

SOOS CREEK WATER & SEWER DISTRICT

MASTER AGREEMENT FOR ENGINEERING ROSTER PROJECT SERVICES

BHC CONSULTANTS, LLC

THIS AGREEMENT is made and entered into this 8th day of July, 2020, by and between Soos Creek Water and Sewer District, a Washington Municipal Corporation, hereinafter referred to as DISTRICT, and BHC Consultants, LLC., a Washington Limited Liability Company, herein referred to as ENGINEER.

WITNESSETH:

WHEREAS, DISTRICT operates water supply, storage, and distribution facilities, and operates sanitary sewage lift stations and sewerage collection facilities; and

WHEREAS, DISTRICT desires from time to time to plan for and perform projects for additional public works facilities within DISTRICT, either as replacements of existing facilities, improvements to current facilities, or future facilities as may be planned and approved pursuant to DISTRICT'S authority to adopt comprehensive plans; and

WHEREAS, DISTRICT will require design, administration, engineering and environmental compliance and monitoring services for such facilities; and

WHEREAS, DISTRICT has established an Engineering Roster for assignment of engineering services for such projects in accordance with the terms of the Resolutions establishing such Roster, and as amended from time-to-time; and

WHEREAS, DISTRICT desires to enter into a Master Agreement for Engineering Roster Project Services with each of its Roster engineers, such Master Agreement to define the terms of

engineering services for all projects to which a Roster Engineer is assigned.

NOW, THEREFORE, IT IS AGREED that the terms and conditions under which this agreement will be effective are as follows:

1. Engagement. DISTRICT hereby engages the services of ENGINEER to perform project engineering services as a District Roster Engineer

2. Acceptance. ENGINEER hereby accepts the request to provide such services and agrees to perform all requested reasonable engineering and environmental compliance and monitoring services, and will endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession, currently practicing under similar circumstances. ENGINEER shall also exercise usual and customary professional care to comply with federal, state and local laws, District resolutions, ordinances and regulations applicable to the services to be rendered under this Agreement.

3. Non-exclusive. This contract is not intended to create a relationship in which DISTRICT contracts exclusively with ENGINEER for services, or in which ENGINEER serves DISTRICT as its sole client.

4. Nature of services. Services provided to DISTRICT by a Roster Engineer for a Project are as described in the STANDARD FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES, Prepared by ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE, Copyright ©1997, as amended by DISTRICT to

adapt to the specific conditions and circumstances of District procedures and construction. A copy of said Agreement, as amended, is attached hereto as Addendum A to this Agreement, and incorporated herein by this reference as though fully set forth.

5. Additional Project Services. DISTRICT and ENGINEER recognize that the required services on a project are unique to that project and will vary between projects. DISTRICT and ENGINEER also recognize and agree that services which are not listed in this contract may be required on various projects. ENGINEER agrees to provide services requested by DISTRICT only if said services are within the expertise of ENGINEER or its sub consultant(s). ENGINEER agrees to assist DISTRICT in acquiring those services which ENGINEER declines to provide. All general services, and services on a project, including preparation of scope and budget analyses, will be authorized by DISTRICT by the District Manager and/or a majority of the Board of Commissioners at a duly called meeting thereof.

6. Preliminary Phase Basic Services. The project-specific "Basic Services" to be provided by ENGINEER upon authorization by DISTRICT in the preliminary phase of the Project are:

(a) Preliminary investigations and layout drawings showing alternatives for environmental considerations and preparation of or furnishing data for Environmental Checklists, Environmental Impact Statements or Environmental Impact Assessments, and review of environmental documents prepared for projects of DISTRICT.

(b) Preliminary determination of project-related Aquatic Habitat effects and appropriate Best Management Practices (BMP) as described within DISTRICT's Environmental Protection Plan (EPP), and other potential, but non-redundant BMPs required by

governmental permit, for inclusion in contract documents and related project mitigation plans.

7. Design Phase Basic Services. The project-specific "Basic Services" to be provided by ENGINEER upon authorization by DISTRICT in the design phase of the Project are:

(a) Preliminary investigations and layout drawings showing alternatives for design purposes.

(b) Design, topographic and boundary surveys, and legal descriptions, if required.

(c) The making of final designs stamped by ENGINEER.

(d) Prepare drawings, specifications, and contract documents for construction.

(e) Prepare projections of probable quantities and costs, including ENGINEER's Estimate.

(f) Submit construction plans and specifications for approval by the regulatory agencies and revisions.

(g) Assist in securing bids, analysis of bids, recommendations for award, and execution of contract documents.

(h) Assist DISTRICT in securing permits and franchises for construction.

8. Construction Phase Basic Services. The project-specific "Basic Services" to be provided by ENGINEER upon authorization by DISTRICT and/or requested by DISTRICT during construction are:

(a) Daily, part-time, full-time, or as-needed construction observers and/or project engineers to observe the Contractor's work, except for that work pertaining to the installation, maintenance and performance of Aquatic Habitat Best Management Practices. Observation shall not give rise to responsibility for site safety, or means and methods employed by the Contractor to complete the Project.

(b) Review and approval of environmental mitigation plans prepared by the Contractor prior to commencement of the work to determine consistency with the implementation, performance, and monitoring standards described within DISTRICT Aquatic Habitat BMPs, related EPP policies, and controlling governmental permit standards.

(c) Preparation of reports that document (1) the effectiveness of the Aquatic Habitat Best Management Practices in achieving their project-related objectives; and (2) provide recommendations, including those resulting from Adaptive Management analysis, regarding changes and/or modifications relating to future application of Aquatic Habitat Best Management Practices.

(d) Support DISTRICT personnel in construction observation as needed or requested by DISTRICT.

(e) Designation of a qualified Compliance Officer, who shall not be replaced without written notice to DISTRICT, and if such action occurs, said replacement shall have equivalent qualifications. ENGINEER's Compliance Officer shall have the duties and authorities described herein below.

(f) Construction staking and survey.

(g) Prepare change orders as required during the course of construction.

(h) Provide DISTRICT with copies of the original plans which have been revised to conform to construction records.

(i) Prepare progress payment and final payment for the Contractor.

(j) Review shop and working drawings furnished by the Contractor necessary for construction of the project.

(k) Advise DISTRICT regarding acceptance of construction work.

(l) Advise DISTRICT and notify the Contractor regarding the performance of the Contractor's environmental mitigation activities, including providing daily, part-time, full-time or as-needed monitoring of the Contractor's compliance with proper installation and implementation of aquatic habitat BMP, ordering corrective actions when appropriate, and providing other environmental compliance and monitoring services as provided for in Attachment A to this Agreement.

(m) Support and advise District personnel in the application of principles of "adaptive management" to the Project.

9. Compliance Officer Duties. The duties and authorities of ENGINEER's Compliance Officer regarding Aquatic Habitat Best Management Practices are:

(a) The Compliance Officer shall be ENGINEER's representative at the Work site responsible for regularly monitoring the site, and for providing notification to the Contractor (without controlling the means or methods of the Contractor) as to the proper installation, performance, and maintenance by the Contractor, including subcontractors and suppliers, of the Aquatic Habitat Best Management Practices described in the Contract Documents.

(b) ENGINEER's compliance Officer shall be available to consult with the Contractor's Compliance Officer, when requested, or as appropriate to his/her duties, regarding the proper installation, performance, and maintenance of the Aquatic Habitat Best Management Practices, and the application of corrective actions. ENGINEER's Compliance Officer shall also be available to consult with the Compliance Director, or DISTRICT, when requested.

(c) ENGINEER's Compliance Officer shall be responsible for attending all Pre-Construction Meetings, and all other meetings involving ENGINEER, the Contractor, and DISTRICT, that relate to Contract Documents development and Work performance issues involving the identification, description, objectives, and implementation of Aquatic Habitat Best Management Practices.

(d) ENGINEER's Compliance Officer shall make daily visits to the site at appropriate times during installation of the Aquatic Habitat Best Management Practices. ENGINEER's Compliance Officer shall make regular visits thereafter during the various stages of construction to observe the progress, quality, and effectiveness of the Aquatic Habitat Best

Management Practices implemented by the Contractor. ENGINEER's Compliance Officer shall also consult with the Contractor's Compliance Officer during visits to facilitate an on-going mutual understanding of the goals, objectives and proper implementation of the Aquatic Habitat Best Management Practices.

(e) ENGINEER's Compliance Officer shall maintain a log for ENGINEER and DISTRICT that assesses the on-going performance of the Aquatic Habitat Best Management Practices, the Contractor's effectiveness in implementing the Aquatic Habitat Best Management Practices, and which documents corrective actions by the Contractor.

(f) ENGINEER's Compliance Officer shall issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents relating to Aquatic Habitat Best Management Practices as he/she may determine are necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents.

(g) ENGINEER's Compliance Officer may authorize minor variations in the Work relating to Aquatic Habitat Best Management Practices measures cited in the Contract Documents which do not involve an adjustment in the Construction Agreement price or time, and which are consistent with the overall intent of the Contract Documents. Such variations shall be accompanied by a Field Order, and will be binding on DISTRICT and the Contractor.

(h) ENGINEER's Compliance Officer shall have the authority to

disapprove or reject any Work that he/she believes to be implemented in a manner inconsistent with the Aquatic Habitat Best Management Practices described in the Contract Documents, or that are failing to adequately protect aquatic habitat, even if found to be properly implemented. ENGINEER's Compliance Officer shall also have the authority to represent DISTRICT in notifying the Contractor to modify Aquatic Habitat Best Management Practices to correct improper implementation, or improve their effectiveness, and to require special testing of Work-related effects on aquatic habitat to assess proper implementation and effectiveness of Aquatic Habitat Best Management Practices. Prior to requiring corrective measures or special testing, ENGINEER's Compliance Officer shall consult with the Contractor's Compliance Officer and DISTRICT, discuss his/her findings, and discuss the means, methods, cost-allocation, and timing of corrective actions. DISTRICT will indemnify and hold harmless ENGINEER from and against all claims, damages, losses, expenses, and direct, indirect, or consequential costs arising out of or resulting from ENGINEER's decision or recommendation to DISTRICT to disapprove or reject any Work so long as ENGINEER's decision or recommendation was made in the best interest of protecting the environment and in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession, currently practicing under similar circumstances.

(i) ENGINEER's Compliance Officer shall be the initial interpreter of the requirements of the Contract Documents relating to Aquatic Habitat Best Management Practices and judge of the acceptability of the Work thereunder. Claims, disputes, and other matters

relating to the acceptability and proper implementation of the Work relating to the Aquatic Habitat Best Management Practices described in the Contract Documents or interpretations thereof, shall be initially referred to ENGINEER's Compliance Officer in writing with a request for a formal decision, which ENGINEER's Compliance Officer shall render within a reasonable period of time, pursuant to consultations with DISTRICT.

(j) ENGINEER's Compliance Officer shall not be responsible for the acts or omissions of the Contractor or of any subcontractors, suppliers, or any other persons or entities performing or finishing Work regardless of whether said Work does or does not result in the proper installation, performance, and maintenance of the Aquatic Habitat Best Management Practices and/or result in adverse impacts to aquatic habitat. ENGINEER's Compliance Officer will notify the Contractor and/or the Contractor's Compliance Officer in a timely manner of any Work that is inconsistent with the proper installation, performance and maintenance of the Aquatic Habitat Best Management Practices or has adverse impacts to the aquatic habitat, provided, said inconsistencies and/or impacts can be reasonably known and corrected. ENGINEER's Compliance Officer shall not be responsible for any damages resulting from the Contractor's deliberate refusal to comply with ENGINEER's Compliance Officer's directives. ENGINEER's Compliance Officer shall, however, notify DISTRICT and/or the Compliance Director of all situations where the Contractor has deliberately refused to comply with ENGINEER's Compliance Officer's requests to remedy Work inconsistent with the proper installation, performance, and

maintenance of the Aquatic Habitat Best Management Practices.

(k) ENGINEER shall be responsible to DISTRICT for ensuring ENGINEER's Compliance Officer properly performs all other duties and authorities described in the Contract Documents.

10. Payment. On all projects, unless otherwise agreed in writing by the parties, ENGINEER shall develop a time and material budget (Engineering Design, permits, construction observation at appropriate intervals, and construction administration services), and the parties agree that the fees for engineering services for the project shall not exceed the amount set forth in the proposed budget without prior written approval by DISTRICT. Any changes to the proposed budget shall be only as agreed in writing by the parties. When appropriate, ENGINEER may propose a flat fee or lump sum for design projects for DISTRICT's consideration. ENGINEER shall submit invoices before noon on the Friday before the second scheduled Board of Commissioners Meeting of each month, or on such other schedule as is mutually agreed upon between ENGINEER and DISTRICT.

11. Liability Insurance Coverage. ENGINEER will, at ENGINEER's sole expense, obtain and maintain during the life of this contract, a policy of commercial general liability insurance with combined single limit of not less than \$1,000,000 per occurrence, and a policy of professional liability insurance, with limit of not less than \$1,000,000 per claim and aggregate, and placed with an insurer having no less than a Best's rating of A- and authorized to do business in the State of Washington. ENGINEER shall file with DISTRICT a certificate issued by the insurance carrier for each said policy showing such insurance to be in force and adding DISTRICT as a certificate holder, not more than thirty (30) days following signing of this Agreement. If any policy of required insurance is written on a claims-made

basis, ENGINEER shall endeavor to maintain such insurance, if available at a reasonable cost, for three (3) years following completion of the services so to be performed. Upon a determination by ENGINEER that such extended coverage is not available during any portion of such three (3) years at a reasonable cost, and no later than thirty (30) days before the expiration of such coverage, ENGINEER shall give written notice thereof to DISTRICT. A failure to obtain and maintain such insurance or to file said certificates shall be a material breach of this Agreement.

12. Independent Engineer. ENGINEER is and shall be at all times during the term of this Agreement an independent contractor and not an employee of DISTRICT. ENGINEER agrees that it is solely responsible for the payment of taxes applicable to the services performed under this Agreement and agrees to comply with all federal, state, and local laws regarding the reporting of taxes, maintenance of insurance and records, and all other requirements and obligations imposed on it as a result of its status as an independent engineer. DISTRICT shall not be responsible for withholding or otherwise deducting federal income tax or social security or for contributing to the state industrial insurance or unemployment compensation programs or otherwise assuming the duties of an employer with respect to ENGINEER, or any employee of ENGINEER.

13. Dispute Resolution: Mediation. If any dispute, controversy, or claim arises out of or relates to this Agreement, the parties agree first to attempt to settle the dispute by non-binding mediation with the assistance of a mutually acceptable professional mediator. The parties shall bear equally all expenses, exclusive of attorney's fees, associated with the mediation.

14. Attorneys' Fees and Costs. In the event either party shall bring suit against the other to enforce any provision of this agreement, the prevailing party in such suit shall be entitled to

recover its costs, including reasonable attorney's fees incurred in such a suit from the losing party.

15. Termination. This Master Agreement may be terminated by either party upon written Notice mailed to the other party by certified mail, return receipt requested, at their usual place of business. The effective date of termination will be the later of either 30 days after the effective date of the written notice, or at the completion of any Roster Project then pending. Engineering Services on Roster Projects may be terminated prior to completion only in accordance with paragraph 6.06 of the Standard Form of Agreement (Addendum A).

16. Notice addresses. The normal place of business for ENGINEER, and the place to which all notices or other correspondence by DISTRICT will be directed in the performance of this Agreement shall be:

BHC Consultants, L.L.C.
1601 Fifth Avenue, Suite 500
Seattle, WA 98101

Phone Number: 206-505-3400
Fax Number: 206-505-3406

E-Mail Address:
Jim.Gross@bhiconsultants.com

The normal place of business for DISTRICT, and the place to which all notices or other correspondence by ENGINEER will be directed in the performance of this Agreement shall be the District office, the address of which is as follows.

Soos Creek Water and Sewer District
14616 S.E. 192nd Street
Renton, WA 98058-1039

Phone Number: 253-630-9900
Fax Number: 253-630-5289

E-Mail Address: rspeer@sooscreek.com

17. Effective Date and Duration. The effective date of this Agreement shall be the date that the Agreement is signed by the District Manager, and it shall continue until ENGINEER ceases to be a Roster Engineer of DISTRICT. Roster Engineers shall be subject to Chapter 39.80 of the Revised Code of Washington, and their selection and retention on the Roster shall be subject to completion of each evaluation by District of statements of qualifications to provide engineering services in accordance with such Chapter. If DISTRICT selects ENGINEER in accordance with such Chapter, and upon agreement of ENGINEER, this Agreement may be continued by Motion of the Board of Commissioners at a properly convened public meeting thereof until completion of the next review.

18. Authorized _____ Project
Representatives

Contemporaneous with the execution of a Project Memorandum, ENGINEER and DISTRICT shall designate specific individuals to act as ENGINEER'S Project Engineer and DISTRICT'S representative with respect to the services to be performed or furnished by ENGINEER and responsibilities of DISTRICT under this Agreement. Such individuals shall have authority to transmit instructions, receive information and render decisions relative to the Project on behalf of each respective party. In addition, the ENGINEER and DISTRICT shall mutually identify the key individuals employed by ENGINEER who will have key functions as to any Project assigned to ENGINEER. ENGINEER and DISTRICT agree that in the event any such key individual leaves the employment of ENGINEER for any reason while a Project is pending, at the written request of DISTRICT, ENGINEER shall release such individuals from any non-competition provision, or any other provision that would otherwise preclude the key individual from continuing the Project to its completion. Such release shall be effective until the Project is completed or until the employee

is no longer deemed by the DISTRICT to be a key employee on the Project, whichever first occurs.

If, during the course of a Project, a key employee leaves the employment of ENGINEER or ENGINEER believes it is in the best interest of the Project that the key employee be changed, ENGINEER shall propose to the District an alternate key employee. DISTRICT shall have the right to approve the alternate key employee, which approval shall not be unreasonably withheld.

As of the date of this Agreement, ENGINEER's Key Employees are:

- Chris Schmidt, PE
- John Block
- Tom Marshall
- Brian Wilson, EIT

From time to time, DISTRICT and ENGINEER may change this list of Key Employees by agreeing on a new list and documenting that list in writing.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

**SOOS CREEK WATER AND SEWER
DISTRICT**

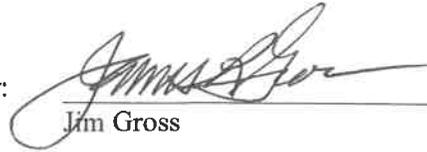
By:


Ron Speer, District Manager

Approved by Resolution No. 3696-C.

BHC CONSULTANTS, LLC

By:


Jim Gross

Title:

EXECUTIVE VICE PRESIDENT

ADDENDUM A TO MASTER AGREEMENT
FOR ENGINEERING ROSTER PROJECT SERVICES

NOTICE: This Agreement has been modified from the Standard Form. Modifications are indicated within the Agreement. Please read carefully.

**STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES**

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly By

[PEPP LOGO]

[ACEC LOGO]

[ASCE LOGO]

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**STANDARD FORM OF AGREEMENT
BETWEEN
DISTRICT AND ENGINEER
FOR
PROFESSIONAL SERVICES**

ARTICLE 1--SERVICES OF ENGINEER

1.01 Scope

A. ENGINEER shall provide the Basic and Additional Services set forth in the Master Agreement for Engineering Roster Project Services (hereinafter referred to as the "Master Agreement") and the applicable Engineering Roster Project Memorandum (hereinafter referred to as the "Project Memorandum")

B. Upon this Agreement becoming effective, ENGINEER is authorized to begin Basic Services as set forth in the Master Agreement and any applicable Roster Project Memorandum.

ARTICLE 2 -- DISTRICT'S RESPONSIBILITIES

2.01 General

A. DISTRICT shall have the responsibilities set forth herein and in the Master Agreement.

ARTICLE 3 -- TIMES FOR RENDERING SERVICES

3.01 General

A. ENGINEER'S services and compensation under this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion. Unless specific periods of time or specific dates for providing services are specified in this Agreement, ENGINEER's obligation to render services hereunder will be for a period which may reasonably be required for the completion of said services.

B. If in this Agreement specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided and if such periods of time or dates are changed through no fault of ENGINEER, the rates and amounts of compensation provided for herein shall be subject to equitable adjustment. If DISTRICT has requested changes in the scope, extent or character of the Project, the time of performance of ENGINEER's services shall be adjusted equitably.

C. For purposes of this Agreement, the term "day" means a calendar day of 24 hours.

3.02 Suspension

A. If DISTRICT fails to give written authorization to proceed with any phase of services within a reasonable period of time after completion of the immediately preceding phase, or if ENGINEER's services are delayed through no fault of ENGINEER, ENGINEER may, after giving seven days' written notice to DISTRICT, suspend services under this Agreement.

B. If ENGINEER's services are delayed or suspended in whole or in part by DISTRICT, or if ENGINEER'S services are extended by the Contractor's actions or inactions for more than three months through no fault of ENGINEER, ENGINEER shall be entitled to equitable adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect, among other things, reasonable costs incurred by ENGINEER in connection with such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised.

ARTICLE 4 -- PAYMENTS TO ENGINEER

4.01 Methods of Payment for Services and Reimbursable Expenses of ENGINEER

A. *For Basic Services.* DISTRICT shall pay ENGINEER for Basic Services performed or furnished as set forth in the Project Memorandum.

B. *For Additional Services.* DISTRICT shall pay ENGINEER for Additional Services performed or furnished as set forth in the Project Memorandum.

C. *For Reimbursable Expenses.* In addition to payments provided for in paragraphs 4.01.A and 4.01.B, DISTRICT shall pay ENGINEER in accordance with the Project Memorandum for Reimbursable Expenses incurred by ENGINEER and ENGINEER's Consultants.

4.02 Other Provisions Concerning Payments

A. *Preparation of Invoices.* Invoices will be prepared in accordance with ENGINEER's standard invoicing practices and in a manner acceptable to DISTRICT. The amount billed

in each invoice will be calculated on the basis set forth in the Project Memorandum.

B. *Payment of Invoices.* Invoices are due and payable within 30 days of receipt. If DISTRICT fails to make any payment due ENGINEER for services and expenses within 30 days after receipt of ENGINEER's invoice there for, and funds are available for the Project, the amounts due ENGINEER will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said ~~30th~~ 60th day; and, in addition, ENGINEER may, after giving seven days' written notice to DISTRICT, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.

C. *Disputed Invoices.* In the event of a disputed or contested invoice, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.

D. *Payments Upon Termination.*

1. In the event of termination under paragraphs 6.06A 1. b. and 6.06.A.2, ENGINEER will be entitled to invoice DISTRICT and will be paid in accordance with the Project Memorandum for all services performed or furnished and expenses incurred through the effective date of termination.

2. In the event of termination by DISTRICT for convenience or by ENGINEER for cause, ENGINEER, in addition to invoicing for those items identified in paragraph 4.02.D.1, shall be entitled to invoice DISTRICT and shall be paid a reasonable amount for services and expenses directly attributable to termination, including those provided or incurred after the effective date of termination, including, but not limited to, reassignment of personnel, costs of terminating contracts with ENGINEER's Consultants and other related close-out costs, using methods and rates for Additional Services set forth in the Project Memorandum.

E. *Records of ENGINEER's Costs.* Records of ENGINEER's costs pertinent to ENGINEER's compensation under this Agreement shall be kept in accordance with generally accepted accounting practices. To the extent necessary to verify ENGINEER's charges and upon DISTRICT's timely request, copies of such records will be made available to DISTRICT at cost.

F. *Legislative Actions.* In the event of legislative actions after the Effective Date of the Agreement by any level of government that impose taxes, fees, or costs on ENGINEER's services in connection with this Project or compensation there for, such new taxes, fees, or costs shall be invoiced to and paid by DISTRICT as a Reimbursable Expense to which a Factor of 1.0 shall be applied. Should

such taxes, fees, or costs be imposed, they shall be in addition to ENGINEER's estimated total compensation.

ARTICLE 5--OPINIONS OF COST

5.01 Opinions of Probable Construction Cost

A. ENGINEER's opinions of probable Construction Cost provided for herein are to be made on the basis of ENGINEER's experience and qualifications and represent ENGINEER's best judgment as an experienced and qualified professional generally familiar with the industry. However, since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, ENGINEER cannot and does not guarantee that proposals, bids or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by ENGINEER. If DISTRICT wishes greater assurance as to probable Construction Cost, DISTRICT shall employ an independent cost estimator as provided in the Project Memorandum.

5.02 Designing to Construction Cost Limit

A. If a Construction Cost limit is established between DISTRICT and ENGINEER, such Construction Cost limit and a statement of ENGINEER's rights and responsibilities with respect thereto will be specifically set forth in the Project Memorandum, "Construction Cost Limit."

5.03 Opinions of Total Project Costs

A. ENGINEER assumes no responsibility for the accuracy of opinions of Total Project Costs.

ARTICLE 6--GENERAL CONSIDERATIONS

6.01 Standards of Performance

A. The standard of care for all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession practicing under similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER'S services.

B. ENGINEER shall be responsible for the technical accuracy of its services and documents resulting there from, and DISTRICT shall not be responsible for discovering deficiencies therein. ENGINEER shall correct such deficiencies without additional compensation, except to the extent such action is directly attributable to deficiencies in DISTRICT-furnished information.

C. ENGINEER shall perform or furnish professional engineering and related services in all phases of the Project to which this Agreement applies. ENGINEER shall serve as DISTRICT's prime professional for the Project. ENGINEER may employ such ENGINEER's Consultants as ENGINEER deems necessary to assist in the performance or furnishing of the services. ENGINEER shall not be required to employ any ENGINEER's Consultant unacceptable to ENGINEER.

D. ENGINEER and DISTRICT shall comply with applicable Laws and Regulations, and DISTRICT-mandated standards. This Agreement is based on these requirements as of its Effective Date. Changes to these requirements after the Effective date of this Agreement may be the basis for modifications to DISTRICT's responsibilities or to the scope, schedule, and compensation for ENGINEER's services.

E. DISTRICT shall be responsible for, and ENGINEER may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data and other information furnished by DISTRICT to ENGINEER pursuant to this Agreement. ENGINEER may use such requirements, reports, data and information in performing or furnishing services under this Agreement.

F. DISTRICT shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the services of ENGINEER and shall bear all costs incident thereto.

G. Prior to the commencement of the Construction Phase, DISTRICT shall notify ENGINEER of any variations from the language indicated in the Project Memorandum, "Notice of Acceptability of Work," or of any other notice or certification that ENGINEER will be requested to provide to DISTRICT or third parties in connection with the Project. DISTRICT and ENGINEER shall reach agreement on the terms of any such requested notice or certification and DISTRICT shall authorize such Additional Services as are necessary to enable ENGINEER to provide the notices or certifications requested under this paragraph.

H. ENGINEER shall not be required to sign any documents, no matter by whom requested, that would result in ENGINEER's having to certify, guarantee or warrant the existence of conditions whose existence ENGINEER cannot ascertain. DISTRICT agrees not to make resolution of any dispute with ENGINEER or payment of any amount due to ENGINEER in any way contingent upon ENGINEER's signing any such certification.

I. During the Construction Phase, ENGINEER shall not supervise, direct, or have control over the Contractor's work, nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by the Contractor, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of the Contractor to comply with Laws and Regulations applicable to the Contractor's furnishing and performing the Work.

J. ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

K. ENGINEER shall not be responsible for the acts or omissions of any Contractor(s), subcontractor or supplier, or of any of the Contractor's agents or employees or any other persons (except ENGINEER's own employees) at the Site or otherwise furnishing or performing any of the Contractor's work; or for any decision made on interpretations or clarifications of the Contract Documents given by DISTRICT without consultation and advice of ENGINEER.

L. The General Conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (Document No. 1910-8) as modified by DISTRICT, unless DISTRICT and ENGINEER mutually agree to use other General Conditions as specifically referenced in a Project Memorandum. By signing a Project Memorandum, ENGINEER acknowledges that it has been provided a copy of the form of General Conditions, incorporating DISTRICT's modifications, to be utilized for the Project.

6.02 Authorized Project Representatives

A. Contemporaneous with the execution of a Project Memorandum, ENGINEER and DISTRICT shall designate specific individuals to act as ENGINEER's Project Engineer and DISTRICT's representatives with respect to the services to be performed or furnished by ENGINEER and responsibilities of DISTRICT under this Agreement. Such individuals shall have authority to transmit instructions, receive information and render decisions relative to the Project on behalf of each respective party.

6.03 Design without Construction Phase Services

A. Should DISTRICT provide Construction Phase services with either DISTRICT's representatives or a third party, ENGINEER's Basic Services under this Agreement will be considered to be completed upon completion of the Final Design Phase or Bidding or Negotiating Phase as outlined in the Master Agreement.

B. It is understood and agreed that if ENGINEER's Basic Services under this Agreement do not include construction observation, or review of the Contractor's performance, or any other Construction Phase services, then DISTRICT assumes all responsibility for interpretation of the Contract Documents and for construction observation or review and waives any claims against ENGINEER that may be in any way connected thereto.

6.04 Use of Documents

A. All Documents are instruments of service in respect to this Project and ENGINEER shall retain an ownership and

property interest therein (including the right of reuse at the discretion of ENGINEER) whether or not the Project is completed.

B. Copies of DISTRICT-furnished data that may be relied upon by ENGINEER are limited to the printed copies (also known as hard copies) that are delivered to ENGINEER pursuant to the Master Agreement. Files on electronic media of text, data, or graphics or of other types (collectively termed electronic files) that are furnished by DISTRICT to ENGINEER are only for convenience of ENGINEER. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

C. Copies of Documents that may be relied upon by DISTRICT are limited to the printed copies (also known as hard copies) that are signed or sealed by ENGINEER. Electronic files that are furnished by ENGINEER to DISTRICT are only for convenience of DISTRICT. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

D. Because data stored on electronic media can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the data. ENGINEER shall not be responsible to maintain documents stored in electronic media format after acceptance by DISTRICT.

E. When transferring documents in electronic media format, ENGINEER makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by ENGINEER at the beginning of this Project.

F. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

G. DISTRICT may make and retain copies of Documents for information and reference in connection with use on the Project by DISTRICT. Such Documents are not intended or represented to be suitable for reuse by DISTRICT or others on extensions of the Project or on any other project. Any such reuse or modification without written verification or adaptation by ENGINEER, as appropriate for the specific purpose intended, will be at DISTRICT's sole risk and without liability or legal exposure to ENGINEER, or to ENGINEER's Consultants. DISTRICT shall indemnify and hold harmless ENGINEER and ENGINEER's Consultants from all claims, damages, losses, and expenses including attorneys' fees arising out of or resulting there from.

H. DISTRICT and ENGINEER hereby grant to each other a royalty free, non-exclusive license to reproduce, use, and make derivative generation of electronic

media of such files used on DISTRICT projects which are assigned to ENGINEER, and to incorporate such files into additional drawings, designs, revisions, and updates for any purposes or uses as determined by either ENGINEER or DISTRICT.

6.05 Insurance

A. ENGINEER shall procure and maintain insurance as set forth in the Master Agreement

B. DISTRICT shall require the Contractor to purchase and maintain general liability and other insurance as specified in the Contract Documents and to cause ENGINEER and ENGINEER's Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by the Contractor for the Project.

C. All policies of property insurance shall contain provisions to the effect that ENGINEER's and ENGINEER's Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder.

D. ENGINEER shall deliver to DISTRICT certificates of insurance evidencing the coverages indicated in the Master Agreement. Such certificates shall be furnished prior to commencement of ENGINEER's services and at renewals thereafter during the life of the Agreement.

E. At any time, DISTRICT may request that ENGINEER, at DISTRICT's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in the Master Agreement. If so requested and if commercially available, ENGINEER shall obtain, and shall require ENGINEER's Consultants to obtain such additional insurance coverage, increased limits, or revised deductibles for such periods of time as requested by DISTRICT, and the Master Agreement will be supplemented to incorporate these requirements.

6.06 Termination

A. The obligation to provide further services under this Agreement for a Project may be terminated:

1. *For cause,*

a. by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

b. by ENGINEER:

1) upon seven days written notice if ENGINEER reasonably believes that ENGINEER is being requested by DISTRICT to furnish or perform services

contrary to ENGINEER's responsibilities as a licensed professional; or

2) upon seven days written notice if ENGINEER's services for the Project are delayed or suspended for more than ninety days for reasons beyond ENGINEER's control.

3) ENGINEER shall have no liability to DISTRICT on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate as a result of such substantial failure if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. *For convenience*, by DISTRICT effective upon the receipt of notice by ENGINEER.

B. The terminating party under paragraphs 6.06.A.1 or 6.06.A.2 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow ENGINEER to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

6.07 Controlling Law

A. This Agreement is to be governed by the law of the State of Washington.

6.08 Successors, Assigns, and Beneficiaries

A. DISTRICT and ENGINEER each is hereby bound and the partners, successors, executors, administrators and legal representatives of DISTRICT and ENGINEER (and to the extent permitted by paragraph 6.08.B the assigns of DISTRICT and ENGINEER) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

B. ENGINEER may not assign, sublet or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of DISTRICT, except to the extent that any assignment, subletting or transfer is mandated

or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

C. Unless expressly provided otherwise in this Agreement:

1. Nothing in this Agreement shall be construed to create, impose or give rise to any duty owed by DISTRICT or ENGINEER to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them.

2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of DISTRICT and ENGINEER and not for the benefit of any other party. DISTRICT agrees that the substance of the provisions of this paragraph 6.08.C shall appear in the Contract Documents.

6.09 Dispute Resolution

A. DISTRICT and ENGINEER agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of the Master Agreement or other provisions of this Agreement, or exercising their rights under law.

B. To the extent that DISTRICT and ENGINEER have agreed on a method and procedure for resolving disputes between them arising out of or relating to this Agreement, such dispute resolution method and procedure, ~~if any~~, is set forth in the Master Agreement.

6.10 Hazardous Environmental Condition

A. DISTRICT represents to ENGINEER that to the best of its knowledge a Hazardous Environmental Condition does not exist.

B. DISTRICT has disclosed to the best of its knowledge to ENGINEER the existence of all Asbestos, PCB's, Petroleum, Hazardous Waste, or Radioactive Material located at or near the Site, including type, quantity and location.

C. If a Hazardous Environmental Condition is encountered or alleged, ENGINEER shall have the obligation to notify DISTRICT and, to the extent of applicable Laws and Regulations, appropriate governmental officials.

D. It is acknowledged by both parties that ENGINEER's scope of services does not include any services related to a Hazardous Environmental Condition. In the event ENGINEER or any other individual or entity encounters a Hazardous Environmental Condition, ENGINEER may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until DISTRICT: (i) retains appropriate specialist consultant(s) or contractor(s) to identify

and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

E. DISTRICT acknowledges that ENGINEER is performing professional services for DISTRICT and that ENGINEER is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of "hazardous substances," as those terms are defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), if such "hazardous substances" are or may be encountered at or near the Site in connection with ENGINEER's activities under this Agreement.

F. If ENGINEER's services under this Agreement cannot be performed because of a Hazardous Environmental Condition, the existence of the condition shall justify ENGINEER's terminating this Agreement for cause on 30 days notice.

6.11 Allocation of Risks -- Indemnification

A. To the fullest extent permitted by law, ENGINEER shall indemnify and hold harmless DISTRICT, DISTRICT's officers, directors, partners and employees from and against any and all costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of ENGINEER or ENGINEER's officers, directors, partners, employees, agents and ENGINEER's Consultants in the performance and furnishing of ENGINEER's services under this Agreement; and provided, however, that such provision shall not apply to the portion of any such damage or injury that results from the fault of DISTRICT or its officers, agents, or employees. "Fault" as herein used shall have the same meaning as set forth in RCW 4.22.015.

B. With respect to the performance of this Agreement and as to claims against DISTRICT, its officers, agents, and employees, ENGINEER expressly waives its immunity under Title 51 of the Revised Code of Washington, The Industrial Insurance Act, for injuries to its employees, and agrees that the obligation to indemnify, defend and hold harmless provided for in this paragraph extends to any claim brought by or on behalf of any employee of ENGINEER and/or its subconsultant(s). This waiver is mutually negotiated by the parties. This paragraph shall not apply to any damage resulting from the sole negligence of DISTRICT, its agents, and employees. To the extent any of the damages covered by this paragraph were caused by or resulted from the concurrent negligence of DISTRICT, its agents or employees, this obligation to indemnify and hold harmless is valid and enforceable only to the extent of negligence of ENGINEER, its officers, and employees.

CB. To the fullest extent permitted by law, DISTRICT shall indemnify and hold harmless ENGINEER.

ENGINEER's officers, directors, partners, employees and agents and ENGINEER's Consultants from and against any and all costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of DISTRICT or DISTRICT's officers, directors, partners, employees, and DISTRICT's consultants with respect to this Agreement or the Project.

DC. To the fullest extent permitted by law, ENGINEER's total liability to DISTRICT and anyone claiming by, through, or under DISTRICT for any cost, loss, or damages caused in part by the negligence of ENGINEER and in part by the negligence of DISTRICT or any other negligent entity or individual, shall not exceed the percentage share that ENGINEER's negligence bears to the total negligence of DISTRICT, ENGINEER, and all other negligent entities and individuals.

ED. In addition to the indemnity provided under paragraph 6.11.B. and to the fullest extent permitted by law, DISTRICT shall indemnify and hold harmless ENGINEER and its officers, directors, partners, employees, and ENGINEER's Consultants from and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from a Hazardous Environmental Condition, provided that (i) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than completed Work), including the loss of use resulting there from, and (ii) nothing in this paragraph 6.11.D. shall obligate DISTRICT to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

6.12 Notices

A. Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address in the Master Agreement and given personally, or by certified mail (return receipt requested), or by facsimile, or by a commercial courier service. All notices shall be effective upon the date of receipt.

6.13 Survival

A. All express representations, indemnifications or limitations of liability included in this Agreement will survive its completion or termination for any reason.

6.14 Severability

A. Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue

to be valid and binding upon DISTRICT and ENGINEER, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

6.15 Waiver

A. Non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

6.16 Headings

A. The headings used in this Agreement are for general reference only and do not have special significance.

ARTICLE 7-- DEFINITIONS

7.01 Defined Terms

A. Wherever used in this Agreement (including the Exhibits) and printed with initial or all capital letters, the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

1. *Adaptive Management* -- An approach that incorporates monitoring and research to allow projects and activities, including projects designed to produce environmental benefits, to proceed in the face of some uncertainty regarding consequences. Adaptive management has three basic elements: (1) an initial operational decision or project design made in the face of uncertainty about impacts of an action; (2) monitoring and research to determine impacts of the actions; and (3) changes to the operations, construction, project design, or mitigation measures in response to new information.

2. *Addenda* -- Written or graphic instruments-issued prior to the opening of Bids which clarify, correct or change the Bidding Documents.

3. *Additional Services* -- The services to be performed for or furnished to DISTRICT by ENGINEER in accordance with the Project Memorandum.

4. *Agreement* -- This "Standard Form of Agreement between DISTRICT and ENGINEER for Professional Services" as modified by the Master Agreement, and including the Project Memorandum.

5. *Application for Payment* -- The form acceptable to ENGINEER which is to be used by the Contractor in requesting progress or final payments for the completion of its Work and which is to be accompanied by such supporting documentation as is required by the Contract documents.

6. *Aquatic Habitat Best Management Practices (Best Management Practices)* -- Practices designed to avoid or reduce impacts to aquatic habitat related activities required for the replacement of water and sewer facilities and the construction of new water and sewer facilities.

7. *Asbestos* -- Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

8. *Basic Services* -- The services to be performed for or furnished to DISTRICT by ENGINEER in accordance with the Master Agreement.

9. *Bid* -- The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

10. *Bidding Documents* -- The advertisement or invitation to Bid, instructions to bidders, the Bid form and attachments, the required form of Bid bond, and the proposed Contract Documents and Addenda, if any.

11. *Change Order* -- A document recommended by ENGINEER, which is signed by the Contractor and DISTRICT to authorize an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Construction Agreement.

12. *Compliance Director* -- Individual designated and directly employed by DISTRICT who has the authority to direct actions by the Contractor's and ENGINEER's Compliance Officers to ensure Work occurs in a manner consistent with the Aquatic Habitat Best Management Practices developed for the Work and described in the Contract Documents. DISTRICT's Compliance Officer shall report to Compliance Director on any actions-that may affect the Contract Time or Contract Price.

13. *Compliance Officer* -- Individuals designated by ENGINEER and/or the Contractor responsible for endeavoring to ensure performance of the Work occurs in a manner consistent with the Aquatic Habitat Best Management Practices developed for the Work, and described in the Contract Documents. Compliance Officers must have successfully completed the Washington State Department of Transportation's (WSDOT) Construction Site Erosion and Sediment Control Certification Course or comparable Aquatic Habitat BMP training program approved by DISTRICT.

14. *Construction Agreement* -- The written agreement, contained in the Contract Documents between DISTRICT and the Contractor covering the

Work to be performed or furnished with respect to this Project.

15. *Construction Cost* -- The cost to DISTRICT to construct those portions of the entire Project designed or specified by ENGINEER. Construction Cost does not include costs of services of ENGINEER and other design professionals and consultants, cost of land, rights-of-way, or compensation for or damages to properties, or DISTRICT's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project or the cost of other services to be provided by others to DISTRICT pursuant to the Project Memorandum. Construction Cost is one of the items comprising Total Project Costs.

16. *Contract Documents* -- The Construction Agreement between Owner and Contractor, Addenda (which pertain to the Contract Documents), Contractor's Bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the notice of award) when attached as an exhibit to the Construction Agreement, the notice to proceed, the bonds, appropriate certifications, the General Conditions, the Supplementary Conditions, Instructions to Bidders, the General requirements, the Specifications and the Drawings as the same are more specifically identified in the Construction Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders and ENGINEER's written interpretation and clarifications issued on or after the Effective Date of the Construction Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents.

17. *Contract Price* -- The moneys payable by DISTRICT to the Contractor for completion of the Work in accordance with the Contract Documents and as stated in the Construction Agreement.

18. *Contract Times* -- The numbers of days or the dates stated in the Construction Agreement to: (i) achieve Substantial Completion, and (ii) complete the Work so that it is ready for final payment as evidenced by ENGINEER's written recommendation of final payment.

19. *Contractor* -- An individual or entity with whom DISTRICT enters into a Construction Agreement covering Work to be performed or furnished with respect to the Project.

20. *Correction Period* -- The time after Substantial Completion during which the Contractor must correct, at no cost to DISTRICT, any defective Work, normally one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of

any applicable special guarantee or specific provision of the Contract Documents.

21. *Defective* -- An adjective which when modifying the word Work refers to Work that is unsatisfactory, faulty or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to ENGINEER's recommendation of final payment.

22. *Documents* -- Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by ENGINEER to DISTRICT pursuant to this Agreement.

23. *Drawings* -- Those parts of the Contract Documents prepared or approved by Engineer which graphically show the scope, extent and character of the Work to be furnished and performed by the Contractor, and which have been prepared or approved by ENGINEER and are referred to in the Contract Documents. Shop Drawings are not Drawings as so defined.

24. *Effective Date of the Construction Agreement* -- The date indicated in the Construction Agreement on which it becomes effective.

25. *Effective Date of the Agreement* -- The date indicated in the Master Agreement on which it becomes effective.

26. *ENGINEER's Consultants* -- Individuals or entities having a contract with ENGINEER to perform or furnish Basic or Additional Services with respect to this Project as ENGINEER's independent professional associates, consultants, subcontractors or vendors. The term ENGINEER includes ENGINEER's Consultants.

27. *Field Order* -- A written order issued by ENGINEER which directs minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

28. *General Conditions* -- That part of the Contract Document which sets forth terms, conditions, and procedures that govern the Work to be performed or furnished by the Contractor with respect to the Project.

29. *General Requirements* -- Section B 4 of the Construction Agreement. General Requirements pertain to all sections of the Specifications.

30. *Hazardous Environmental Condition* -- The presence at the Site of Asbestos, PCB's, Petroleum, Hazardous Waste, or Radioactive Materials in such quantities or circumstances that may present a

substantial danger to persons or property exposed thereto in connection with the Work.

31. *Hazardous Waste* -- The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

32. *Laws and Regulations; Laws or Regulations* -- Any and all applicable laws, rules, regulations, ordinances, codes, standards, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

33. *Master Agreement* -- The Master Agreement for Engineering Roster Project Services entered into between ENGINEER and DISTRICT upon ENGINEER's selection as a District Roster Engineer.

34. *Monitor* -- To watch, observe, or check for a special purpose; or to keep track of the Contractor's work for purposes of providing notification to facilitate the regulation or control of the operation of the Contractor without controlling the means or methods of the Contractor.

35. *Observe* -- to view for the purpose of arriving at a judgment.

36. *PCB 's* -- Polychlorinated biphenyls.

37. *Petroleum* -- Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

38. *Project Memorandum* -- The Engineering Roster Project Memorandum applicable to a specific Project to which ENGINEER has been assigned as a Roster Project Engineer.

39. *Radioactive Materials* -- Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

40. *Record Drawings* -- The Drawings as issued for construction on which ENGINEER has shown changes due to Addenda or Change Orders and other information which ENGINEER considers significant based on the Drawings, Shop Drawings, and other documents furnished by the Contractor to ENGINEER and which were annotated by the Contractor to show all changes made during construction.

41. *Reimbursable Expenses* -- The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional

Services for the Project for which DISTRICT shall pay ENGINEER pursuant to the applicable Project Memorandum.

42. *Project Engineer* -- The authorized representative of ENGINEER, if any, assigned immediate charge of the engineering and administration of the. Project Engineer will be ENGINEER's agent or employee and under ENGINEER's supervision. As used herein, the term Project Engineer includes any assistants of Project Engineer agreed to by DISTRICT. The duties and responsibilities of the Project Engineer are as set forth in the Master Agreement.

43. *Samples* -- Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

44. *Shop Drawings* -- All drawings, diagrams, illustrations, schedules and other data or information which are specifically prepared or assembled by or for the Contractor and submitted by the Contractor to ENGINEER to illustrate some portion of the Work.

45. *Site* -- Lands or areas, indicated in the Contract documents as being furnished by DISTRICT upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands furnished by DISTRICT which are designated for use of the Contractor.

46. *Specifications* -- Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

47. *Substantial Completion* -- The time at which the Work (or a specified part thereof) has progressed to the point where it, in the opinion of ENGINEER, is sufficiently complete in accordance with the Contract Documents so that it can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

48. *Supplementary Conditions* -- The part of the Contract Documents which amends or supplements the General Conditions.

49. *Total Project Costs* -- The sum of the Construction Cost, allowances for contingencies, the total costs of services of ENGINEER or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or DISTRICT's costs for legal, accounting, insurance counseling or auditing services, or interest and financing

charges incurred in connection with the Project, or the cost of other services to be provided by others to DISTRICT pursuant to the Project Memorandum.

50. *Work* -- The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents with respect to this Project. Work includes and is the result of performing or furnishing labor, services and documentation necessary to produce such construction and furnishing, installing and incorporating materials and equipment into the construction, all as required by the Contract Documents.

51. *Work Change Directive* -- A written directive to the Contractor, issued on or after the Effective Date of the Construction Agreement and signed by DISTRICT upon recommendation of ENGINEER, ordering an addition, deletion or revision in the Work, or responding to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times, but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

52. *Written Amendment* -- A written amendment of the Contract documents, signed by DISTRICT and the Contractor upon recommendation of ENGINEER on or after the Effective Date of the Construction Agreement and normally dealing with the nonengineering or nontechnical rather than strictly construction-related aspects of the Contract documents.

ARTICLE 8 SPECIAL PROVISIONS

[See Master Agreement and Project Memorandum]

8.01 Total Agreement

A. This Agreement together with the Master Agreement and Project Memorandum identified above) constitutes the entire agreement between DISTRICT and ENGINEER and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument.