Preliminary Design Phase documents to and review them with Owner.
 6. Submit to Owner the number of final copies of the Preliminary Design Phase documents and revised opinion of probable Construction Cost within the time period set forth in the Task Order.
 7. Perform or provide the following additional Preliminary Design Phase tasks or deliverables: Attend project design review meetings required by external funding agencies and incorporated agreed upon design changes.
- B. Landscape Architect's services under the Preliminary Design Phase will be considered complete on the date when final copies of the Preliminary Design Phase documents have been delivered to Owner.

A1.03 *Final Design Phase*

For each Task Order that includes final design services, select from or supplement the following possible services:

A. Landscape Architect shall:

1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor. Where appropriate, prepare Specifications in general conformance with the format of the Construction Specifications Institute or other format as directed by Owner to conform to funding agency requirements.
2. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of a Specific Project and assist Owner in consultations with appropriate authorities.
3. Provide Owner a current opinion of probable Construction Cost and any adjustments to Total Project Costs known to Landscape Architect, itemized as provided in the Study and Report Phase Services section above.
4. Prepare and furnish Bidding Documents for review and approval by Owner, its legal counsel, and other advisors, as appropriate, and assist Owner in the preparation of other related documents.
5. Submit the number of final copies of the Bidding Documents and a current opinion of probable Construction Cost to Owner within the time period set forth in the Task Order.
6. Prepare for, coordinate with, participate in, and respond to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by Owner; and perform or furnish services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.
7. Perform or provide the following additional Final Design Phase tasks or deliverables: Attend project design review meetings required by external funding agencies and incorporated agreed upon design changes.

- B. Landscape Architect's services under the Final Design Phase will be considered complete on the date when the required submittals have been delivered to Owner.

PART 3: BIDDING AND NEGOTIATION

A1.04 *Bidding or Negotiating Phase*

For each Task Order that includes bidding or negotiation services, select from or supplement the following possible services:

A. The Landscape Architect shall:

1. Assist Owner in advertising for and obtaining bids or negotiating proposals for the Work and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-Bid conferences, if any, and receive and process Contractor deposits or charges for the Bidding Documents.
2. Issue Addenda as appropriate to clarify, correct, or change the Bidding Documents.
3. Consult with Owner as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by Contractor for those portions of the Work as to which such acceptability is required by the Bidding Documents.
4. Prepare additional Bidding Documents or Contract Documents for alternate bids or prices requested by Owner for the Work or a portion thereof.
5. If bidding documents require, the Landscape Architect shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by bidders, but subject to the provisions below regarding additional compensation for an excessive number of such substitute or "or equal" submittals.
6. Attend the bid opening, prepare bid tabulation sheets, and assist Owner in evaluating bids or proposals and in assembling and awarding contracts for the Work.
7. Assist Owner with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services.

- B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective Contractors (except as may be required if Exhibit F is a part of the Task Order).

PART 4: CONSTRUCTION AND COMMISSIONING

A1.05 *Construction Phase*

For each Task Order that includes Construction Phase services, select from or supplement the following possible services:

A. Landscape Architect shall provide the following services:

1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the General Conditions. The extent and limitations of the duties, responsibilities and authority of Landscape Architect as assigned in said General

Conditions shall not be modified, except as Landscape Architect may otherwise agree in writing. All of Owner's instructions to Contractor will be issued through Landscape Architect, who shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and said General Conditions except as otherwise provided in writing.

2. *Resident Project Representative (RPR)*: Provide the services of an RPR at the Site of the Specific Project to assist the Landscape Architect and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in the Task Order and in Exhibit D, "Duties, Responsibilities and Limitations of Authority of Resident Project Representative." The furnishing of such RPR's services will not limit, extend, or modify Landscape Architect's responsibilities or authority except as expressly set forth in Exhibit D. *[Note: For those Specific Projects for which Landscape Architect will not be providing the services of an RPR, do not incorporate this Paragraph A1.05.A.2, and do not include Exhibit D.]*
3. *Selecting Independent Testing Laboratory*: Assist Owner in the selection of an independent testing laboratory to perform the services identified in Paragraph B2.01.0.
4. *Pre-Construction Conference*: Participate in a pre-construction conference prior to commencement of Work at the Site.
5. *Schedules*: Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Landscape Architect, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
6. *Baselines and Benchmarks*: As appropriate, establish baselines and benchmarks for locating the Work which in Landscape Architect's judgment are necessary to enable Contractor to proceed.
7. *Visits to Site and Observation of Construction*: In connection with observations of Work in progress :
 - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Landscape Architect deems necessary, in order to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Landscape Architect, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work in progress or to involve detailed inspections of the Work in progress beyond the responsibilities specifically assigned to Landscape Architect in the Task Order and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Landscape Architect's exercise of professional judgment as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Landscape Architect will determine in general if the Work is proceeding in accordance with the Contract Documents, and Landscape Architect shall keep Owner informed of the progress of the Work.

- b. The purpose of Landscape Architect's visits to, and representation by the Resident Project Representative, if any, at the Site of the Specific Project, will be to enable Landscape Architect to better carry out the duties and responsibilities assigned to and undertaken by Landscape Architect during the Construction Phase, and, in addition, by the exercise of Landscape Architect's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Landscape Architect shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over the Work, nor shall Landscape Architect have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to Contractor's Work, or for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Landscape Architect neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish or perform the Work in accordance with the Contract Documents.
8. *Defective Work:* Reject Work if, on the basis of Landscape Architect's observations, Landscape Architect believes that such Work (a) is defective under the standards set forth in the Contract Documents, (b) will not produce a completed Project that conforms to the Contract Documents or (c) will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.
9. *Clarifications and Interpretations; Field Orders:* Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of the Work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. Subject to any limitations in the Contract Documents, Landscape Architect may issue Field Orders authorizing minor variations from the requirements of the Contract Documents.
10. *Change Orders and Work Change Directives:* Recommend change orders and work change directives to Owner, as appropriate, and prepare change orders and work change directives as required.
11. *Shop Drawings and Samples:* Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Landscape Architect shall meet any Contractor's submittal schedule that Landscape Architect has accepted.

12. *Substitutes and "or-equal"*: Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to any provisions below regarding additional compensation for evaluation of such substitute or "or equal" submittals.
13. *Inspections and Tests*: Require such special inspections or tests of the Work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. Landscape Architect's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. Landscape Architect shall be entitled to rely on the results of such tests.
14. *Disagreements between Owner and Contractor*: Render formal written decisions on all duly submitted issues relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the execution, performance or progress of the Work; review each duly submitted Claim by Owner or Contractor, and in writing either deny such Claim in whole or in part, approve such Claim, or decline to resolve such Claim if Landscape Architect in its discretion concludes that to do so would be inappropriate. In rendering such decisions, Landscape Architect shall be fair and not show partiality to Owner or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.
15. *Applications for Payment*: Based on Landscape Architect's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
 - a. Determine the amounts that Landscape Architect recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute Landscape Architect's representation to Owner, based on such observations and review, that, to the best of Landscape Architect's knowledge, information and belief, the Work has progressed to the point indicated, the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Landscape Architect's responsibility to observe the Work. In the case of unit price work, Landscape Architect's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Contract Documents). The responsibilities of Landscape Architect contained in Paragraph A1.05.A.15.a are expressly subject to the limitations set forth in Paragraph A1.05.A.15.b and other express or general limitations in this Agreement and elsewhere.
 - b. By recommending any payment, Landscape Architect shall not thereby be deemed to have represented that observations made by Landscape Architect to check the quality or quantity of the Work as it is performed and furnished have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work

beyond the responsibilities specifically assigned to Landscape Architect in this Agreement and the Contract Documents. Neither Landscape Architect's review of the Work for the purposes of recommending payments nor Landscape Architect's recommendation of any payment including final payment will impose on Landscape Architect responsibility to supervise, direct, or control the Work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Landscape Architect to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the Work in progress, materials, or equipment has passed to Owner free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.

16. *Contractor's Completion Documents:* Receive, review and transmit to Owner maintenance and operating instructions, schedules guarantees, bonds, certificates, or other evidence of insurance not previously submitted and required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as provided above, and transmit the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. The extent of such review by Landscape Architect will be limited as provided above.
 17. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to determine if the Work is Substantially Complete. If after considering any objections of Owner, Landscape Architect considers the Work Substantially Complete, Landscape Architect shall deliver a certificate of Substantial Completion to Owner and Contractor.
 18. *Final Notice of Acceptability of the Work:* Conduct a final payment inspection to determine if the completed Specific Project of Contractor is acceptable so that Landscape Architect may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Landscape Architect shall also provide a notice in the form attached hereto as Exhibit E ("Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of Paragraph A1.05.A.15.b) to the best of Landscape Architect's knowledge, information, and belief and based on the extent of the services provided by Landscape Architect under this Agreement.
 19. *Defective Work:* Together with Owner, visit the Site to observe any apparent defects in the Work, assist Owner in consultations and discussions with Contractor concerning correction of any such defects, and make recommendations as to replacement or correction of Defective Work, if any.
 20. *Correction Period:* Together with Owner or Owner's representative, visit the Site within one month before the end of the Correction Period to ascertain whether any portion of the Work is subject to correction.
- B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Agreement for a Specific Project or any part thereof and will terminate

upon written recommendation by Landscape Architect for final payment to Contractors. If a Specific Project involves more than one prime contract as indicated in the Task Order, Construction Phase services may be rendered at different times in respect to the separate contracts.

A1.06 Commissioning Phase

For each Task Order that includes facilities commissioning services, select from or supplement the following possible services:

A. Landscape Architect shall:

1. Assist Owner in connection with the adjusting of Specific Project equipment and systems.
2. Assist Owner in training Owner's staff to operate and maintain Specific Project equipment and systems.
3. Prepare operation and maintenance manuals.
4. Assist Owner in developing procedures for (a) control of the operation and maintenance of Specific Project equipment and systems, and (b) related record-keeping.
5. Prepare and furnish to Owner, in the format agreed to, Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor.

PART 5– OTHER SERVICES

A2.01 For each Task Order, consider the inclusion of the following possible services:

A. Landscape Architect shall:

1. Prepare hydrologic and/or hydraulic analyses including but not limited to: SSCAFCA watershed management plan updates, 1- and 2-dimensional hydraulic modeling of arroyos and other open channels (including culverts), floodplain analysis/mapping, closed conduit hydraulic analysis, HEC-HMS hydrologic analysis on watersheds up to 80 sq. mi., including peer review of studies submitted to SSCAFCA.
2. Provide geo-referenced spatial data (i.e. basin delineations, floodplain delineations, cross-sections, stream centerlines, etc.) using ESRI ArcGIS.
3. Prepare or review of Letters of Map Revision (LOMR) or Conditional LOMRs for projects as assigned by SSCAFCA for submittal to FEMA.
4. Update hydrologic model and analyses required under jurisdictional status and development of required reporting for Office of the State Engineer (OSE) Jurisdictional Facilities.
5. Provide expertise in the application of scour analysis, sediment transport and erosion control including but not limited to the Lateral Erosion Envelope as specified in the Sediment and Erosion Design Guide (2008).

6. Provide design services necessary to construct new or modify existing flood control facilities, including bank/channel stabilization measures in natural arroyos and other flood control related facilities.
7. Provide construction-phase services and/or construction observation of SSCAFCA projects, including observation and documentation of projects being constructed by others which affect SSCAFCA facilities.
8. Provide design/environmental services to support SSCAFCA compliance with U.S. Environmental Protection Agency/National Pollutant Discharge Elimination System (NPDES)/Municipal Separate Storm Sewer System (MS4) permit.
9. Provide design/environmental services to support special analyses, studies, or assessment/monitoring of water quality including but not limited to illicit discharge detection and elimination, pollutant loading in stormwater discharges, urban stormwater and watershed quality modeling, Best Management Practice (BMP) evaluation, and other analyses or studies as necessary.
10. Prepare applications and supporting documents for private or governmental grants, loans or advances in connection with a Specific Project; prepare or review environmental assessments and impact statements; review and evaluate the effects on the design requirements for a Specific Project of any such statements and documents prepared by others; and assist in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of a Specific Project.
11. Provide services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner.
12. Provide renderings or models for Owner's use.
13. Evaluate processes available for licensing, and assist Owner in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by Owner.
14. In addition to baselines and benchmarks, provide more extensive construction surveys and staking to enable a Contractor to perform its work and any type of property surveys or related services needed for the transfer of interests in real property; and provide other special field surveys.
15. Provide assistance in responding to the presence of any Constituent of Concern at any Site, in compliance with current Laws and Regulations.

PART 6: ADDITIONAL SERVICES REQUIRING AMENDMENT TO TASK ORDER

A2.02 *Additional Services Requiring an Amendment to Task Order*

- A. *Advance Written Authorization Required:* During performance under a Task Order, Owner may authorize Landscape Architect in writing to furnish or obtain from others Additional Services of the types listed below. The Task Order shall be amended to reflect the inclusion of such Additional Services. Services resulting from significant changes in the scope, extent, or character of the portions of a Specific Project designed or specified by Landscape Architect or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date of the Task Order or are due to any other causes beyond Landscape Architect's control.
1. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those identified in Paragraph A.1.01.A.4.
 2. Services required as a result of Owner's providing incomplete or incorrect Project information to Landscape Architect.
 3. Providing Construction Phase services beyond the Contract Times set forth in the Task Order.
 4. Providing more extensive services required to enable Landscape Architect to issue notices or certifications requested by Owner, subject to the terms of Paragraph 6.01.F of the Agreement.
 5. Overtime work requiring higher than regular rates.
 6. Other services proposed to be performed or furnished by Landscape Architect not otherwise provided for in this Agreement.
- B. *Advance Written Authorization Not Required:* Landscape Architect shall advise Owner in advance that Landscape Architect will immediately commence to perform or furnish the Additional Services of the types listed below. For such Additional Services, Landscape Architect need not request or obtain specific advance written authorization from Owner. Landscape Architect shall cease performing or furnishing such Additional Services upon receipt of written notice from Owner. The Task Order shall be amended to reflect the inclusion of such Additional Services.
1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner so as to make the compensation commensurate with the extent of the Additional Services rendered.
 2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; services after the award of any Construction Contract in evaluating and determining the acceptability of a proposed substitution, whether approved or not; evaluation and determination of an excessive number of proposed "or equals" or substitutions whether proposed before or after award of the Construction Contract.

3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
4. Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work (advance notice not required), (2) the presence at the site of any Constituent of Concern or items of historical or cultural significance, (3) Work damaged by fire or other cause during construction, (4) a significant amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, or (6) default by Contractor.
5. Services in connection with any partial utilization of any part of the Work on a Specific Project by Owner prior to Substantial Completion.
6. Reviewing a Shop Drawing more than three times, as a result of repeated inadequate submissions by Contractor.
7. While at the Site, compliance by Landscape Architect and its staff with those terms of Owner's or Contractor's safety program enacted or provided to Landscape Architect subsequent to the Effect Date of the Task Order that exceed those normally required of consultant personnel by federal, state, or local safety authorities for similar construction sites.
8. Evaluation of an unreasonable claim or an excessive number of claims or requests for information submitted by a Contractor or others in connection with the Work on a Specific Project.

This is **EXHIBIT B**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Landscape Architect for Professional Services – Task Order Edition** dated _____, _____.

Owner's Responsibilities

Article 2 of the Agreement is amended and supplemented to include the following responsibilities unless expressly stated otherwise in a Task Order.

- A. Provide Landscape Architect with all criteria and full information as to Owner's requirements for the Specific Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require to be included in the Drawings and Specifications; and furnish copies of Owner's standard forms, conditions, and related documents for Landscape Architect to include in the Bidding Documents, when applicable.
- B. Furnish to Landscape Architect any other available information pertinent to the Specific Project including reports and data relative to previous designs, or investigation at or adjacent to the Site of the Specific Project.
- C. Following Landscape Architect's assessment of initially-available Specific Project information and data and upon Landscape Architect's request, furnish or otherwise make available such additional Specific Project related information and data as is reasonably required to enable Landscape Architect to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 1. Property descriptions.
 2. Zoning, deed, and other land use restrictions.
 3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions relating to existing surface or subsurface structures at the Site, or hydrographic surveys, with appropriate professional interpretation thereof.
 5. Environmental assessments, audits, investigations and impact statements, and other relevant environmental or cultural studies as to a Specific Project, the Site and adjacent areas.
 6. Data or consultations as required for a Specific Project but not otherwise identified in the Agreement, the Exhibits thereto, or the Task Order.
- D. Give prompt written notice to Landscape Architect whenever Owner observes or otherwise becomes aware of the presence at the Site of any Constituent of Concern, or of any other

development that affects the scope or time of performance of Landscape Architect's services, or any defect or nonconformance in Landscape Architect's services, the Work, or in the performance of any Contractor.

- E. Authorize Landscape Architect to provide Additional Services as set forth in the Task Order as required.
- F. Arrange for safe access to and make all provisions for Landscape Architect to enter upon public and private property as required for Landscape Architect to perform services under the Task Order.
- G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Landscape Architect for the Specific Project (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Specific Project designed or specified by Landscape Architect and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Specific Project.
- I. Recognizing and acknowledging that Landscape Architect's services and expertise do not include the following services, provide, as required for the Specific Project:
 - 1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
 - 2. Legal services with regard to issues pertaining to the Specific Project as Owner requires, a Contractor raises, or Landscape Architect reasonably requests.
 - 3. Such auditing services as Owner requires to ascertain how or for what purpose a Contractor has used the moneys paid.
- J. Place and pay for advertisement for Bids in appropriate publications.
- K. Advise Landscape Architect of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Specific Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.
- L. Furnish to Landscape Architect data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling and legal advice) for Owner so that Landscape Architect may assist the Owner in collating the various cost categories which comprise Total Project Costs.
- M. If Owner designates a construction manager or an individual or entity other than, or in addition to, Landscape Architect to represent Owner at the Site, define and set forth in the Task Order the

duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Landscape Architect.

- N. If more than one prime contract is to be awarded for the Work of the Specific Project designed or specified by Landscape Architect, designate in the Task Order a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors. Define and set forth in the Task Order the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Landscape Architect.
- O. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment visits to the Site.
- P. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of Samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work for the Specific Project with appropriate professional interpretation thereof.
- Q. Provide Landscape Architect with the findings and reports generated by any independent testing laboratory, if Landscape Architect is required to review such documents.
- R. Inform Landscape Architect of any specific requirements of safety or security programs that are applicable to Landscape Architect, as a visitor to the Site.

This is **EXHIBIT C**, consisting of ____ pages, referred to in and part of the **Agreement between Owner and Landscape Architect for Professional Services – Task Order Edition** dated _____, _____.

Payments to Landscape Architect for Services and Reimbursable Expenses

Article 2 of the Agreement is amended and supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER'S RESPONSIBILITIES

C2.01 Method of Payment

- B. Owner shall pay Landscape Architect for services in accordance with one or more of the following methods as identified in each Task Order:
1. Method A: Lump Sum
 2. Method B: Standard Hourly Rates
 3. Method C: Not Used
 4. Method D: Not Used

C2.02 Explanation of Methods

A. Method A – Lump Sum

1. Owner shall pay Landscape Architect a Lump Sum amount for the specified category of services.
2. The Lump Sum will include compensation for Landscape Architect's services and services of Consultants, if any. Appropriate amounts will be incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.
3. The portion of the Lump Sum amount billed for Landscape Architect's services will be based upon Landscape Architect's estimate of the proportion of the total services actually completed during the billing period to the Lump Sum.

B. Method B – Standard Hourly Rates

1. For the specified category of services, the Owner shall pay Landscape Architect an amount equal to the cumulative hours charged to the Specific Project by each class of Landscape Architect's employees times Standard Hourly Rates for each applicable billing class for all services performed on the Specific Project, plus Reimbursable Expenses and Consultant's charges, if any.

2. Standard Hourly Rates include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
3. Landscape Architect's Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit as Appendices 1 and 2.
4. The total estimated compensation for the specified category of services shall be stated in the Task Order. This total estimated compensation will incorporate all labor at Standard Hourly Rates, Reimbursable Expenses, and Consultants' charges, if any.
5. The amounts billed will be based on the cumulative hours charged to the specified category of services on the Specific Project during the billing period by each class of Landscape Architect's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Landscape Architect's Consultant's charges, if any.
6. The Standard Hourly Rates and Reimbursable Expenses Schedule may be adjusted annually (as of September) subject to SSCAFCA Board of Directors approval to reflect equitable changes in the compensation payable to Landscape Architect.

C2.03 *Not Used*

C2.04 *Not Used.*

C2.05 *Other Provisions Concerning Payment*

A. *Extended Contract Times.* Should the Contract Times to complete the Work be extended beyond the period stated in the Task Order, payment for Landscape Architect's services shall be continued based on the Standard Hourly Rates Method of Payment.

B. *Estimated Compensation Amounts*

1. Landscape Architect's estimate of the amounts that will become payable for services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Landscape Architect under the Agreement.
2. When estimated compensation amounts have been stated in a Task Order and it subsequently becomes apparent to Landscape Architect that a compensation amount thus estimated will be exceeded, Landscape Architect shall give Owner written notice thereof. Promptly thereafter Owner and Landscape Architect shall review the matter of services remaining to be performed and compensation for such services. Owner shall either agree to such compensation exceeding said estimated amount or Owner and Landscape Architect shall agree to a reduction in the remaining services to be rendered by Landscape Architect so that total compensation for such services will not exceed said estimated amount when such services are completed. If Landscape Architect exceeds the estimated amount before Owner and Landscape Architect have agreed to an increase in the compensation due Landscape Architect or a reduction in the remaining services, the Landscape Architect shall give written notice thereof to Owner and shall be paid for all services rendered thereafter.

This is **Appendix 1 to EXHIBIT C**, consisting of _____ pages, referred to in and part of the **Standard Form of Agreement between Owner and Landscape Architect for Professional Services – Task Order Edition**, dated _____, _____.

Reimbursable Expenses Schedule

Current agreements for landscape architecture services stipulate that the Reimbursable Expenses are subject to review and adjustment per Exhibit C. Rates for reimbursable expenses effective on the date of this Agreement are:

Fax	\$	/page
8"x11" Copies/Impressions	_____	/page
Plan Sheet Copies	_____	/sq. ft.
Reproducible Copies (Mylar)	_____	/sq. ft.
Reproducible Copies (Paper)	_____	/sq. ft.
Mileage (auto)	_____	/mile
Field Truck Daily Charge	_____	/day
Mileage (Field Truck)	_____	/mile
Field Survey Equipment	_____	/day
Confined Space Equipment	_____	/day plus expenses
Resident Project Representative Equipment	_____	/month
Specialized Software	_____	/hour
CAD Charge	_____	/hour
CAE Terminal Charge	_____	/hour
Equipment Charge	_____ /day, \$	/week, or \$ _____ /month
Electrical Meters Charge	_____	/week, or \$ _____ /month
Flow Meter Charge	_____	/week, or \$ _____ /month
Rain Gauge	_____	/week, or \$ _____ /month
Sampler Charge	_____	/week, or \$ _____ /month
Dissolved Oxygen Tester Charge	_____	/week
Fluorometer	_____	/week
Laboratory Pilot Testing Charge	_____	/week, or \$ _____ /month
Soil Gas Kit	_____	/day
Submersible Pump	_____	/day
Water Level Meter	_____	/day, or \$ _____ /month
Soil Sampling	_____	/sample
Groundwater Sampling	_____	/sample
Health and Safety Level D	_____	/day
Health and Safety Level C	_____	/day
Electronic Media Charge	_____	/hour
Long Distance Phone Calls		at cost
Mobile Phone	_____	/day
Meals and Lodging		at cost

[NOTE TO USER: Customize this Schedule to reflect anticipated reimbursable expenses on this specific Project]

This is **Appendix 2 to EXHIBIT C**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Landscape Architect for Professional Services – Task Order Edition** dated _____, _____

Standard Hourly Rates Schedule

Current agreements for landscape architecture services stipulate that the standard hourly rates are subject to review and adjustment per Exhibit C. Hourly rates for services effective on the date of this Agreement are:

Billing Class VIII	\$ _____/hour
Billing Class VII	_____/hour
Billing Class VI	_____/hour
Billing Class V	_____/hour
Billing Class IV	_____/hour
Billing Class III	_____/hour
Billing Class II	_____/hour
Billing Class I	_____/hour
Support Staff	_____/hour

This is **EXHIBIT D**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Landscape Architect for Professional Services – Task Order Edition** dated _____.

Schedule of Duties, Responsibilities, and Limitations of Authority of Resident Project Representative

The following duties, responsibilities, and limitations of authority may be incorporated in the Task Order for a Specific Project:

D1.01 Resident Project Representative

- A. Landscape Architect shall furnish a Resident Project Representative ("RPR") to assist Landscape Architect in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree.
- B. Through RPR's observations of Contractor's work in progress and field checks of materials and equipment, Landscape Architect shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Landscape Architect shall not, during such RPR field checks or as a result of such RPR observations of Contractor's work in progress, by the RPR, supervise, direct, or have control over Contractor's work, nor shall Landscape Architect (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures selected or used by any contractor, for security or safety at the Site, for safety precautions and programs incident to any contractor's work in progress, or for any failure of a contractor to comply with Laws and Regulations applicable to such contractor's performing and furnishing of its work. The Landscape Architect (including RPR) neither guarantees the performances of any contractor nor assumes responsibility for any contractor's failure to furnish and perform the Work in accordance with the Contract Documents. In addition, the specific limitations set forth in Paragraph A1.05 of Exhibit A as incorporated in the Task Order are applicable.
- C. The duties and responsibilities of the RPR are limited to those of Landscape Architect in the Agreement with the Owner and in the Contract Documents, and are further limited and described as follows:
 1. *General:* RPR is Landscape Architect's representative at the Site, will act as directed by and under the supervision of Landscape Architect, and will confer with Landscape Architect regarding RPR's actions.
 - RPR's dealings in matters pertaining to a Contractor's work in progress shall in general be with Landscape Architect and Contractor.
 - RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor.
 - RPR shall generally communicate with Owner only with the knowledge of and under the direction of Landscape Architect.

2. *Schedules*: Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by a Contractor and consult with Landscape Architect concerning acceptability.
3. *Conferences and Meetings*: Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
4. *Liaison*:
 - a. Serve as Landscape Architect's liaison with Contractor. Working principally through Contractor's authorized representative or designee, and assist in providing information regarding the intent of the Contract Documents.
 - b. Assist Landscape Architect in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
5. *Interpretation of Contract Documents*: Report to Landscape Architect when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Landscape Architect.
6. *Shop Drawings and Samples*:
 - a. Record date of receipt of Samples and approved Shop Drawings.
 - b. Receive Samples which are furnished at the Specific Project Site by Contractor, and notify Landscape Architect of availability of Samples for examination.
 - c. Advise Landscape Architect and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by Landscape Architect.
7. *Modifications*: Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, to Landscape Architect. Transmit to Contractor in writing decisions as issued by Landscape Architect.
8. *Review of Work and Rejection of Defective Work*:
 - a. Conduct on-Site observations of Contractor's work in progress to assist Landscape Architect in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to Landscape Architect whenever RPR believes that any part of Contractor's work in progress will not produce a completed project that conforms generally to the Contract Documents or will imperil the integrity of the design concept of the completed Specific Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required

to be made; and advise Landscape Architect of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

9. *Inspections, Tests, and System Start-ups:*

- a. Consult with Landscape Architect in advance of scheduled inspections, tests, and systems start-ups.
- b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- c. Observe, record, and report to Landscape Architect appropriate details relative to the test procedures and systems start-ups.
- d. Accompany visiting inspectors representing public or other agencies having jurisdiction over a Specific Project, record the results of these inspections, and report to Landscape Architect.

10. *Records:*

- a. Maintain at the Site orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all change orders, field orders, work change directives, addenda, additional Drawings issued subsequent to the execution of the Construction Contract, Landscape Architect's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Specific Project-related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, weather conditions, data relative to questions of change orders, field orders, work change directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Landscape Architect and Owner.
- c. Record names, addresses, fax numbers, e-mail addresses, web site locations and telephone numbers of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- d. Maintain records for use in preparing project documentation, including any requirements specified by a regulatory or funding agency, as appropriate.
- e. Upon completion of the Work, furnish original set of all RPR Specific Project documentation to Landscape Architect and Owner.

11. *Reports:*

- a. Furnish to Landscape Architect and Owner periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.

- b. Draft and recommend to Landscape Architect proposed change orders, work change directives, and Field Orders. Obtain backup material from Contractor.
- c. Furnish to Landscape Architect and Owner copies of all inspection, test, and system startup reports.
- d. Immediately notify Landscape Architect of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Constituent of Concern.

12. *Payment Requests:*

- a. Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Landscape Architect, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

13. *Certificates, Operation and Maintenance Manuals:*

- a. During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by a Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Landscape Architect for review and forwarding to Owner prior to payment for that part of the Work.

14. *Completion:*

- a. Participate in visits to the Project to assist in determining Substantial Completion, assist in the determination of Substantial Completion and the preparation of lists of items to be completed or corrected.
- b. Participate in a final visit to the Project in the company of Landscape Architect, Owner, and Contractor and prepare a final list of items to be completed and deficiencies to be remedied.
- c. Observe whether all items on the final list have been completed or corrected and make recommendations to Landscape Architect concerning acceptance and issuance of the Notice of Acceptability of the Work. (See Exhibit E).

D. Resident Project Representative shall not:

1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
2. Exceed limitations of Landscape Architect's authority as set forth in this Agreement.
3. Undertake any of the responsibilities of a Contractor, subcontractors, suppliers, or a Contractor's superintendent.

4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Contractor's work.
5. Advise on, issue directions regarding, or assume control over security safety practices, precautions and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Landscape Architect.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy a Specific Project in whole or in part.

This is **EXHIBIT E**, consisting of __ pages, referred to in and part of the **Agreement between Owner and Landscape Architect for Professional Services – Task Order Edition** dated _____, _____.

NOTICE OF ACCEPTABILITY OF WORK

PROJECT:

OWNER:

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:

EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:

ENGINEER:

NOTICE DATE:

To: _____
OWNER

And To: _____
CONTRACTOR

From: _____
ENGINEER

The Landscape Architect hereby gives notice to the above Owner and Contractor that the completed Work furnished and performed by Contractor under the above Contract is acceptable, expressly subject to the provisions of the related Contract Documents and the terms and conditions set forth in this Notice.

By: _____

Title: _____

Dated: _____

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work ("Notice") is expressly made subject to the following terms and conditions to which all persons who receive said Notice and rely thereon agree:

1. Said Notice is given with the skill and care ordinarily used by members of the landscape architecture profession practicing under similar conditions at the same time and in the same locality.
2. Said Notice reflects and is an expression of the professional judgment of Landscape Architect.
3. Said Notice is given as to the best of Landscape Architect's knowledge, information, and belief as of the Notice Date.
4. Said Notice is based entirely on and expressly limited by the scope of services Landscape Architect has been employed by Owner to perform or furnish during construction of the Specific Project (including observation of the Contractor's work) under Landscape Architect's Agreement with Owner and under the Construction Contract referenced in this Notice, and applies only to facts that are within Landscape Architect's knowledge or could reasonably have been ascertained by Landscape Architect as a result of carrying out the responsibilities specifically assigned to Landscape Architect under Landscape Architect's Agreement with Owner and the Construction Contract referenced on the reverse hereof.
5. Said Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract referenced in this Notice nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Contract Documents.

This is **EXHIBIT F**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Landscape Architect for Professional Services – Task Order Edition** dated _____, _____.

Construction Cost Limit

Paragraph 5.02 of the Agreement is amended and supplemented to include the following when incorporated in the Task Order for a Specific Project:

F5.02 Designing to Construction Cost Limit

- A. A Construction Cost limit may be set forth in the Task Order.
- B. If a Construction Cost limit is set forth in a Task Order, then the Task Order will also specify bidding or negotiating contingency to be added to such Construction Cost limit.
- C. The acceptance by Owner at any time during Basic Services of a revised opinion of probable Construction Cost in excess of the then established Construction Cost limit will constitute a corresponding increase in the Construction Cost limit.
- D. Landscape Architect will be permitted to determine what types of materials, equipment and component systems, and the types and quality thereof are to be included in the Drawings and Specifications and to make reasonable adjustments in the scope, extent, and character of a Specific Project to the extent consistent with the project requirements and sound landscape architecture practices to bring the project within the Construction Cost limit.
- E. If the Bidding or Negotiating Phase has not commenced within three months after completion of the Final Design Phase, or if industry-wide prices are changed because of unusual or unanticipated events affecting the general level of prices or times of delivery in the construction industry, the established Construction Cost limit will not be binding on Landscape Architect, and Owner shall consent to an adjustment in such Construction Cost limit commensurate with any applicable change in the general level of prices in the construction industry between the date of completion of the Final Design Phase and the date on which proposals or Bids are sought.
- F. If the lowest bona fide proposal or Bid exceeds the established Construction Cost limit, Owner shall (1) give written approval to increase such Construction Cost limit, or (2) authorize negotiating or rebidding the Specific Project within a reasonable time, or (3) cooperate in revising the Specific Project's scope, extent, or character to the extent consistent with the Specific Project's requirements and with sound landscape architecture practices. In the case of (3), Landscape Architect shall modify the Contract Documents as necessary to bring the Construction Cost within the Construction Cost limit. Owner shall pay Landscape Architect's cost to provide such modification services, including the costs of the services of its Consultants, all overhead expenses reasonably related thereto, and Reimbursable Expenses, but without profit to Landscape Architect on account of such services. The providing of such services will be the limit of its responsibility in this regard and, having done so, Landscape Architect shall be entitled to payment for services and expenses in accordance with this Agreement and will not otherwise be liable for damages attributable to the lowest bona fide proposal or bid exceeding the established Construction Cost limit.

This is **EXHIBIT G**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Landscape Architect for Professional Services – Task Order Edition** dated _____, _____.

Insurance

Paragraph 6.04 of the Agreement is amended and supplemented to include the following agreement of the parties.

G6.04 *Insurance*

G6.04 *Insurance*

H. *General Conditions*

If applicable, Owner will require that the Landscape Architect procure and maintain in full force and effect during the life of this agreement, such insurance as is required herein. Policies of insurance shall be written by companies licensed or approved to do business in the State of New Mexico.

The Landscape Architect shall furnish Owner copies of certificates of required insurance in a form satisfactory to Owner (or copies of insurance policies if Owner calls for them). All certificates of insurance (or policies) shall provide that thirty (30) days written notice be given to Owner before a policy is cancelled or not renewed except that thirty (30) days notice shall not apply for non-payment of premiums. Various types of required insurance may be written in one or more policies.

If part of this Agreement is subcontracted, the Landscape Architect shall require its subcontractor to secure insurance to protect itself against all hazards enumerated herein, which are not covered by the Landscape Architect's insurance policies.

1. Approval of Insurance

Even though a "Notice to Proceed" may have been given, the Landscape Architect or subcontractor shall not begin any work under this Agreement until the required insurance has been obtained and the proper Certificates (or insurance policies) have been provided to Owner, adding Owner as an additional insured. Neither approval nor failure to disapprove certificates, policies or the insurance by Owner shall relieve the Landscape Architect of full responsibility to maintain the required insurance in full force and effect.

2. Professional Liability Insurance

The Landscape Architect will be required to obtain Professional Liability Insurance in an amount not less than \$1,000,000.00 in the aggregate provided however, that there shall not be a per claim limit of less than \$1,000,000.

In the event Owner elects to require insurance coverage in excess of \$1,000,000 the cost directly incurred by the Landscape Architect, if it is in addition to the Landscape Architect's Basic Professional Liability Insurance, shall be a direct reimbursable expense (additional insurance

premium cost only) paid by Owner.

3. Commercial General Liability and Automobile Insurance

All commercial, general liability and automobile insurance policies shall have liability limits in amounts not less than \$1,000,000 combined single limit of liability for bodily injury, including death and property damage in any one occurrence.

Said policies of insurance shall be in effect for the term of this Agreement and include coverage for all operations performed for Owner by the Landscape Architect. Landscape Architect shall provide with the Certificate of Insurance an endorsement from their policy showing the Landscape Architect carries Additional Insured coverage.

4. Workers' Compensation Insurance

The Landscape Architect shall comply with the provisions of the Workers' Compensation Act, the Subsequent Injury Act, and the New Mexico Occupational Disease Disablement Law.

5. Increased Limits

If, during the life of this contract, the legislature of the State of New Mexico increases the maximum limits of the liability under the Tort Claims Act, Owner may require the Landscape Architect to increase the maximum limits of any insurance required herein. In the event that the Landscape Architect is so required to increase the limits of such insurance, an appropriate adjustment in contract amount will be made.

6. Proof of Licensing

Landscape Architect shall provide Owner with its state license number and shall maintain its license in good standing for the term of this Agreement.

7. Notification

Landscape Architect agrees to notify Owner of any change or cancellation of insurance policy.

B. *Additional Insureds:*

1. Landscape Architect and the Consultants identified in the Task Order for a Specific Project shall be listed on Owner's general liability policies of insurance as additional insureds, and on any applicable property insurance policy as loss payees, as provided in Paragraph 6.04.B.

This is **EXHIBIT H**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Landscape Architect for Professional Services – Task Order Edition** dated _____, _____.

Dispute Resolution

Paragraph 6.08 of the Agreement is supplemented to include the following agreement of the parties:

H6.08 Dispute Resolution

- A. Owner and Landscape Architect agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement, including any Task Order, or the breach thereof ("Disputes") to mediation by an individual or firm mutually agreeable to the Landscape Architect and Owner. Owner and Landscape Architect agree to participate in the mediation process in good faith. The process should be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

This is **EXHIBIT I**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Landscape Architect for Professional Services – Task Order Edition** dated _____, _____.

Limitations of Liability

I6.10.A Limitation of Landscape Architect's Liability

1. *Landscape Architect's Liability Limited to Amount of Insurance Proceeds:* Landscape Architect shall procure and maintain insurance as required by and set forth in Exhibit G to this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of Landscape Architect and Landscape Architect's officers, directors, members, partners, agents, employees, and Consultants, to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way related to a Specific Project or Task Order, or this Agreement, from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty, express or implied, of Landscape Architect or Landscape Architect's officers, directors, partners, agents, employees, or Consultants, or any of them (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Landscape Architect by Landscape Architect's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Landscape Architect's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal). If no such insurance coverage is provided with respect to Owner's Claims, then the total liability, in the aggregate, of Landscape Architect and Landscape Architect's officers, directors, members, partners, agents, employees, or Consultants, to Owner and anyone claiming by, through, or under Owner for any and all such uninsured Owner's Claims shall not exceed \$1,000,000.
2. *Limitation of Indemnification:* These indemnification provisions are subject to the limitations and provisions of NMSA 1978, Section 56-7-1(1971).

This is **EXHIBIT J**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Landscape Architect for Professional Services** dated _____, _____.

Special Provisions

Paragraph 6.11 of the Agreement is supplemented to include the following agreement of the parties:

H. *Records and Audits*: The Landscape Architect shall maintain detailed time records which indicate the date, time, and nature of services rendered if hourly services are being provided. These records shall be subject to inspection by Owner. Owner shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of Owner to recover excessive and/or illegal payments.

1. *Ownership of Plans and Documents*: All documents prepared as part of or related to the project, including, but not limited to the field notes, design notes, original tracings of plans, and logs of any test holes drilled, and any computer generated materials prepared under this Agreement as instruments of service, are and shall remain, the property of Owner. At the termination of this Agreement or the conclusion of the project, whichever is sooner, upon request by Owner, the Landscape Architect shall deliver as part of the basic services and in a form acceptable to Owner, one bound copy of the design calculations and assumptions including facility life-cycle costs and annual operations and maintenance requirements, one set of digital data on a format acceptable to Owner, one set of blueprints, and one set of reproducible mylar record drawings of the work. Additional plans and documents which may be required by Owner, will be identified and agreed upon as a deliverable due at the completion of the project. Any use of completed documents for other projects and/or any use of uncompleted documents without specific written authorization from the Landscape Architect will be at Owner's sole risk. Owner shall indemnify and hold harmless the Landscape Architect from all claims, damages and attorney fees arising from the reuse of the documents. No material produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country by the Landscape Architect. Owner shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement.
2. *Retention*: After project completion including the warranty period and final payment under this contract, the Landscape Architect shall maintain for no less than ten (10) years, or as required by funding agency, copies of all documents, maps, records, computer data, and computer generated materials, field notes and soil tests which were developed in the course of work on the project for Owner and for which compensation has been received by the Landscape Architect. The above shall be the property of Owner, maintained by the Landscape Architect, at no additional cost to Owner and in accordance with applicable law and requirements prescribed by Owner. If required by Owner, and upon written request, delivery of these documents or copies of this information shall be transmitted to Owner at a mutually agreed upon cost.

I. *Use of Federal Funds*. Landscape Architect and Owner must not make any award or permit any award (sub-grant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

