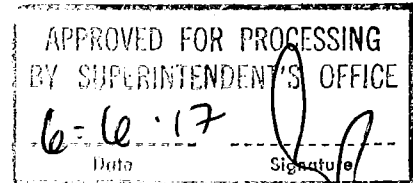


**TITLE: APPROVAL OF AGREEMENT NO. A17.421 FOR ONGOING
STRUCTURAL ENGINEERING SERVICES BETWEEN SIMI
VALLEY UNIFIED SCHOOL DISTRICT AND KPFF CONSULTING
ENGINEERS**

Business & Facilities
Consent # 14

June 6, 2017
Page 1 of 1

Prepared by: Ron Todo, Associate Superintendent
Business & Facilities



Background Information

On February 21, 2017 the Board of Education approved the list of selected firms for on-call engineering services for the Measure X Bond Program. Structural engineering services are needed for a variety of projects. The firm of KPFF Consulting Engineers is on the approved list and can provide these services. The attached agreement A17.421 with KPFF Consulting Engineers is presented to the Board of Education for approval.

Fiscal Analysis

Ongoing Structural Engineering Services Agreement A17.421 (Exhibit "A") is a **no-cost master services agreement** establishing the terms and conditions applicable to each project assignment.

Additional information is available at the Bond Management Office.

Recommendation

It is recommended that the Board of Education approve Ongoing Structural Engineering Services Agreement A17.421 with the firm of KPFF Consulting Engineers.

On a motion # 237 by Trustee LaBelle, seconded by Trustee Lundstrom and carried by a vote of 5/0, the Board of Education approved, by roll-call-vote, Ongoing Structural Engineering Services Agreement A17.421 with the firm of KPFF Consulting Engineers.

Motion # 237 Ayes: Blough,
LaBelle, Lundstrom, White, Daniels;
Noes: 0; Absent: 0; Abstain: 0

Absent: 0

Abstained: 0

AGREEMENT NO. A17.421 FOR ON-GOING ENGINEERING SERVICES

This Agreement for On-Going Engineering Services ("Agreement") is entered into May 18, 2017 by and between **SIMI VALLEY UNIFIED SCHOOL DISTRICT**, a California public school district ("District") and **kpff Consulting Engineers** ("Engineer"); the District and the Engineer are collectively referred to herein as "the Parties." This Agreement is entered into with reference to the following Recitals, all of which are incorporated herein by this reference.

WHEREAS, from time-to-time, the District is engaged in the design, bidding and construction of works of improvement consisting generally of the demolition, construction and/or alteration of new and existing physical facilities and maintenance (deferred and scheduled) of physical facilities and equipment/building repairs; these works of improvement are hereinafter collectively referred to as "the Projects" and singularly referred to as "an Assigned Project".

WHEREAS, in or about December 19, 2016, the District issued a Request for Qualifications ("RFQ") pursuant to which the District solicited proposals from Engineering services firms to provide Engineering services on an on-going basis.

WHEREAS, the Engineer submitted a written response to the RFQ ("the RFQ Response"); by this reference, the RFQ and the RFQ Response are incorporated into this Agreement.

WHEREAS, the District desires to retain Engineer to provide and perform engineering and related services in connection with the design, bidding and construction of the Assigned Projects; the specific terms and conditions for an Assigned Project will be as set forth in the Project Assignment Amendment ("PAA") in substantially the form attached hereto as Exhibit A.

WHEREAS, Engineer is qualified and capable of providing and performing the services and its other obligations under this Agreement in accordance with the terms hereof.

WHEREAS, as required by the Laws and/or the nature of services provided, personnel of the Engineer are duly registered as engineers under the laws of the State of California; all such personnel are qualified, experienced and capable of completing the Basic Services tasks assigned them for an Assigned Project.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the District and Engineer agree as follows:

Basic Services

General. Engineer shall provide Basic Services and authorized Additional Services for an Assigned Project, as more particularly enumerated in this Agreement and in the PAA for an Assigned Project. All Basic Services and authorized Additional Services for an Assigned Project shall be performed and completed by employees of the Engineer. Engineer's services shall be performed or provided consistent with the Basic Services Completion Schedule set forth in the PAA for an Assigned Project and with professional skill and care and in such a manner as to avoid hindrance, interruption or delay to the orderly progress and completion of the design, bidding and construction of the Assigned Project. The scope of Basic Services to be provided by the Engineer in connection with an Assigned Project shall be in accordance with the PAA issued by the District for an Assigned Project; the form of PAA is attached hereto as Exhibit A and incorporated herein by this reference.

Relationship of Engineer to Other Assigned Project Participants. The Engineer's services hereunder shall be provided in conjunction with contracts between the District and other Assigned Project participants including the Contractor, the Construction Manager, if one is retained by the District for an Assigned Project. The Engineer's services and the Design Documents prepared by or through the Engineer for an Assigned Project shall conform to processes, procedures and standards established by the District and/or processes, procedures and standards established by the Construction Manager or the District for an Assigned Project. The Contractor awarded the Construction Contract for an Assigned Project is responsible for performance of its

obligations under the Construction Contract. Engineer's services hereunder shall not be deemed or construed to be Engineer's assumption of responsibility for, or control over construction means, methods sequences or procedures, or for safety during construction of the Project, all of which are and remain the responsibility of the Contractor.

Engineer Independent Contractor Status. The Engineer is an independent contractor to the District. The express terms hereof set forth the limited extent to which Engineer is authorized to act on behalf of the District in its independent contractor capacity. The Engineer shall be liable for the consequences of Engineer's actions or conduct which exceeds the express limited scope of Engineer's authority to act on behalf of the District as set forth herein.

Engineer Standard of Care. Engineer shall provide the Basic Services and authorized Additional Services for an Assigned Project: (i) using its best professional skill and judgment; (ii) acting with due care and in accordance with respective applicable standards of care under California law for those providing similar services for projects of the size, scope and complexity of an Assigned Project; (iii) the terms of this Agreement and the PAA for an Assigned Project; and (iv) in accordance with applicable standards of care regarding application and interpretation of applicable law, code, rule or regulation at the time services are rendered. Neither the Engineer nor its respective employees shall engage in any conduct or activity, accept any employment or compensation which actually or reasonably appears to compromise the Engineer's obligations to the District under this Agreement.

Engineer Representation. The Engineer shall designate a Project Engineer and/or Job Captain for all Phases of Basic Services for an Assigned Project. Unless approved by the District for an Assigned Project, the Project Engineer or Job Captain designated by the Engineer for an Assigned Project shall be the same for all Phases of Basic Services for the Assigned Project. The Engineer's Project Engineer and/or Job Captain shall: (i) be reasonably satisfactory to the District; (ii) will not be replaced without approval of the District; (iii) shall have the overall responsibility for performance of Engineer's obligations hereunder; and (iv) be authorized to act on behalf of the Engineer in discharge of Engineer's services hereunder. If the Project Engineer or Job Captain designated by the Engineer for an Assigned Project is replaced, the District shall have the right to approve of the replacement Project Engineer or Job Captain for the Assigned Project. During the Construction Phase of an Assigned Project, the Project Engineer and/or Job Captain shall be readily available to communicate by telephone, correspondence, necessary Site visits, e-mail or other means of communication to provide design direction and decisions as necessary to avoid delay, hindrance or interruption to construction of the Assigned Project.

Compliance with Regulatory Agencies. The Engineer shall respond to and comply with all requests relating to an Assigned Project made by any federal, state, regional or local governmental or quasi-governmental agency with jurisdiction over any portion of the Assigned Project, including without limitation, the California Department of Education, California Department of Finance, Division of State Architect and the California Public Works Board.

Meetings. The Engineer, as necessary, appropriate or requested by the District, shall attend and participate in meetings, forums and other conferences ("Meetings") relating to the design, bidding or construction of an Assigned Project. Without limiting the generality of the foregoing, the Engineer shall attend and participate in Meetings with the Construction Manager, District, end-user groups, shared governance councils/committees, Board of Education and organized public forums relating to an Assigned Project. The Engineer shall promptly respond to matters assigned to or designated for response, review or other action by the Engineer. If requested by the District, the Engineer shall prepare and distribute minutes of Meetings relating to an Assigned Project.

Phased Construction/Construction By Multiple Trade Contractors. Whether or not reflected in the PAA issued by the District for any Assigned Project, the District reserves the right to complete

construction of an Assigned Project in phases and/or by multiple Trade Contractors, each under separate contract with the District for constructing a portion of an Assigned Project. The election of the District to phase construction of an Assigned Project or to construct an Assigned Project with multiple Trade Contractors shall not result in increase of the Contract Price to the Engineer for an Assigned Project.

Existing Conditions Investigation. The Engineer shall inspect the Site of an Assigned Project to ascertain existing conditions, facilities or other improvements on or about the Site of an Assigned Project as necessary to produce complete and accurate Design Documents for the Assigned Project. If the Assigned Project involves any existing improvements, the Engineer shall review any materials provided to the Engineer by or through the District relating to the as-built and existing condition of the improvements on or about the Site. The Engineer shall promptly notify the District and Construction Manager in writing of discrepancies encountered between the existing conditions observed by the Engineer and the materials provided by or through the District.

Obligation to Design Within Construction Budget. A material obligation of the Engineer under this Agreement and in connection with each Assigned Project hereunder is the Engineer's development and preparation of Design Documents for each Assigned Project that can be constructed (under the then current marketplace conditions) within the Construction Budget established by the District for the Assigned Project. Design Documents for an Assigned Project shall include features, elements, components or other items which may be added to or deleted from the scope of the Assigned Project without impairing the size, intended uses, functions or occupancy of the Assigned Project ("Design Alternatives"). The election to incorporate any Design Alternatives into an Assigned Project shall be solely that of the District. Basic Services of the Engineer include incorporation of District selected Design Alternatives into the Design Documents for an Assigned Project.

Conformity to District Standards. Design Documents prepared by or through the Engineer for an Assigned Project shall conform to District standards for materials, equipment and/or workmanship. Modifications of the Design Documents for an Assigned Project to conform to District materials, equipment or workmanship standards shall be without adjustment of the Contract Price for the Assigned Project.

Compliance with Regulatory Agencies. The Engineer shall respond to and comply with all requests relating to an Assigned Project made by any federal, state, regional or local governmental or quasi-governmental agency with jurisdiction over any portion of an Assigned Project ("Regulatory Agencies"). All of the Engineer's verbal communications with Regulatory Agencies shall be reduced to writing. The Engineer shall copy the District Representative with all written communications received from any of the Regulatory Agencies relating to an Assigned Project or generated by the Engineer to any Regulatory Agency relating to an Assigned Project. The Engineer shall be responsible and liable to the District for all consequences of the Engineer's failure or refusal to timely, completely and accurately respond to any communications or requests from/by/between Regulatory Agencies relating to an Assigned Project.

Assigned Projects. The Engineer acknowledges that the District has the sole discretion to retain others to provide other engineering; architectural or related design professional services for any District work of improvement. Unless the District issues the Engineer a PAA for an Assigned Project pursuant to the terms hereof, the Engineer is not obligated to provide any services hereunder and there is no compensation due from the District to the Engineer.

Basic Services; Pre-Design (Programming) Phase.

General. The Engineer shall review the Construction Budget and other information provided by the District regarding an Assigned Project to ascertain the requirements and constraints of the

Assigned Project.

Site Observations. The Engineer shall visit the Site of an Assigned Project to become familiar with physical conditions and existing improvements at the Site as they relate to design of Assigned Project. Unless specifically indicated in this Agreement, the Site observations of the Engineer do not include observations of concealed conditions. The foregoing notwithstanding, by conducting Site observations, the Engineer is responsible for noting and incorporating patently observable existing Site conditions into the Assigned Project Design Documents. If the Assigned Project involves any existing improvements, the Engineer shall review and verify the accuracy of any materials provided to the Engineer by or through the District relating to the as-built and existing condition of the improvements on or about the Site. The Engineer shall promptly notify the District in writing of discrepancies encountered between the existing conditions observed by the Engineer and the materials provided by or through the District; failure of the Engineer to do so shall result in the Engineer's assumption of responsibility for correcting discrepancies between actual conditions and those described in the District-provided materials and incorporating the actual conditions into Design Documents for the Project without adjustment of the Contract Price are the Engineer for an Assigned Project.

Assigned Project Program Statement. In consultation with the District and the Construction Manager, understandings shall be arrived at with respect to the scope, requirements and constraints of the Assigned Project. Engineer shall provide the District with a written evaluation ("the Program Statement") of the District's requirements and constraints, including the selection of materials, building systems, equipment, the Construction Budget for the Assigned Project and alternative approaches to design and construction of the Assigned Project. The Engineer shall modify the Program Statement as necessary for the District's acceptance of the entirety of the Program Statement. The Engineer's development and preparation of the Design Documents for an Assigned Project shall conform to the District accepted Program Statement for the Assigned Project.

Basic Services: Design Development Documents Phase.

Initial Design Development Documents. Based upon the District accepted Program Statement for the Assigned Project, the Engineer shall prepare Initial Design Development Documents consisting of Drawings and other documents illustrating scale and other relationships of the various components of the Work and an outline of Specifications. Design Development Documents shall include without limitation: (i) a general description of the Assigned Project; (ii) conceptual site plan; (iii) preliminary building plans; (iv) sections and elevations; (v) perspective sketches; and (vi) other documents requested by the District relating to the preliminary design of an Assigned Project. Upon completion of the Initial Design Development Documents, or at such other intervals during Engineer's development of Initial Design Development Documents as established in the PAA for an Assigned Project, Engineer shall submit the same to the District and the Construction Manager for information, review and comments.

Final Design Development Documents. The District, the Construction Manager and Engineer will confer and consult with each other to arrive at mutual understandings and agreements as to which of the comments of the District and the Construction Manager to the Initial Design Development Documents are to be incorporated into the Final Design Development Documents. The Engineer shall prepare Final Design Development Documents which consist of the Initial Design Development Documents revised to incorporate therein the mutually agreed upon changes and other comments. Upon completion of the Final Design Development Documents, Engineer shall submit the same to the District for review and acceptance.

Design Documents. As required for an Assigned Project, Design Documents completed by the Engineer in the Design Development Documents phase for an Assigned Project shall include without limitation the following:

Demolition Plans. Identification of existing facilities and improvements to be demolished, including without limitation, description of items, systems, materials and/or equipment to be: (i) abandoned in place, (ii) removed, or (iii) salvaged.

Design/Details. Development and expansion of the Assigned Project requirements to establish the scope, relationships, forms, sizes and appearance of the Project through: (i) plans, sections and elevations; (ii) typical construction details; (iii) materials selections; and (v) equipment layouts.

Structural Design/Documentation. If the services under this Agreement are for structural engineering, development of the specific structural system(s) and materials with sufficient detail to establish: (i) basic structural system and dimensions; (ii) final structural design criteria; (iii) foundation design criteria; (iv) sizing of major structural components; (v) critical coordination clearances; and (vi) outline specifications or materials lists.

Mechanical Design/Documentation. If the services under this Agreement are for mechanical engineering, develop mechanical design to establish: (i) approximate equipment sizes and capacities; (ii) equipment layouts; (iii) required space for equipment; (iv) required chases and clearances; (v) acoustical and vibration control; (vi) visual impacts; and (vii) energy conservation measures.

Electrical Design/Documentation. If the services under this Agreement are for electrical engineering, develop electrical design to establish: (i) criteria for lighting, electrical, audio/visual and telecommunications (voice/data); (ii) approximate equipment sizes and capacities; (iii) equipment layouts; (iv) required space for equipment; (v) required chases and clearances; (vi) visual impacts; and (vii) energy conservation measures.

Plumbing and Fire Protection. If the services under this Agreement are for plumbing engineering, develop plumbing design to establish: (i) general location of plumbing lines; (ii) plumbing line sizing; and (iii) plumbing fixtures. Develop fire protection design showing generally sprinkler piping layout, fire department access areas and connections, and main utility connection.

Civil Design/Documentation. If the services under this Agreement are for civil engineering, develop civil design to establish: (i) topographic surveys including spot elevations and other information necessary for construction of improvements; (ii) systems for proper control of storm +water drainage; and (iii) other work necessary for the civil engineering design.

Constructability; Value Engineering Reviews of Design Construction Documents. The District will conduct, or cause to be conducted, Constructability Reviews and/or Value Engineering Reviews of the Design Development Documents for an Assigned Project as set forth in the PAA for the Assigned Project. If the Design Documents for an Assigned Project are subject to either Constructability Reviews or Value Engineering Reviews of the Design Development Documents, the Engineer shall submit Design Development Documents to the District for such Constructability Reviews and/or Value Engineering Reviews as set forth in the PAA for the Assigned Project. The District and the Construction Manager and Engineer will confer and consult with each other to arrive at mutual understandings and agreements as to which of the Constructability Review and/or Value Engineering Review comments are to be incorporated into the Design Development Documents. If mutual agreement is not reached, the Engineer shall incorporate such Constructability Review and/or Value Engineering Review comments as directed by the District. The Design Development Documents shall incorporate mutually agreed upon comments or comments as directed by the District. Engineer shall revise Design Development Documents as necessary to obtain the District's reasonable acceptance thereof.

Design Development Documents Construction Cost Estimate. If required by the PAA for an Assigned Project, the Engineer shall prepare and deliver to the District a Construction Cost Estimate of the Design Development Documents for the Assigned Project as depicted in the Final Design Development Documents. If the Construction Cost Estimate of the Design Development Documents materially exceeds the District's Construction Budget for the Assigned Project, the Engineer shall consult with the District and the Construction Manager to identify revisions to the Design Development Documents as necessary so that the Construction Cost Estimate for the Work depicted in the Final Design Development Documents is consistent with the Construction Budget for the Assigned Project. Revisions of the Design Development Documents to conform with the Construction Budget shall be without adjustment to the Contract Price for the Assigned Project unless the District shall have directed modifications to, or inclusions in, the scope of the Assigned Project or component parts thereof which cause the Project Construction Budget to be exceeded.

Basic Services: Construction Documents Phase.

General. Based upon the District accepted Design Development Documents, the Engineer shall prepare Construction Documents consisting of all Drawings and Specifications and other Design Documents necessary or appropriate for setting forth in detail the requirements for the Work of the Assigned Project with sufficient clarity, coordination and consistency to permit qualified and capable contractors to bid upon and construct the Work depicted therein for the Project Construction Budget. Construction Documents shall include without limitation: (i) details establishing and defining the scope, relationships, forms, size and appearance of the Assigned Project and component parts thereof by site plans, floor plans, elevations, cross sections and other documents or calculations necessary to accurately depict design of the Assigned Project; (ii) typical construction details; (iii) equipment specifications and layouts; (iv) dimensions as necessary to accurately depict design of the Assigned Project or as consistent with professional engineering practices; and (v) complete and detailed written Specifications establishing and defining workmanship standards, materials/equipment standards or performance requirements, administration of the Construction Contract for the Assigned Project and similar matters.

Construction Documents. Unless otherwise set forth in the PAA for an Assigned Project, the Construction Documents shall be one hundred percent (100%) complete dimensioned plans, elevations, sections, details, schedules and diagrams. Without limiting the generality of the foregoing component parts of the Construction Documents shall include:

Demolition. Complete and detailed descriptions of the existing facilities and improvements to be demolished, to remain in place or to be re-located, including specific direction for the removal, disposal, recycling or other handling of materials or equipment of the existing facilities and improvements to be demolished.

Structural. Foundation details, structural notes and structural calculations.

Mechanical. Floor plans with all components and service/access areas drawn to scale, duct sizing and air flow quantities, detailed piping and duct design with sizing and coordinated with structural supports, equipment details with structural support and vibration isolation methods, penetration and sleeve details, space zoning, installation details, detailed controls requirements and design calculations for mechanical equipment, supporting infrastructure and structural supports to mechanical equipment and ducts.

Plumbing and Fire Protection. Fire protection plans with header and riser layouts, detailing piping design with sizing indicated, sprinkler zone locations, sprinkler installation details including structural supports, penetration details and design calculations. Plumbing components shall be completely identified and located.

Electrical. Details of power service to the Assigned Project, power plans showing primary cable,

raceways, feeder conduits, electrical loads, duplex and special receptacles and branch circuitry design, connections with other building systems, including fire/life-safety, mechanical and telecommunications, grounding details, penetration details. The Electrical Construction Documents shall include interior/exterior lighting with control systems, lighting panels, switching and circuiting, installation details, conduit/wire size notes for lighting branch circuits.

Civil. Topographic surveys of sites or portions of sites where improvements will take place. Sufficient quantities of spot elevations, top-of-grate elevations, curb and concrete elevations, and pavement elevations as required for the proper design and construction of improvements are part of the required information. Accessible ramp and landing elevations, storm water control and retention systems design, surface water control, foundation and retaining wall drainage systems, SWPPP plans and systems, and other information as required for the design and construction of improvements.

Specifications. The Construction Documents Phase Specifications shall be complete and incorporate all requirements for workmanship, materials, equipment and other requirements for the Assigned Project.

Review of Construction Documents Status. At intervals established in the PAA for an Assigned Project or as mutually agreed upon by the District and Engineer, the Engineer shall provide to the District and/or the Construction Manager, for review and information, the Drawings, Specifications and other documents depicting the then current status of the Engineer's preparation of Construction Documents.

Constructability and Value Engineering Reviews of Construction Documents. The District will conduct, or cause to be conducted, Constructability Reviews and/or Value Engineering Reviews of the Construction Documents for an Assigned Project as set forth in the PAA for an Assigned Project. If the Design Documents for an Assigned Project are subject to either Constructability Reviews and/or Value Engineering Reviews, the Engineer shall submit Construction Documents to the District for such Constructability and/or Value Engineering Reviews as set forth in the PAA for the Assigned Project. The District, the Construction Manager and the Engineer will confer and consult with each other to arrive at mutual understandings and agreements as to which of the Constructability Review and/or Value Engineering Review comments are to be incorporated into the Construction Documents. If mutual agreement is not reached, the Engineer shall incorporate such Constructability Review and/or Value Engineering Review comments into the Construction Documents as directed by the District. The Engineer shall submit revised Construction Documents to the District for acceptance. The Engineer shall revise Construction Documents as necessary to obtain the District's reasonable acceptance thereof.

Detailed Construction Cost Estimate. At such time as the Engineer achieves fifty percent (50%) completion of the Construction Documents, the Engineer shall prepare a detailed Construction Cost Estimate for the Work depicted in the fifty percent (50%) completed Construction Documents ("the 50% Estimate"). If the detailed 50% Estimate materially exceeds the Construction Budget for the Assigned Project, the Engineer shall revise the Construction Documents as necessary so that the 50% Estimate conforms with the Construction Budget for the Assigned Project. Revisions of the Construction Documents shall be without adjustment to the Contract Price for the Assigned Project unless the District shall have directed modifications or inclusions to the scope of the Assigned Project or component parts thereof which cause the Construction Budget for the Assigned Project to be exceeded.

Approvals/Permitting of Construction Documents. The Engineer shall assist the District in obtaining all necessary approvals or permits for the Construction Documents for an Assigned Project from governmental and quasi-governmental agencies with jurisdiction over any portion of an Assigned

Project as necessary for the bidding and construction of the Assigned Project including without limitation, approvals by the Division of State Engineer ("DSA"). Without adjustment of the Contract Price for an Assigned Project, Engineer shall revise Construction Documents as required by DSA or other governmental or quasi-governmental agencies with jurisdiction over the Assigned Project, or portions thereof, to obtain their respective approval(s) or permit issuance.

Engineer Provision of Construction Documents. The Engineer shall provide the District with one (1) clear background, reproducible copy of the Drawings included in the final District accepted Construction Documents for bidding and construction purposes of each Assigned Project. Reproduction of these sets of Design Documents for an Assigned Project is at the cost of the District, except to the extent that reproduction is required by revisions or corrections arising out of errors or omissions of the Engineer, in which case, the Engineer shall bear all costs of preparing revisions or corrections and reproduction of Construction Documents.

Basic Services: Bidding Phase.

Development of Bid Documents. In consultation with the District and the Construction Manager, the Engineer will advise and make recommendations to the District for bidding and award of the Construction Contract for an Assigned Project. Engineer will generally review and comment upon the District's proposed forms of Construction Contract and General, Special and other Conditions thereof for conformity and consistency with the Construction Documents. Engineer shall assist the District and the Construction Manager in preparation of information, documents and forms necessary or appropriate for bidding the Construction Contract for an Assigned Project ("Bid Documents").

Bidding Process. During the bidding for Construction Contract, Engineer will: (i) attend pre-bid conference(s), as called by the District; (ii) assist the District in responding to bidders' inquiries, questions or clarification requests relating to the Assigned Project; and (iii) where necessary or appropriate, the Engineer will prepare and assist the District in issuance of addenda to the Bid Documents for an Assigned Project. As requested by the District, the Engineer will assist the District in obtaining required governmental approval(s) for award of the Construction Contract.

Bid Costs Exceeding Project Construction Budget. If within one hundred fifty (150) days of the date of the DSA construction permit for an Assigned Project, the District receives Bid Proposals for the Assigned Project Construction Contract and the lowest bona fide Bid Proposal exceeds the Project Construction Budget, the District may: (i) approve of an increase in the Construction Budget for the Assigned Project; (ii) reject all Bid Proposals and authorize re-bidding of the Assigned Project; (iii) abandon or terminate the Assigned Project; or (iv) revise the scope, or reduce or eliminate portions of the Assigned Project so as to limit and reduce Construction Costs. Unless the District has theretofore directed changes, modifications or inclusions in the scope of the Assigned Project or component parts thereof which cause the Bid Proposals to exceed the Project Construction Budget, if the District elects to revise the Assigned Project pursuant to (iv) above, the Engineer shall make all necessary revisions to the Construction Documents without adjustment of the Contract Price for the Assigned Project. If the District re-bids the Assigned Project, for such subsequent re-bid(s), the Engineer shall perform the obligations set forth in Paragraphs 5.1 and 5.2 above in connection with such re-bid(s) without adjustment of the Contract Price due the Engineer for the Assigned Project.

Pre-Construction. The Engineer shall complete the following as necessary for an Assigned Project:

Conformed Design Documents. Prepare Conformed Design Documents consisting of the Design Documents initially issued by or on behalf of the District for bidding as modified by Addenda or other changes thereto made during the Bidding Phase. The Engineer shall complete preparation of the Conformed Design Documents so that the Conformed Design Documents are delivered to the District sufficiently in advance of the anticipated/planned

commencement date of the Construction Phase of the Assigned Project to allow the District to reproduce Conformed Design Documents for distribution to the Contractor at or prior to commencement of the Construction Phase of an Assigned Project.

Project Inspector; Materials Tests/Inspections. As requested by the District, the Engineer shall assist in the District's selection and retention of a Project Inspector and/or materials test/inspection services for the Assigned Project.

DSA PR 13-01. The Engineer shall complete pre-construction activities required by DSA PR 13-01 for the Design Professional in Charge.

Contractor Meetings. Attend and participate in pre-construction meetings with the District, Construction Manager and Contractor.

Basic Services; Construction Phase.

Administration of Construction Contract. Engineer will provide assistance to the District in administration of the Construction Contract for the Assigned Project and construction of the Assigned Project. The scope of the Engineer's services in administration of the Construction Contract shall include all activities and responsibilities set forth herein and in the Construction Contract. The Engineer's administration of the Construction Contract for an Assigned Project shall be in conjunction with the services and responsibilities of the Project Inspector, Construction Manager. The Engineer shall be a representative of the District and shall advise and consult with the District regarding construction of an Assigned Project until Final Payment under the Construction Contract for the Assigned Project is due and Final Completion of construction of an Assigned Project is certified by the Engineer and other Project participants including the Construction Manager and the Project Inspector for the Assigned Project. The Engineer shall have the authority to act on behalf of the District only to the extent expressly provided for by the terms hereof and as may be subsequently modified in accordance with the provisions hereof. Duties, responsibilities and limitations of the Engineer's authority shall not be restricted, modified or extended without written agreement of the District and the Engineer along with consent by the Contractor and/or Construction Manager for the Assigned Project as necessary or appropriate. Engineer shall cooperate with and comply with controls, procedures, processes and reporting functions reasonably implemented by the District with respect to design or construction of the Assigned Project.

Site Observations. The Engineer shall attend weekly meetings at the Site and other meetings relating to the Assigned Project and shall visit the Assigned Project Site at intervals appropriate to the stage of construction, as required by the conditions of construction or the Site, or as may be reasonably requested by the District from time to time for the purpose of becoming generally familiar with the progress and quality of completed construction and to generally determine if construction of the Assigned Project is being performed in a manner indicating that upon completion it will be generally in accordance with the Construction Contract and the Construction Documents. On the basis of observations made during Site visits and in its capacity as an Engineer, the Engineer shall: (i) keep the District informed of the progress and quality of the construction of the Assigned Project; and (ii) endeavor to guard the District against defects and deficiencies in the Assigned Project construction and the failure or refusal of the Contractor to construct the Assigned Project in accordance with the terms and intent of the Construction Contract and the Construction Documents. Without limiting any other right or remedy of the District whether pursuant to this Agreement or by operation of law, if in the course of its Site observations, the Engineer fails to discover or report to the District any patently observable major defect or deficiency in construction of the Assigned Project which by exercise of due care should have been observed by the Engineer and reported to the District, the Engineer will provide all design services necessary for remedial or corrective measures for such conditions without additional cost or expense to the District. The foregoing shall not be deemed to obligate the

Engineer to observe or inspect concealed conditions, unless the nature of the visually apparent conditions are such that a prudent Engineer would conduct observations or inspections of related concealed conditions to confirm that there are no major defects or deficiencies in the concealed conditions. The provisions hereof shall not be construed as requiring the Engineer to make exhaustive or continuous Site observations to check on the quality or quantity of the Assigned Project construction. The Engineer shall have access to the Assigned Project wherever in preparation, fabrication or progress.

Contractor Applications for Payment.

Development of Payment Procedures. In consultation with the District and Construction Manager, the Engineer shall assist in the development and implementation of procedures, forms and documents for the submittal, review, processing and disbursement of Progress Payments to the Contractor for each Assigned Project.

Certification of Payment Due. Based on the Engineer's observations and evaluations and in conjunction with the observations and evaluations of the Construction Manager and the Project Inspector, the Engineer shall certify the amount due the Contractor on each Application for Progress Payment. Such certification shall be the Engineer's representation to the District that based upon the Engineer's Site observations in accordance with this Agreement and the data contained in the Application for Progress Payment, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the terms of the Construction Contract. Issuance of a Certificate for Payment shall constitute Engineer's representation to the District that the Contractor is entitled to the amount certified.

Limitations Upon Engineer's Certification. The Engineer's certifications and representations hereunder are subject to an evaluation of the Work for conformity with the terms of the Construction Contract upon Substantial Completion, the results of subsequent tests and inspections, minor deviations from the terms of the Construction Contract correctable prior to Final Completion and any specific qualifications expressed by the Engineer. The issuance of a Certificate for Payment shall not be deemed a representation that the Engineer has: (i) made exhaustive or continuous Site inspections to check the quality or quantity of the Work; (ii) reviewed construction means, methods, sequences or procedures; (iii) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the District to substantiate the Contractor's right to payment, excepted as included in the materials accompanying an Application for Progress Payment transmitted to and reviewed by the Engineer hereunder; or (iv) ascertained for or what purpose the Contractor has used funds previously disbursed under prior Application(s) for Progress Payment.

Final Payment. In conjunction with the Construction Manager and the Project Inspector, the Engineer shall review, evaluate and certify for payment the Contractor's Application for Final Payment.

Timely Action by Engineer. Upon receipt of any of the Contractor's Applications for Progress Payment and the Application for Final Payment, the Engineer shall promptly commence and complete its review, evaluation and certification of the amount due on each such application so that the District can make payment of the amount certified within the time permitted by law without incurring liability for interest and/or the Contractor's attorneys' fees resulting from untimely payments of any Progress Payment or the Final Payment. If the Engineer fails to take timely action pursuant to the preceding, the Engineer shall be liable to the District for all costs, demands, liabilities or losses arising out of or related to such failure to timely take action.

Rejection of Work. The Engineer shall have the authority, after notification to the District and Construction Manager, to reject Work of an Assigned Project which does not conform with the

requirements of the Construction Contract. Whenever the Engineer considers it necessary or appropriate for implementation of the intent of the Construction Contract upon notice to the District and Construction Manager, and authorization by the District, the Engineer may require additional inspection or testing of materials/equipment from an Assigned Project in accordance with the provisions of the Construction Contract, whether such materials/equipment are prepared, fabricated, installed or constructed. This authority of the Engineer, or the Engineer's good faith determination to exercise or not exercise such authority, shall not, however, give rise to a duty or responsibility of the Engineer to the District, the Contractor or any others constructing any portion of the Assigned Project to exercise or not to exercise such authority.

DSA.

Project Inspector. The Engineer shall consult with and cooperate with the Project Inspector in discharge of the Project Inspector's duties to observe construction of the Assigned Project. Where the Project Inspector notes defective or deficient construction, the Engineer shall: (i) assist in development of solutions to such conditions; and (ii) assist the Project Inspector in oversight of corrective measures.

Materials Tests/Inspections. The Engineer shall assist in scheduling and coordination of materials tests/inspections and observe such tests/inspections as required or appropriate. The Engineer shall review materials test/inspection reports, data and similar materials ("Test Reports") for confirmation of compliance with requirement of the Construction Contract; the Engineer shall advise the District, Construction Manager and Project Inspector of necessary remedial or corrective measures if Test Reports do not comply with Construction Contract requirements.

Reports; Communications. The Engineer shall file DSA Reports as required by the Laws. The Engineer shall communicate with DSA regarding the Project on behalf of the District; the Engineer shall keep the District informed of Engineer/DSA communications relating to the Assigned Project.

Submittals.

Submittal Procedures. In consultation with the District and the Construction Manager, the Engineer shall assist in the development and implementation of forms, documents and procedures for the handling, review and processing the Contractor's Submittals required for an Assigned Project.

Submittal Review. The Engineer shall review, and take appropriate action upon Submittals for the purpose of checking for conformance with the information given and the design concept expressed in the Design Documents. The Engineer's actions hereunder shall be taken with such reasonable promptness as to cause no delay, interruption or hindrance to the activities of the Contractor or others performing construction activities at the Site affected by such Submittal while allowing sufficient time in the Engineer's professional judgment to permit adequate review. If a Submittal Schedule or time frames for completion of the Engineer's review and evaluation of Submittals are developed and established pursuant to the Construction Contract with the participation and concurrence of the Engineer, Engineer's actions hereunder shall conform with such Submittal Schedule or time frames; Engineer shall be responsible for all results or consequences of its failure or refusal to complete its review and evaluation of Submittals in accordance with such Submittal Schedule. When professional certification of performance characteristics of materials, systems or equipment is required by the terms of the Construction Contract, the Engineer shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Construction Contract.

Limitations Upon Submittal Review. The Engineer's review of Submittals is not for the purpose of

determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Contractor, all of which remain the responsibility of the Contractor in accordance with the Construction Contract. The Engineer's review shall not constitute approval of safety precautions or, unless otherwise expressly stated by the Engineer, construction means, methods, sequences or procedures.

Changes.

Changes Procedures and Processing. In consultation with the District and the Construction Manager, the Engineer shall assist in the development of procedures, forms and processes for the evaluation of Changes or potential Changes to the Work of an Assigned Project.

Evaluation of Changes; Change Orders. The Engineer shall assist the District and the Construction Manager in evaluating Change Proposals of the Contractor and will advise the District of the nature, extent and scope of Change Proposals along with alternatives. Where Changes are authorized by the terms of the Construction Contract, the Engineer shall prepare, execute and forward to District a Change Order describing such Change and the adjustment if any, to the Contract Price or Contract Time of the Construction Contract.

Authority to Direct Minor Changes. The Engineer may authorize and direct minor Changes in the Work of an Assigned Project which do not involve an adjustment of the Contract Time or the Contract Price of Construction Contract and which are consistent with the intent of the Design Documents. Such Changes shall be effected by written order issued by the Engineer and copied to the District and the Construction Manager for an Assigned Project.

Interpretations.

Procedures for Handling Contractor's Requests. In conjunction with the District and the Construction Manager, the Engineer shall assist in the development of forms, documents and procedures for the transmittal, handling, response and disposition of requests and inquiries relative to the Work or the Design Documents.

Engineer's Interpretation. The Engineer shall interpret and decide matters concerning the performance of the District, Construction Manager or the Contractor on written request of the District, Construction Manager or the Contractor. The Engineer shall respond to and issue clarifications as necessary to address and resolve questions or inquiries of the Contractor relative to coordination, consistency and clarity of the Design Documents and the component parts thereof. The Engineer's responses to the foregoing shall be made with reasonable promptness and within any time limits established in the Construction Contract or which may otherwise be mutually agreed upon.

Effect of Engineer's Decisions. The Engineer's decisions and interpretations rendered hereunder shall be consistent with the intent of and reasonably inferable from the Construction Contract or the Design Documents and shall be in writing or in the form of drawings. When making such decisions or interpretations, the Engineer shall endeavor to secure faithful performance of the Contractor and the District, shall show no partiality to either and shall not be liable for the results of such decisions or interpretations rendered in good faith, in accordance with the terms hereof and the Engineer's discharge of due care. The Engineer's decisions or interpretations in matters pertaining to aesthetic effect shall be final and binding on the Contractor and District if consistent with the intent expressed in the Construction Contract or Design Documents.

Contractor Claims. The Engineer shall render written decisions regarding claims, disputes or other matters in controversy between the District and the Contractor arising under or relating to the Construction Contract, including the execution or progress of Work thereunder. The Engineer's decisions shall be in accordance with any applicable time limits set forth in the

Construction Contract; if no time limits are set forth, the Engineer shall render decisions within a reasonable time.

Records and Reports. The Engineer shall maintain current, accurate and complete records relating to the construction of the Assigned Project, including without limitation, correspondence, memorandum, Change Orders, Change Order Requests, Proposal Requests and similar records for an Assigned Project. The Engineer shall timely prepare and submit all reports regarding the Assigned Project construction required by applicable law, rule or regulation.

Limitations Upon Engineer's Construction Phase Services. Engineer's services during the Construction Phase shall not be deemed Engineer's assumption of, or control over, construction means, methods and sequences or Site safety, all of which remain the responsibility of the Contractor. Engineer shall not have control over or charge of the acts or omissions of the Contractor or its Subcontractors or their agents and employees.

Basic Services; Post Construction Phase.

Substantial Completion. Upon request of the Contractor and in conjunction with the District, the Project Inspector and the Construction Manager, the Engineer shall inspect the Work to determine if Substantial Completion has been achieved and if not the measures necessary to achieve Substantial Completion. The Engineer shall determine and certify the date of Substantial Completion of the Assigned Project, or portions thereof.

Punchlist. At the time of determining Substantial Completion and in conjunction with the District, the Project Inspector, the Construction Manager and the Contractor, the Engineer shall note the discovered conditions of the Work requiring correction, replacement, removal or other action necessary to comply and conform with the requirements of the Construction Contract ("the Punchlist"). The Engineer shall, in conjunction with the District, the Project Inspector, the Construction Manager, and the Contractor, determine the time reasonably necessary to complete the Punchlist items. If mutual agreement is not reached establishing the time for the Contractor's completion of the Punchlist, the Engineer shall make a binding good faith determination of the time for the Contractor's completion of the Punchlist. The Engineer shall thereafter periodically review the Contractor's performance and completion of the Punchlist.

Final Completion. In conjunction with the District and upon request of the Contractor, the Engineer shall inspect the Work of an Assigned Project to determine that Final Completion has been achieved and that the Work conforms and complies with the requirements of the Construction Contract, including completion of the Punchlist prepared at Substantial Completion. The Engineer shall determine and certify the date of Final Completion of an Assigned Project or portions thereof.

Close-Out Documents.

Assembly/Transmittal of Close-Out Documents. If the District does not retain a Construction Manager for an Assigned Project, the Engineer for such an Assigned Project shall compile and assemble the Contractor's close-out documents for delivery to the District, including without limitation, Record As-Built Drawings, Operations and Maintenance manuals, key schedules and warranties. If the District retains a Construction Manager for an Assigned Project, the Engineer shall review the close-out materials assembled by the Contractor and delivered to the Construction Manager for conformity to the Close-Out requirements for an Assigned Project. If the Contractor fails to fully comply with its close-out obligations, the Engineer shall make recommendations to the District and Construction Manager for implementation of measures to secure the Contractor's compliance; as requested by the District, the Engineer shall take action to enforce or implement measures to secure the Contractor's compliance with close-out obligations.

DSA Certification. The Engineer shall assist the District in preparation and submittal of such documentation as required by DSA for DSA Certification of the Assigned Project. The Engineer shall advise and assist the District in completing remedial/corrective measures required for issuance of DSA Certification.

As-Built Drawings. The District shall require each Contractor for an Assigned Project to provide the District with As-Built Record Drawings indicating the location and size of all concealed, underground or imbedded construction not covered in the original Drawings, Change Orders, Supplemental Drawings or Shop Drawings. The Contractor shall be required to record such work on reproducible drawings furnished to the Contractor by the District. The Contractor's As-Built Record Drawings shall be delivered by the Contractor to the Engineer for the Engineer's review and delivery to the District. The Engineer's review of the Contractor's As-Built Record Drawings shall be for the limited purpose of generally determining that the Contractor has complied with its obligations to prepare As-Built Record Drawings; responsibility for the accuracy and completeness of the As-Built Record Drawings is that of the Contractor.

Additional Services.

Additional Services: General. The services described in this Paragraph 8 are not included in the scope of Engineer's Basic Services for the Project. The District may, by written instrument, may direct or authorize the Engineer to complete the following or other Additional Services relating to the Project. The Engineer shall not complete any Additional Services without express prior direction or authorization of the District; no payment will be made by the District for any Additional Services completed without the Engineer's prior direction or authorization.

Additional Services Compensation. If the District authorizes or directs the Engineer to complete Additional Services and such Additional Services are not necessary as a result (in whole or in part) of deficiencies in the Design Documents for the Project or fault/neglect of the Engineer, the Engineer will be compensated for such District-requested Additional Services as set forth in this Agreement. If any Additional Services are the result of deficiencies in the Design Documents for the Project and/or fault/neglect of the Engineer, no compensation is due from the District to the Engineer for completing such Additional Services.

Additional Services. Without limiting any Additional Service the District may authorize or direct the Engineer to complete Additional Services which may include the following:

Design Document Revisions. Making significant revisions to the Drawings, Specifications or other Design Documents where such revisions are: (i) inconsistent with approval or instructions previously given by the District, including revisions necessary due to significant adjustments in the District's Program, budget or construction completion time for an Assigned Project; (ii) required by enactment of, or revisions to codes, laws, rules or regulations applicable to the Work of the Project where such enactment or revision could not have been reasonably foreseen by Architect; or (iii) due to the District's failure to render decisions in a timely manner.

District/Contractor Default. Services required or necessary as a result of the default or termination of the Contractor, failure of performance by the District or the Contractor, or major defects or deficiencies in the Work of the Contractor which were not and could not have been noted by the Engineer in its Site observations under Paragraph 6.2 hereof.

Design Documents Changes. Except as provided in Paragraph 6 above, preparing Drawings, Specifications or other Design Documents, along with supporting data in connection with Changes to the Work of an Assigned Project.

Contractor Substitutions. Providing services in connection with the evaluation(s) or request(s) by

the Contractor for as Assigned Project to provide substitute or alternative systems, equipment or materials to those indicated in the Design Documents and making subsequent revisions to the Design Documents and other documentation resulting therefrom.

Damaged Work. Providing consultation or other services in connection with repairs, replacements or corrections of the Work of an Assigned Project damaged or destroyed by fire or other casualty so long as no negligent or willful acts, omissions or other conduct of Engineer or its employees, agents or representatives have caused or contributed to such damage or destruction to an Assigned Project.

Excessive Contractor Claims. Providing services in connection with evaluation of an extensive and excessive number of claims submitted by a Contractor, except to the extent that such claims arise out of the services, Design Documents or other work product provided or performed by or through Engineer hereunder.

Expert Witness. Providing services as an expert witness in connection with a public hearing, arbitration or other legal proceeding arising out of as Assigned Project, except where Engineer is a party thereto, is called as a percipient witness (in which case Engineer shall be entitled to witness fees and costs as allowed by law) or is found liable for damages or other relief.

Future Improvements. Services relative to future systems, facilities or equipment not included within the scope of as Assigned Project.

Existing Conditions. Services to investigate existing conditions or facilities not included within the scope of an Assigned Project or to provide measured drawings thereof.

Furniture, Furnishings, Equipment. Services in connection with the District's selection, procurement or installation of furniture, furnishing or equipment not included within the scope of the Construction Contracts.

Financial/Special Studies. Providing financial feasibility or other special study in connection with an Assigned Project.

Special Surveys. Providing planning surveys or special surveys for Site evaluations, comparative studies or assessment of environmental conditions, to the extent not included in the scope of Basic Services for as Assigned Project.

Verification of District Provided Information. Providing services to verify the accuracy of drawings or other information provided by the District relating to existing conditions affecting as Assigned Project.

Operational/Maintenance Cost Analysis. Analysis of ownership, operational or maintenance costs of as Assigned Project or the components thereof to the District.

Additional Design Consultants. Providing services of Design Consultants for design disciplines not included in the Basic Services for an Assigned Project.

District Responsibilities.

Information. The District shall provide full information regarding the Assigned Project, including the District's objectives, general description of the scope, schedule requirements, construction budget, and other constraints and requirements which may affect the Assigned Project. Except as set forth herein, the Engineer shall be entitled to rely on the accuracy and completeness of information relating to an Assigned Project provided by the District. The foregoing notwithstanding, if any information provided by the District to the Engineer consists of information relating to existing "as built" conditions of improvements on or about the Site of an Assigned Project, the Engineer shall be entitled to rely upon information in concealed or covered conditions, but the Engineer shall independently verify the accuracy and completeness of

information of existing "as built" conditions which are visually apparent without opening or uncovering any existing improvements. If in such independent verification, the Engineer encounters conditions different than noted in the District provided information, the Engineer shall notify the District, and the Construction Manager in writing of such encountered discrepancies.

District Representative. The District shall designate a representative to act on the District's behalf with respect to an Assigned Project and who shall be authorized to render decisions on behalf of the District and to carry out the District's responsibilities under this Agreement, all of which shall be discharged or performed in a manner so as to avoid unreasonable delay in the orderly and sequential progress of design and construction of an Assigned Project and Engineer's services hereunder.

District Consultants. The District shall furnish all legal, accounting, insurance and other consulting services as may be necessary for an Assigned Project.

Test and Inspections. The District shall furnish or otherwise retain inspection or testing services in connection with construction of an Assigned Project as required by applicable code, regulation, ordinance or the terms of the Construction Contract. The District shall provide, if required by applicable code, regulation or rule or by conditions encountered, tests or inspections for hazardous or toxic materials.

District Notice of Non-Conformity. The District will give prompt written notice to the Engineer if the District becomes aware of any fault, failure or neglect of Engineer or the services provided by Engineer hereunder; provided that the failure or delay by District in giving such written notice shall not constitute a waiver of any right or remedy of the District arising out of such fault, failure or neglect of the Engineer. Upon receipt of such notice, a material obligation of the Engineer under this Agreement is its prompt action to fully remedy the fault, neglect or failure identified by the District in the District's written notice.

Insurance and Indemnity.

Engineer Insurance. At all times while providing or performing services under this Agreement, the Engineer shall obtain and maintain the policies of insurance described in this Paragraph 10. The minimum coverage amounts of each policy of insurance to be obtained and maintained by the Engineer while providing or performing services in connection with an Assigned Project shall be as set forth in this Agreement, subject to modifications set forth in the PAA for the Assigned Project.

Workers Compensation and Employers Liability Insurance. Engineer shall purchase and maintain Workers' Compensation Insurance covering claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts may be liable. Engineer shall purchase and maintain Employer's Liability Insurance covering bodily injury (including death) by accident or disease to any employee which arises out of the employee's employment by Engineer. The Employer's Liability Insurance required of Engineer hereunder may be obtained by Engineer as a separate policy of insurance or as an additional coverage under the Workers' Compensation Insurance required to be obtained and maintained by Engineer hereunder.

Commercial General Liability and Property Insurance. Engineer shall purchase and maintain Commercial General Liability and Property Insurance as will protect Engineer from the types of claims set forth below which may arise out of or result from Engineer's services under this Agreement and for which Engineer may be legally responsible: (i) claims for damages because of bodily injury, sickness or disease or death of any person other than Engineer's employees; (ii) claims for damages insured by usual personal injury liability coverage; (iii) claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; (iv) claims for damages because of bodily injury, death of a

person or property damages arising out of ownership, maintenance or use of a motor vehicle; and (v) contractual liability insurance applicable to Engineer's obligations under this Agreement. District shall be an additional insured to Engineer's commercial general liability insurance policy.

Automobile Liability Insurance. Engineer shall purchase and maintain Automobile Liability insurance covering losses for bodily injury, property damage and personal injury, with a combined single limit of not less than One Million Dollars (\$1,000,000) for all owned, non-owned, and hired motor vehicles.

Professional Liability Insurance. Engineer will procure and maintain professional liability insurance covering liabilities of the Engineer arising out of the performance of services under this Agreement.

Coverage Amounts. Insurance to be procured and maintained by Engineer hereunder shall be in the coverage amounts set forth in the Agreement.

Policy Endorsements; Evidence of Insurance. Engineer shall deliver Certificates of Insurance to the District evidencing each of the policies of insurance in the coverage amounts required hereunder. All policies of insurance required hereunder shall be issued by insurer(s) admitted to issue insurance by the State of California and to the reasonable satisfaction of the District. Coverages under each policy of insurance required hereunder, whether by endorsement or otherwise, shall provide that such policy will not be modified or canceled without at least thirty (30) days advance written notice to the District.

Engineer's Insurance Minimum Coverage Limits. Minimum coverage limits for policies of insurance to be obtained and maintained by the Engineer are:

Required Insurance Policy	Minimum Coverage Limits
Workers Compensation	In accordance with law
Employers Liability	One Million Dollars (\$1,000,000)
General Liability (including property damage)	One Million Dollars (\$1,000,000) per Occurrence Two Million Dollars (\$2,000,000) in the aggregate
Automobile Liability	One Million Dollars (\$1,000,000) combined single limit
Professional Liability	One Million Dollars (\$1,000,000) per claim

Modifications to Minimum Coverage Limits. The foregoing notwithstanding, the minimum coverage limits required for an Assigned Project may be modified as set forth in the PAA for an Assigned Project.

Policy Endorsements; Evidence of Insurance. Engineer shall deliver to the District Certificates of Insurance evidencing each of the policies of insurance in the coverage amounts required hereunder. All policies of insurance required hereunder shall be issued by insurer(s) admitted to issue insurance by the State of California and to the reasonable satisfaction of the District. Coverages under each policy of insurance required hereunder, whether by endorsement or otherwise, shall provide that such policy will not be modified or canceled without at least thirty (30) days advance written notice to the District. A separate endorsement specifically naming the District as additional insured shall also be provided.

Indemnity.

Engineer Indemnity. To the fullest extent permitted by law, the Engineer shall indemnify, defend and hold harmless the District and its employees, officers, Board of Education, Board Members, agents and representatives (collectively "the Indemnified Parties") from any and

all claims, actions, demands, losses, responsibilities or liabilities for: (i) injury or death of Engineer's employees arising out of this Agreement; (ii) injury or death of persons, damage to property, or (iii) other costs or charges arising out of or attributable, in whole or in part, to the negligent or willful acts, omissions, errors and/or other conduct of Engineer or the employees, agents and representatives of the Engineer in performing or providing any of the obligations, services or other work product contemplated under this Agreement. The foregoing shall include without limitation, reasonable attorneys' fees and costs incurred by the Indemnified Parties and shall survive the termination of this Agreement until any such claim, demand, loss, responsibility or liability covered by the provisions hereof is barred by the applicable Statute of Limitations.

District Indemnity of Engineer. The District shall indemnify and hold harmless Engineer from all claims arising out of bodily injury (including death) and physical damage (other than to the Project itself and property covered by a policy of Builder's Risk Insurance) which arise out of the negligent or willful acts, omissions or other conduct of the District.

Engineer Compensation

Contract Price. For each Assigned Project, the District will pay the Contract Price set forth in the PAA for the Assigned Project.

Fees, Costs and Expenses Incorporated Into Assigned Project Contract Price. Unless otherwise expressly provided in the PAA for an Assigned Project, the Contract Price for an Assigned Project includes the Engineer's fee, personnel expense of the Engineer, inclusive of all benefits and burdens, travel for the personnel of the Engineer to and from their respective offices and the District as well as travel within the **counties of Los Angeles, Orange, Riverside, San Bernardino, Ventura and Kern**, insurance and all other administrative or overhead costs associated with or arising out of performance of the Basic Services designated in the PAA for an Assigned Project.

Reconciliation of Contract Price Computed by Percentage of Construction Costs. (This provision only applies to non-Fixed-Fee Assigned Projects). As soon as is practical after the District's award of the Construction Contract(s) for an Assigned Project, the District and the Architect shall review payments of the Assigned Project Contract Price made prior thereto based upon the Assigned Project Construction Budget. Based upon the actual Construction Cost, payments of the Assigned Project Contract Price made prior thereto will be reconciled by applying the percentage allocated to each Phase. If it is determined that the payments of the Assigned Project Contract Price made prior thereto exceed the cumulative amount due, the overpaid amount shall be credited against the Architect's billings until the entire credit balance is exhausted. If it is determined that payments of the Assigned Project Contract Price made prior thereto are less than the amount due, payment of the underpaid amount will be made by the District within thirty (30) days of the completion of such reconciliation. At completion of the Construction Phase for an Assigned Project, the District and Architect shall perform a subsequent reconciliation consistent with this Article.

Construction Phase Changes; Adjustment of Contract Price. The Contract Price for the Basic Services for an Assigned Project is not subject to adjustment unless there are Changes authorized by the District during the Construction Phase of an Assigned Project which are not the result of errors, omissions or other defects in the Design Documents or failures of the Engineer to timely and completely perform the Basic Services for the Assigned Project. If services of the Engineer are required in connection with Changes during the Construction Phase of an Assigned Project which do not result from errors, omissions or other defects in the Design Documents or failures of the Engineer to timely and completely perform the Basic Services for an Assigned Project, the Contract Price for an Assigned Project will be equitably adjusted by an amount equal to the lesser of: (i) eight percent (8%) of the Construction Costs of a Change; or (ii) the time reasonably

necessary for personnel of the Engineer to complete modifications to the Design Documents to incorporate such a Change, multiplied by the applicable hourly rate for such personnel. If a Change during the Construction Phase of an Assigned Project is the result of errors, omissions or other defects in the Design Documents or failures of the Engineer to timely and completely perform the Basic Services, services required of the Engineer in connection with such Change shall not result in adjustment of the Contract Price for the Assigned Project.

Reimbursable Expenses. The Contract Price for Engineer's Basic Services for an Assigned Project includes all costs and expenses of a non-capital nature reasonably and necessarily incurred by Engineer to perform the Basic Services including without limitation expenses for telephone, postage, delivery, office supplies, reproduction of plans and prints, photographic film and development and travel to and from the office of the Engineer to the Assigned Project and the District's Administrative offices. Unless expressly authorized in advance by the District, no payment will be made by the District for expenses or costs of any kind, type or nature.

Additional Services. If the District authorizes or directs the Engineer to perform or provide Additional Services described generally in Paragraph 8 of this Agreement in connection with an Assigned Project, Engineer shall be compensated for its personnel providing such Additional Services in accordance with the hourly personnel rate schedule attached to the PAA for the Assigned Project ("the Rate Schedule").

District Payments.

Allocation of Contract Price. The District's payment of the Contract Price for Basic Services for an Assigned Project shall be allocated amongst the various Phases of the Basic Services for an Assigned Project as set forth in the PAA for an Assigned Project.

Engineer Billings to District. During the course of providing Basic Services for an Assigned Project, Engineer shall submit monthly billing invoices to the District for payment of the Contract Price for Basic Services and authorized Additional Services performed in the immediately prior month. Engineer's billings shall be in such form and format as may be reasonably requested by District.

District Payments to Engineer. Within thirty (30) days of receipt of Engineer's billing invoices, District will make payment to Engineer of undisputed amounts of the Contract Price due for Basic Services and authorized Additional Services for an Assigned Project. No deductions shall be made or withheld from payments due Engineer hereunder on account of any penalty, assessment, liquidated damages or other amounts withheld by the District from payment to the Contractor engaged by the District for construction of an Assigned Project. The District may, however, withhold or deduct from amounts otherwise due Engineer hereunder if Engineer shall fail to timely and completely perform material obligations to be performed on its part under this Agreement, with the amounts withheld or deducted being released after Engineer has fully cured such failure of performance, less costs, damages or losses sustained by the District resulting therefrom. Notwithstanding any provision of this Agreement to the contrary, if the District shall, in good faith, dispute the amount due Engineer under any billing invoice rendered by Engineer under this Agreement, pursuant to Civil Code §3320(a), the District may withhold from payment to the Engineer an amount not to exceed one hundred and fifty percent (150%) of the disputed amount.

Term; Time.

Term. The initial term of this Agreement shall commence upon the District and the Engineer each executing a counterpart copy hereof, delivery of an executed counterpart copy hereof to the other and ratification of this Agreement by the District's Board of Education ("the Initial Term"). The Term shall expire sixty (60) months after the date of ratification of this Agreement by the District's Board of Education. Notwithstanding expiration of the Term, if at such time, there are remaining

Basic Services or authorized Additional Services to be performed by the Engineer in connection with an Assigned Project under a PAA issued prior to expiration of the Term of this Agreement, the Engineer shall continue to diligently perform and complete all such remaining Basic Services or authorized Additional Services for the Assigned Project; notwithstanding expiration of the Term of this Agreement, the District will continue to make payment for the Basic Services and authorized Additional Services performed in connection with an Assigned Project after expiration of the Term of this Agreement in accordance with the terms of the PAA for such an Assigned Project.

Time. All of the Basic Services and authorized Additional Services set forth in the PAA for an Assigned Project shall be completed by the Engineer in a prompt and diligent manner as is consistent with professional skill and care. If a schedule for completion of Basic Services in connection with an Assigned Project is agreed upon between the District and the Engineer, the Engineer's performance and completion of Basic Services shall be in accordance with such schedule. The Engineer shall be liable to the District for all costs, losses, damages or other liabilities arising out of the failure of the Engineer to complete Basic Services for an Assigned Project in accordance with an agreed upon schedule, provided that the Engineer's liabilities hereunder shall not extend to costs, losses, damages or other liabilities caused by factors beyond the reasonable control of the Engineer.

Termination; Suspension.

Termination for Default. Either the District or Engineer may terminate this Agreement or a PAA upon seven (7) days advance written notice to the other if there is a default by the other Party in its performance of a material obligation hereunder or in connection with a PAA and such default in performance is not caused by the Party initiating the termination. Such termination shall be deemed effective the seventh (7th) day following the date of the written termination notice, unless during such seven (7) day period, the Party receiving the written termination notice shall commence to cure its default(s) and diligently thereafter prosecute such cure to completion. In addition to the District's right to terminate this Agreement pursuant to the foregoing, the District may terminate this Agreement upon written notice to Engineer if: (a) Engineer becomes bankrupt or insolvent, which shall include without limitation, a general assignment for the benefit of creditors or the filing by Engineer or a third party of a petition to reorganize debts or for protection under any bankruptcy or similar law or if a trustee or receiver is appointed for Engineer or any of Engineer's property on account of Engineer's insolvency; or (b) if Engineer disregards applicable laws, codes, ordinances, rules or regulations. If District exercises the right of termination hereunder, the Contract Price due the Engineer, if any, shall be based upon Basic Services and authorized Additional Services for each Assigned Project as of the date of termination provided prior the effective date of the District's termination of this Agreement, reduced by the District's prior payments of the Contract Price due for such Assigned Projects and losses, damages, or other costs sustained by the District arising out of the termination of this Agreement or the cause(s) for termination of this Agreement. Payment of the amount due the Engineer, if any, shall be made by District only after completion of the Post-Construction Phase of all pending Assigned Projects as of the date of termination. Engineer shall remain responsible and liable to District all losses, damages or other costs sustained by District arising out of termination pursuant to the foregoing or otherwise arising out of Engineer's default hereunder, to the extent that such losses, damages or other costs exceed any amount due Engineer hereunder for Basic Services or authorized Additional Services.

District's Right to Suspend. The District may, in its discretion, suspend all or any part of the design or construction of an Assigned Project or the Engineer's services under a PAA; provided, however, that if the District shall suspend construction of an Assigned Project or Engineer's services under a PAA for a period of sixty (60) consecutive days or more and such suspension is not caused by the Engineer's default or the acts or omissions of Engineer, upon rescission of such suspension,

the Contract Price will be subject to adjustment to reflect actual costs and expenses incurred by Engineer, if any, as a direct result of the suspension and resumption of Assigned Project construction or Engineer's services under a PAA.

District's Termination for Convenience. The District may, at any time, upon seven (7) days advance written notice to Engineer terminate this Agreement or a PAA, in whole or in part, for the District's convenience and without fault, neglect or default on the part of Engineer. In such event, the Agreement shall be deemed terminated seven (7) days after the date of the District's written notice to Engineer or such other time as the District and Engineer may mutually agree upon. In such event, the District shall make payment of the Contract Price to Engineer for services provided through the date of termination plus actual costs incurred by Engineer directly attributable to such termination.

Engineer Suspension of Services. If the District shall fail to make payment of the Contract Price for an Assigned Project when due Engineer hereunder, Engineer may, upon seven (7) days advance written notice to the District, suspend further performance of services relating to such Assigned Project hereunder until payment in full is received. In such event, Engineer shall have no liability for any delays or additional costs of construction of the Assigned Project due to, or arising out of, such suspension.

Engineer Obligations Upon Termination. Upon the District's exercise of the right of termination under Paragraph 13.1 or Paragraph 13.3 of this Agreement, the Engineer shall take action as directed by the District relative to on-going preparation of the Design Documents or construction of an Assigned Project. If requested by the District, the Engineer shall within ten (10) days of such request, assemble and deliver to the District all work product, instruments of service and other items of a tangible nature (whether in the form of documents, drawings, samples or electronic files) prepared by or on behalf of the Engineer under this Agreement. The Engineer shall deliver the originals of all work product, instruments of service and other items of a tangible nature requested by the District pursuant to the preceding sentence; provided, however, that the Engineer may, at its sole cost and expense, make reproductions of the originals delivered to the District.

Miscellaneous.

Governing Law; Interpretation. This Agreement shall be governed and interpreted in accordance with the laws of the State of California in accordance with its fair meaning and not strictly for or against the District or Engineer.

Marginal Headings; Captions. The titles of the various Paragraphs of the Agreement are for convenience of reference only and are not intended to and shall in no way enlarge or diminish the rights or obligations of Engineer and District hereunder.

Severability. If any provision of this Agreement is deemed illegal, invalid unenforceable or void by any court of competent jurisdiction, such provision shall be deemed stricken and deleted herefrom, but all remaining provisions will remain and continue in full force and effect.

Cumulative Rights; No Waiver. Duties and obligations imposed by this Agreement and rights and obligations hereunder are in addition to and not in lieu of any imposed by or available at law or in equity. No action or failure to act by District or Engineer hereunder shall be deemed a waiver of any right or remedy afforded hereunder or acquiesce or approval of any breach or default by the other.

Successors; Non-Assignability. This Agreement and all terms hereof are binding upon and inure to the benefit of the respective successors of Engineer and the District. Neither Engineer nor District shall assign rights or obligations hereunder without the prior consent of the other, which consent may be withheld or granted in sole discretion of the Party requested to grant such

consent.

Authority. The individual(s) executing this Agreement on behalf of Engineer warrant and represent that she/he is authorized to execute this Agreement and bind Engineer to all terms hereof. The individual(s) executing this Agreement on behalf of District warrant and represent that she/he is authorized to execute this Agreement and subject to approval and ratification by the District's Board of Education, to bind District to all terms hereof and authority granted to enter into this Agreement.

Notices. Notices under this Agreement shall be addressed and delivered as follows:

If to District:

Attention: Anthony Joseph
Bond Program Manager
Simi Valley Unified School District
875 East Cochran Street
Simi Valley, CA 93065

If to Engineer:

Attention Gary Duncan, S. E.
kpff Consulting Engineers
117 E. Colorado Blvd., Suite 200
Pasadena, CA 91105

Disputes.

Continuation of Engineer Services. Notwithstanding any disputes between District and Engineer under this Agreement, a PAA for an Assigned Project or in connection with an Assigned Project, Engineer and District shall each continue to perform their respective obligations hereunder and the applicable PAA; including the obligation of the Engineer to continue to provide and perform services hereunder pending a subsequent resolution of such disputes.

Mandatory Mediation. All claims, disputes and other matters in controversy between the Engineer and the District arising out of or pertaining to this Agreement, a PAA or an Assigned Project shall be submitted for resolution by non-binding mediation conducted under the auspices of the JAMS and the Construction Mediation Rules of JAMS in effect at the time that a Demand For Mediation is filed. The commencement and completion of mediation proceedings pursuant to the foregoing is a condition precedent to either the District or the Engineer commencing arbitration proceedings pursuant to the following Paragraph. Mediation shall be conducted at the JAMS regional office situated closest to the Site.

JAMS Binding Arbitration. All claims, disputes and other matters in controversy between the Engineer and the District arising out of or pertaining to this Agreement, a PAA or an Assigned Project which are not fully resolved by the mandatory mediation proceedings shall be resolved by binding arbitration conducted before a retired judge in accordance with the Construction Arbitration Rules and Procedures of Judicial Arbitration Mediation Services ("JAMS") in effect as of the date that a Demand for Arbitration is filed, except as expressly modified herein. The locale for any arbitration commenced hereunder shall be the regional office of the JAMS closest to the Site.

1.1.1.1. Demand for Arbitration. A Demand for Arbitration shall be filed and served within a reasonable time after the occurrence of the claim, dispute or other disagreement giving rise to the Demand for Arbitration, but in no event shall a Demand for Arbitration be filed or served after the date when the institution of legal or equitable proceedings based upon such claim, dispute or other disagreement would be barred by the applicable statute of

limitations. If more than one Demand for Arbitration is filed by either the District or the Contractor relating to the Work or the Contract Documents, all Demands for Arbitration shall be consolidated into a single arbitration proceeding, unless otherwise agreed to by the District and the Contractor. The Contractor's Surety, a Subcontractor or Material Supplier to the Contractor and other third parties may be permitted to join in and be bound by an arbitration commenced hereunder if required by the terms of their respective agreements with the Contractor, except to the extent that such joinder would unduly delay or complicate the expeditious resolution of the claim, dispute or other disagreement between the District and the Contractor, in which case an appropriate severance order shall be issued by the Arbitrator(s).

- 1.1.1.2. Discovery. In connection with any arbitration proceeding commenced hereunder, the discovery rights and procedures provided for in California Code of Civil Procedure §1283.05 shall be applicable, and the same shall be deemed incorporated herein by this reference.
- 1.1.1.3. Arbitration Award. The award rendered by the Arbitrator(s) ("Arbitration Award") shall be final and binding upon the District and the Engineer only if the Arbitration Award is: (i) supported by substantial evidence; (ii) based on applicable legal standards in effect at the time the Arbitration Award is issued; and (iii) supported by written findings of fact and conclusions of law in conformity with California Code of Civil Procedure §1296. Any Arbitration Award that does not conform to the foregoing is invalid and unenforceable. The District and Engineer hereby expressly agree that the Court shall, subject to California Code of Civil Procedure §§1286.4 and 1296, vacate the Arbitration Award if, after review, the Court determines either that the Arbitration Award does not fully conform to the foregoing. The confirmation, enforcement, vacation or correction of an arbitration award rendered hereunder shall be made by the Superior Court of the State of California for the county in which the Site is situated. The substantive and procedural rules for such post-award proceedings shall be as set forth in California Code of Civil Procedure §1285 et seq.
- 1.1.1.4. Arbitration Fees and Expenses. The expenses and fees of the Arbitrator(s) shall be divided equally among all of the parties to the arbitration. Each party to any arbitration commenced hereunder shall be responsible for and shall bear its own attorneys' fees, witness fees and other costs or expenses incurred in connection with such arbitration. The foregoing notwithstanding, the Arbitrator(s) may award arbitration costs, including Arbitrators' fees but excluding attorneys' fees, to the prevailing party.
- 1.1.1.5. Limitation on Arbitrator. The Superior Court for the State of California for the County in which the Site is situated has the sole and exclusive jurisdiction, and an arbitrator has no authority, to hear and/or determine a challenge to the commencement or maintenance of an arbitration proceeding on the grounds that: (i) the subject matter of the arbitration proceeding is barred by the applicable statute of limitations; (ii) the subject matter of the arbitration proceeding is barred by a provision of the California Government Claims Act; (iii) the subject matter of the arbitration proceeding is outside the scope of the arbitration clause; (iv) the Engineer has failed to satisfy all conditions precedent to commencement or maintenance of an arbitration proceeding; (v) waiver of the right to compel arbitration; (vi) grounds exist for the revocation of the arbitration agreement; and/or, (vii) there is the prospect that a ruling in arbitration would conflict or potentially with a ruling in a pending proceeding regarding the Project on a common issue of law or fact.
- 1.1.1.6. Engineer Compliance with Government Code §900 et seq. The foregoing dispute resolution procedures notwithstanding, neither the provisions of this Agreement or any

PAA issued hereunder, shall be deemed to waive, limit or modify any requirements under Government Code §900 et seq. relating to the Engineer's submission of claims to the District. The Engineer's strict compliance with all applicable provisions of Government Code §900 et seq. in connection with any claim, dispute or other disagreement arising hereunder is an express condition precedent to the Engineer's initiation of any other dispute resolution procedure or proceeding.

Limitation on Special/Consequential Damages. In the event of the District's breach or default of its obligations under this Agreement, or a PAA, the damages, if any, recoverable by the Engineer shall be limited to general damages which are directly caused by the breach or default of the District and shall exclude any and all special or consequential damages, if any. By executing the Agreement, the Engineer expressly acknowledges the foregoing limitation to recovery of only general damages from the District if the District is in breach or default of its obligations under the Agreement or a PAA; the Engineer expressly waives and relinquishes any recovery of special or consequential damages from the District.

Confidentiality. Unless disclosure is required by applicable law or valid court order, the Engineer shall maintain the confidentiality of all information provided by or through the District to the Engineer and shall not disclose or otherwise disseminate any information conveyed by or through the District to the Engineer relating to this Agreement or an Assigned Project.

Definitions.

Construction Contract. The Contract for Construction awarded by the District to the Contractor for the construction of the Project. If an Assigned Project is constructed by a general contractor under contract to the District, references to the Construction Contract in this Agreement and the PAA shall be deemed references to such general contractor's contract with the District for the Assigned Project. If an Assigned Project is constructed by multiple trade contractors, each under contract to the District, references to the Construction Contract in this Agreement and the PAA for such an Assigned Project shall be such contracts individually or collectively as required by context in which such term is used.

Contractor. The individual or entity awarded the Construction Contract by the District for the Project. If an Assigned Project is constructed by a general contractor, references to the contractor in this Agreement or the PAA for an Assigned Project shall be to such general contractor. If an Assigned Project is constructed by multiple trade contractors, references to the contractor in the Agreement or the PAA for an Assigned Project shall be to such multiple trade contractors, individually or collectively, as required by the context in which such term is used.

Design Documents. The Drawings, Specifications, calculations and other work product prepared by the Engineer for an Assigned Project or any portion thereof.

Submittals. Shop Drawings, Product Data or Samples prepared or provided by the Contractor or its Subcontractor(s) or supplier(s) illustrating some portion of the Work of an Assigned Project.

Site. The physical area for construction and related activities of an Assigned Project.

Drawings and Specifications. The Drawings are the graphic and pictorial portions of the Design Documents showing generally the location, design and dimensions of the Work of an Assigned Project, including without limitation, plans, elevations, sections, details, schedules and diagrams. Specifications are the portion of the Design Documents which consist of written requirements for materials, equipment, construction systems, standards, criteria and workmanship for the Work and related services.

Work. All of the construction and other services required by the terms of the Construction Contract, including all labor, materials, equipment and other services required of the Contractor under the terms of the Construction Contract to complete the Project.

Assigned Project Construction Budget. The Assigned Project Construction Budget refers to the total costs allocated by the District for construction of an Assigned Project, exclusive of the Contract Price under this Agreement, site acquisition costs and the costs of furniture, furnishing and/or equipment for an Assigned Project. The Project Construction Budget established by the District may be modified by the District upon notice to the Engineer. As used in this Agreement, the term "Project Construction Budget" refers to the then current amount allocated for construction of the Assigned Project as modified from time-to-time.

Construction Cost Estimate. Construction Cost Estimates are estimates prepared by or on behalf of the Engineer of the current costs of labor, materials, equipment and services plus a reasonable allowance for the Contractor's profit, overhead and administrative cost as necessary to complete construction of the Assigned Project in accordance with the Design Documents. Construction Cost Estimates shall include a reasonable allowance for contingencies relating to market conditions at the time of solicitation of Contractor bids for the Work of the Assigned Project and Changes in the Work during construction of the Project; the allowance for contingency costs shall be consistent with the contingency established by the District in the Project Construction Budget, if any.

Construction Manager. The Construction Manager is the individual or entity retained by the District as an independent contractor to provide certain management, planning, other services and/or work product in connection with the design and/or construction of an Assigned Project. Services, functions and responsibilities of the Construction Manager shall be provided in conjunction with and complementary to the Engineer's services and work product under this Agreement. If the District has not retained or designated a Construction Manager as of the issuance of a PAA for an Assigned Project, without adjustment of the Contract Price for any Assigned Project, the District reserves the right to subsequently retain a Construction Manager to provide services and/or work product for the Assigned Project as generally described herein.

Assigned Project. An Assigned Project is the Project described in a PAA issued by the District under this Agreement.

PAA. A PAA is a Project Assignment Amendment which is the written instrument issued by the District and mutually executed by the District and the Engineer which establishes the specific terms and conditions for the Engineer's performance and provision of Engineering and related services for an Assigned Project. The form of PAA is attached as Exhibit A to the Agreement. Notwithstanding execution of the Agreement by the District and the Engineer, the Engineer shall have no right to provide Engineering services or to be compensated for any Project which may be undertaken by the District unless the District has theretofore issued a PAA for such Project and the PAA is mutually executed by the District and the Engineer.

Construction Cost Estimate. Construction Cost Estimates are estimates prepared by or on the behalf of the Engineer of the anticipated costs of labor, materials, equipment and services plus a reasonable allowance for the Contractor's profit, overhead and administrative cost as necessary to complete construction of an Assigned Project in accordance with the Design Documents for the Assigned Project. Construction Cost Estimates shall include a reasonable allowance for contingencies relating to market conditions at the time of solicitation of bids for the Work of the Assigned Project and Changes in the Work during construction of the Assigned Project; the allowance for contingency costs shall be

consistent with the contingency established by the District in the Project Construction Budget, if any.

Use and Ownership of Design Documents.

Ownership. Subject to the provisions hereof, all Drawings, Specifications, estimates, Instruments of Service and other tangible items ("Project Documents") prepared by or through the Engineer for an Assigned Project shall be and remain the property of the District. The Project Documents shall be and remain the property of the District regardless of the format on which said items are prepared or stored, including without limitation paper copies, original or reproducible transparencies, AutoCAD R-2002 files (or similar computer-aided drafting of design formats), or other types of computerized data. The District specifically maintains ownership of the design of each Assigned Project and the design of any buildings or other improvements which are a part thereof, notwithstanding creation/preparation of such design by or through the Engineer, and such design may not be re-used by the Engineer or its employees without the specific prior written consent of the District which may be granted, denied or conditioned in the sole exclusive discretion of the District. Subject to the District's ownership of tangible Project Documents, the copyright and other intellectual property rights in all Project Documents shall remain with the Engineer.

Right to Use. The Engineer grants to the District a perpetual license to use and/or reuse all or any part of the Project Documents at the District's sole discretion with no additional compensation to the Engineer for the purposes of: (i) construction of all or part of an Assigned Project; (ii) the repair, renovation, modernization, replacement, reconstruction or expansion of an Assigned Project; or (iii) the construction of another project by or for the District for the District's ownership and/or use. The District is not bound by this Agreement to employ the services of the Engineer in the event any of the Project Documents are used for such purposes. The District shall be authorized to use or reuse the Project Documents for these purposes without liability to the Engineer or third parties with respect to the condition of an Assigned Project Documents, and the use or reuse of the Project Documents for these purposes shall not be construed or interpreted to waive or limit the District's right to recover for latent defects or for errors or omissions of the Engineer; provided, however, that any use or reuse by the District of the Project Documents on any project other than the Assigned Project for which the Project Documents were prepared without employing the services of the Engineer shall be at the District's own risk. If the District uses or reuses the Project Documents on any project other than the Assigned Project for which the Project Documents were prepared for, the District shall remove the Engineer's seal from the Project Documents and indemnify and hold harmless the Engineer from claims arising out of the use or re-use of the Project Documents on such other project.

District License to Use Project Documents. This Agreement creates a non-exclusive and perpetual license for the District to copy, use, modify or reuse any and all Project Documents and any intellectual property rights therein.

Engineer Right to Grant License. The Engineer represents and warrants that the Engineer has the legal right to license any and all copyrights, designs and other intellectual property embodied in the Project Documents prepared by or through the Engineer under this Agreement.

Entire Agreement. This Agreement, the RFQ, RFQ Response and the form of PAA attached hereto as Exhibit A are all of the documents forming a part of the Agreement. The foregoing constitute the entire agreement and understanding between the District and Engineer concerning the subject matter hereof, replacing and superseding all prior agreements or negotiations, whether written or verbal. The foregoing notwithstanding, in the event of conflict or inconsistency between the terms of this Agreement or the RFP and the RFP Response, this Agreement or the RFP, as

applicable, shall control and govern. No term or condition of this Agreement shall be modified or amended except by writing executed by the District and Engineer.

IN WITNESS WHEREOF, the District and Engineer have executed this Agreement as of the date set forth above.

"District"
**SIMI VALLEY UNIFIED
SCHOOL DISTRICT**

By: _____

Ron Todo

Title: Associate Superintendent
Business & Facilities

"Engineer"
kpff Consulting Engineers

By: _____

Printed Name: _____

Title: _____