

**PERALTA COMMUNITY COLLEGE DISTRICT**  
**Board of Trustees Agenda Report**  
**For the Trustee Meeting Date of April 24, 2012**

ITEM #

**ITEM TITLE:**

Consider Approval to Enter into an Agreement with Salas O'Brien for Engineering Design Services for the Building A Heating Upgrades Project at Merritt College

**SPECIFIC BOARD ACTION REQUESTED:**

Approval is requested to enter into an agreement with Salas O'Brien for engineering design services for the Building A Heating Upgrades project at Merritt College, in the not-to-exceed amount of \$35,000.

**ITEM SUMMARY:**

The existing heating units in Building A are failing. Repairs are no longer effective due to the age and condition of the equipment. The design schedule will be accelerated with the intent of performing construction during the summer and completing the work prior to the fall semester. Because of the critical nature of the project and the time required to complete it, administrative staff recommends entering into an agreement with Salas O'Brien.

**SOURCE OF FUNDS (AND FISCAL/BUDGETARY IMPACT):**

Measure A, as approved by the voters in Peralta's constituency and authorized under Resolution 05/06-45, Exhibit A-1, Merritt College, "Plumbing, electrical, mechanical system upgrades and improvements."

**BACKGROUND/ANALYSIS:**

Salas O'Brien is currently providing design services under an agreement for the Merritt Chiller Plant and Power Upgrade for the adjacent Library building. Salas O'Brien was selected for that project through a formal Request for Qualifications (RFQ) process approved by the Board of Trustees at the meeting of June 28, 2011.

**DELIVERABLES/SCOPE OF WORK:**

Services to be provided under this agreement include:

- Design services for the following scope of work:
  - Replacement of unit heaters in Rooms A130 and A139
  - Replacement of radiant heater in Room A108
  - New hot water fan coils for the music and administrative offices
  - Replacement of gas convection heaters in Rooms A122, A133 and the Fitness Center
- Preparation of specifications to be used in the formal bid for construction of the heating upgrades
- Obtain approvals from governing agencies
- Attend meetings as requested by the District
- Provide construction administration services
- Responsible for project close-out with the Division of the State Architect (DSA)
- Additional services as required by the District

**ANTICIPATED COMPLETION DATE:**

It is anticipated that the project will be complete before the fall semester begins.

**ALTERNATIVES/OPTIONS:**

Not applicable.

**EVALUATION AND RECOMMENDED ACTION:**

Approval is recommended to enter into an agreement with Salas O'Brien for engineering design services for the Building A Heating Upgrades project at Merritt College, in the not-to-exceed amount of \$35,000.

**OTHER DEPARTMENTS IMPACTED BY THIS ACTION (E.G. INFORMATION TECHNOLOGY):**

YES \_\_\_\_\_ NO   X  

**COMMENTS:**

No additional comments.

**WHO WILL BE PRESENTING THIS ITEM AT THE BOARD MEETING? (VICE CHANCELLOR)**

Vice Chancellor Ikhara

(\*\*\*\*\*Board contract approval is subject to negotiation and execution by the Chancellor.)

**DOCUMENT PREPARED BY:**

Prepared by: Dr. Sadiq B. Ikharo Date: April 12, 2012  
Vice Chancellor for General Services

**DOCUMENT PRESENTED AND APPROVED BY:**

Presented and approved by: Dr. Sadiq B. Ikharo Date: April 12, 2012  
Vice Chancellor for General Services

**FINANCE DEPARTMENT REVIEW**

Finance review required  Finance review *not* required

If Finance review is required, determination is:  Approved  Not Approved

If not approved, please give reason: \_\_\_\_\_

Signature: Ronald Gerhard Date: \_\_\_\_\_  
Ronald Gerhard, Vice Chancellor of Finance

**GENERAL COUNSEL (Legality and Format/adherence to Education Codes):**

Legal review required  Legal review *not* required

If Legal review is required, determination is:  Approved  Not Approved

Signature: Thuy Thi Nguyen Date: \_\_\_\_\_  
General Counsel

**CHANCELLOR'S OFFICE APPROVAL**

Approved, and Place on Agenda  Not Approved, but Place on Agenda

Signature: Wise E. Allen Date: \_\_\_\_\_  
Wise E. Allen, Chancellor



# SALAS O'BRIEN

| expect a difference |

305 South 11<sup>th</sup> Street  
San José, California 95112-2218  
408.282.1500 | 408.297.2995 (f)

San Jose | Monterey | San Luis Obispo  
Oakland | Sacramento | Long Beach

November 9, 2011

**Peralta Community College District**

Robert Díaz  
Director of Capital Projects  
333 East 8<sup>th</sup> Street  
Oakland, CA 94606

**Subject: Merritt College – Bldg A. Heating Upgrades**

Dear Mr. Díaz,

At the request of Claudette Brerogow, we met with Johnnie and Clint and walked the building A site to review existing conditions. The existing building was built in 1970 and much of the heating equipment is original. There has only been one major renovation, the old library, which has packaged HVAC units that are new with equipment in good condition. There have been a few other replacements within the last 15 years in individual classrooms spaces, notably, the child care area which now has gas fired unit heaters which replaced the original industrial gas fired unit heaters. There has also been a replacement of a heating hot water unit heater in room A139 and a radiant perimeter heater in Room 137. The building was originally built as a vocational arts building, and the classroom uses have changed over the years.

Some of the original equipment has already failed, some areas have partial heating and there are a couple areas, music room and office with no heating. The median service life for the gas fired heaters per ASHRAE Applications 37.3 Table 4 is only 13 years, the hot water unit heaters 20 years, and the radiant heaters 25 years. Being that these are now 40 years old, the equipment has far exceeded its useful life. Furthermore, one of the replacements, room A139 was a low cost air handler (AHU) that is so noisy, it isn't being used during lecturing. This room appears to be one of the classrooms that is used the most.

In order to keep the spaces useable for the next 5 years, we would recommend at least a minimum option to include:

***Reduced Cost Option 1: \$203,000<sup>1</sup>***

Replacement of the AHU in Room A139 & the unit heater in A130 with a classroom style fan coil similar to the style used in A137.

Replacement of the Radiant heater in A108A ("observation classroom") with a new radiant heater.

Add heating hot water fan coil to Music and administrative office which currently has no heat.

Replace failing gas convection heaters in Rooms A122, 133 & Fitness Center with new radiant heaters.

This reduced cost option only addresses areas of immediate need, as noted above; the majority of equipment is over 40 years old so additional failures could occur at any time.

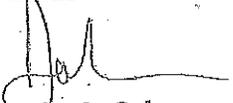
Our scope for this proposal includes providing plans and specifications for only these areas of immediate need. This project will have to go to DSA, and will include mechanical, electrical and structural details and calculations. We can provide these services for a Fixed Fee (FF) of \$35,000 including reimbursable expenses.

Schedule: the design schedule will be accelerated with the intent of having a summer construction with completion prior to the fall semester.

<sup>1</sup> Construction Cost ( see attached).

If you are in agreement, kindly sign this proposal where indicated and fax to 408-297-2995 *Attention Contracts* or by emailing it to [contracts@salasobrien.com](mailto:contracts@salasobrien.com). By signing this proposal, Client authorizes the work to commence and agrees to Salas O'Brien's Standard Terms and Conditions hereby incorporated as Exhibit A. We thank you for this opportunity to be of service. Please do not hesitate to contact us with questions or comments.

Energetically Yours,  
Salas O'Brien



John L. Salas,  
Managing Principal

Approved by: \_\_\_\_\_ Date: \_\_\_\_\_  
Robert Dias

Cc: Chron 11522

Enclosures: Construction Cost Estimate, Exhibit A – Standard Terms and Conditions

Client Project Number: \_\_\_\_\_  
(If applicable, please provide your project number when you sign this agreement and return)

**BERALTA COMMUNITY COLLEGE DISTRICT**  
**MERRITT COLLEGE - BLDG. A HVAC**  
**PROJECT 10207**

REPLACE: A139 AHU, A130 UNIT HEATER, A108A RADIANT HEATER,  
 ADD: HOT WATER FAN COIL TO MUSIC AND ADMINISTRATIVE OFFICES  
 REPLACE: A122, 133, AND FITNESS CENTER INFRARED RADIANT HEATERS

Item Description	Quantity	Unit	Unit Cost		Extension		Total	Total w/OH&P
			Material	Labor	Material	Labor		
<b>Mechanical</b>								
<i>DEMO</i>								
AHU in A139	1	EA	\$ -	\$ 700	\$ -	\$ 700	\$ 700	\$ 1,050
HHW-Piping	1	JOB	\$ 50	\$ 100	\$ 50	\$ 100	\$ 150	\$ 208
Unit Heater in A130	1	EA	\$ -	\$ 400	\$ -	\$ 400	\$ 400	\$ 600
HHW Piping	1	JOB	\$ 50	\$ 100	\$ 50	\$ 100	\$ 150	\$ 208
Radiant Heater in A108A	1	EA	\$ -	\$ 300	\$ -	\$ 300	\$ 300	\$ 450
HHW Piping	1	JOB	\$ 50	\$ 100	\$ 50	\$ 100	\$ 150	\$ 208
Infrared Radiant Heater in A122	3	EA	\$ -	\$ 600	\$ -	\$ 1,800	\$ 1,800	\$ 2,700
Gas Piping	1	JOB	\$ 50	\$ 250	\$ 50	\$ 250	\$ 300	\$ 433
Infrared Radiant Heater in 133	3	EA	\$ -	\$ 600	\$ -	\$ 1,800	\$ 1,800	\$ 2,700
Gas Piping	1	JOB	\$ 50	\$ 250	\$ 50	\$ 250	\$ 300	\$ 433
Infrared Radiant Heater in Fitness Center	3	EA	\$ -	\$ 600	\$ -	\$ 1,800	\$ 1,800	\$ 2,700
Gas Piping	1	JOB	\$ 50	\$ 250	\$ 50	\$ 250	\$ 300	\$ 433
<i>NEW WORK</i>								
Fan Coil Unit - A139 (1,000 CFM)	1	EA	\$ 4,000	\$ 950	\$ 4,000	\$ 950	\$ 4,950	\$ 6,025
Structural Support	1	JOB	\$ 200	\$ 1,000	\$ 200	\$ 1,000	\$ 1,200	\$ 1,730
Reconnect HHW - Piping	20	LF	\$ 9	\$ 8	\$ 180	\$ 160	\$ 340	\$ 447
Reconnect HHW - Fitting	8	EA	\$ 20	\$ 44	\$ 160	\$ 352	\$ 512	\$ 712
Reconnect HHW - Valves	2	EA	\$ 139	\$ 30	\$ 278	\$ 60	\$ 338	\$ 410
Insulation ASJ	36	LF	\$ 1	\$ 5	\$ 50	\$ 180	\$ 230	\$ 328
Thermostat	1	EA	\$ 33	\$ 45	\$ 33	\$ 45	\$ 78	\$ 105
Conduit 3/4"	40	LF	\$ 1	\$ 2	\$ 32	\$ 93	\$ 125	\$ 176
Wire	40	LF	\$ 0.16	\$ 0.90	\$ 6	\$ 36	\$ 42	\$ 61
Fan Coil Unit - A130 (1,000 CFM)	1	EA	\$ 4,000	\$ 950	\$ 4,000	\$ 950	\$ 4,950	\$ 6,025
Structural Support	1	JOB	\$ 200	\$ 1,000	\$ 200	\$ 1,000	\$ 1,200	\$ 1,730
Reconnect HHW - Piping	20	LF	\$ 9	\$ 8	\$ 180	\$ 160	\$ 340	\$ 447
Reconnect HHW - Fitting	8	EA	\$ 20	\$ 44	\$ 160	\$ 352	\$ 512	\$ 712
Reconnect HHW - Valves	2	EA	\$ 139	\$ 30	\$ 278	\$ 60	\$ 338	\$ 410
Insulation ASJ	36	LF	\$ 1	\$ 5	\$ 50	\$ 180	\$ 230	\$ 328
Thermostat	1	EA	\$ 33	\$ 45	\$ 33	\$ 45	\$ 78	\$ 105
Conduit 3/4"	40	LF	\$ 1	\$ 2	\$ 32	\$ 93	\$ 125	\$ 176
Wire	40	LF	\$ 0.16	\$ 0.90	\$ 6	\$ 36	\$ 42	\$ 61
Radiant Heater - A108A	1	EA	\$ 4,000	\$ 950	\$ 4,000	\$ 950	\$ 4,950	\$ 6,025
Structural Support	1	JOB	\$ 200	\$ 1,000	\$ 200	\$ 1,000	\$ 1,200	\$ 1,730
Reconnect HHW - Piping	8	LF	\$ 9	\$ 8	\$ 72	\$ 64	\$ 136	\$ 179
Reconnect HHW - Fitting	8	EA	\$ 20	\$ 44	\$ 160	\$ 352	\$ 512	\$ 712
Reconnect HHW - Valves	2	EA	\$ 139	\$ 30	\$ 278	\$ 60	\$ 338	\$ 410
Insulation ASJ	24	LF	\$ 1	\$ 5	\$ 34	\$ 120	\$ 154	\$ 219
Thermostat	1	EA	\$ 33	\$ 45	\$ 33	\$ 45	\$ 78	\$ 105
Conduit 3/4"	40	LF	\$ 1	\$ 2	\$ 32	\$ 93	\$ 125	\$ 176
Wire	40	LF	\$ 0.16	\$ 0.90	\$ 6	\$ 36	\$ 42	\$ 61
Fan Coil Unit - Music (1,000 CFM)	1	EA	\$ 4,000	\$ 950	\$ 4,000	\$ 950	\$ 4,950	\$ 6,025
Structural Support	1	JOB	\$ 200	\$ 1,000	\$ 200	\$ 1,000	\$ 1,200	\$ 1,730
HHW - Piping	40	LF	\$ 9	\$ 8	\$ 360	\$ 320	\$ 680	\$ 894
HHW - Fitting	8	EA	\$ 20	\$ 44	\$ 160	\$ 352	\$ 512	\$ 712
HHW - Valves	2	EA	\$ 139	\$ 30	\$ 278	\$ 60	\$ 338	\$ 410
Insulation ASJ	56	LF	\$ 1	\$ 5	\$ 78	\$ 280	\$ 358	\$ 510
Thermostat	1	EA	\$ 33	\$ 45	\$ 33	\$ 45	\$ 78	\$ 105
Conduit 3/4"	40	LF	\$ 1	\$ 2	\$ 32	\$ 93	\$ 125	\$ 176
Wire	40	LF	\$ 0.16	\$ 0.90	\$ 6	\$ 36	\$ 42	\$ 61
Fan Coil Unit - Administration (1,000 CFM)	1	EA	\$ 4,000	\$ 950	\$ 4,000	\$ 950	\$ 4,950	\$ 6,025
Structural Support	1	JOB	\$ 200	\$ 1,000	\$ 200	\$ 1,000	\$ 1,200	\$ 1,730
HHW - Piping	40	LF	\$ 9	\$ 8	\$ 360	\$ 320	\$ 680	\$ 894
HHW - Fitting	8	EA	\$ 20	\$ 44	\$ 160	\$ 352	\$ 512	\$ 712
HHW - Valves	2	EA	\$ 139	\$ 30	\$ 278	\$ 60	\$ 338	\$ 410
Insulation ASJ	56	LF	\$ 1	\$ 5	\$ 78	\$ 280	\$ 358	\$ 510
Thermostat	1	EA	\$ 33	\$ 45	\$ 33	\$ 45	\$ 78	\$ 105
Conduit 3/4"	40	LF	\$ 1	\$ 2	\$ 32	\$ 93	\$ 125	\$ 176
Wire	40	LF	\$ 0.16	\$ 0.90	\$ 6	\$ 36	\$ 42	\$ 61
Infrared Radiant Heater in A122 (100MBH)	3	EA	\$ 800	\$ 2,000	\$ 2,400	\$ 6,000	\$ 8,400	\$ 11,760
Structural Support	3	JOB	\$ 150	\$ 1,000	\$ 450	\$ 3,000	\$ 3,450	\$ 5,018
Reconnect Pines	3	JOB	\$ 500	\$ 1,500	\$ 1,500	\$ 4,500	\$ 6,000	\$ 8,475
Reconnect Gas Piping	3	JOB	\$ 30	\$ 40	\$ 90	\$ 120	\$ 210	\$ 284
Thermostat	1	EA	\$ 33	\$ 45	\$ 33	\$ 45	\$ 78	\$ 105
Conduit 3/4"	100	LF	\$ 1	\$ 2	\$ 79	\$ 233	\$ 312	\$ 440
Wire	100	LF	\$ 0.16	\$ 0.90	\$ 16	\$ 90	\$ 106	\$ 153
Infrared Radiant Heater in 133 (100MBH)	3	EA	\$ 800	\$ 2,000	\$ 2,400	\$ 6,000	\$ 8,400	\$ 11,760

**PERALTA COMMUNITY COLLEGE DISTRICT**

**MERRITT COLLEGE - BLDG A HVAC**

PROJECT # 10207

REPLACE: A139 AHU, A130 UNIT HEATER, A108A RADIANT HEATER,  
ADD: HOT WATER FAN COIL TO MUSIC AND ADMINISTRATIVE OFFICES  
REPLACE: A122, 133, AND FITNESS CENTER INFRARED RADIANT HEATERS

Item Description	Quantity	Unit	Unit Cost		Extension		Total	Total w/OH&P
			Material	Labor	Material	Labor		
Structural Support	3	JOB	\$ 150	\$ 1,000	\$ 450	\$ 3,000	\$ 3,450	\$ 5,018
Reconnect Flues	3	JOB	\$ 500	\$ 1,500	\$ 1,500	\$ 4,500	\$ 6,000	\$ 8,475
Reconnect Gas Piping	3	JOB	\$ 30	\$ 40	\$ 90	\$ 120	\$ 210	\$ 284
Thermostat	1	EA	\$ 33	\$ 45	\$ 33	\$ 45	\$ 78	\$ 105
Conduit 3/4"	100	LF	\$ 1	\$ 2	\$ 79	\$ 233	\$ 312	\$ 440
Wire	100	LF	\$ 0.16	\$ 0.90	\$ 16	\$ 90	\$ 106	\$ 153
Infrared Radiant Heater in Fitness Center (100MBH)	3	EA	\$ 800	\$ 2,000	\$ 2,400	\$ 6,000	\$ 8,400	\$ 11,760
Structural Support	3	JOB	\$ 150	\$ 1,000	\$ 450	\$ 3,000	\$ 3,450	\$ 5,018
Reconnect Flues	3	JOB	\$ 500	\$ 1,500	\$ 1,500	\$ 4,500	\$ 6,000	\$ 8,475
Reconnect Gas Piping	3	JOB	\$ 30	\$ 40	\$ 90	\$ 120	\$ 210	\$ 284
Thermostat	1	EA	\$ 33	\$ 45	\$ 33	\$ 45	\$ 78	\$ 105
Conduit 3/4"	100	LF	\$ 1	\$ 2	\$ 79	\$ 233	\$ 312	\$ 440
Wire	100	LF	\$ 0.16	\$ 0.90	\$ 16	\$ 90	\$ 106	\$ 153
Air Balancing	1	JOB	\$ -	\$ 2,500	\$ -	\$ 2,500	\$ 2,500	\$ 3,750
HHW Balancing	1	JOB	\$ -	\$ 1,500	\$ -	\$ 1,500	\$ 1,500	\$ 2,250
<b>Subtotal - Mechanical</b>					\$ 38,992	\$ 68,559	\$ 107,551	\$ 147,680
<b>Electrical</b>								
Provide power for Fan Coil Unit-A139								
Conduit - 3/4" Rigid Conduit	60	LF	\$ 1	\$ 2	\$ 47	\$ 140	\$ 187	\$ 264
Conductors - (2)#12	60	LF	\$ 0.24	\$ 1.06	\$ 14	\$ 64	\$ 78	\$ 112
Ground - (1)#12	60	LF	\$ 0.12	\$ 0.53	\$ 7	\$ 32	\$ 39	\$ 56
Fuse - 30 Amp	1	EA	\$ 10	\$ 100	\$ 10	\$ 100	\$ 110	\$ 162
Provide power for Fan Coil Unit-A130								
Conduit - 3/4" Rigid Conduit	40	LF	\$ 1	\$ 2	\$ 32	\$ 93	\$ 125	\$ 176
Conductors - (2)#12	40	LF	\$ 0.24	\$ 1.06	\$ 10	\$ 42	\$ 52	\$ 75
Ground - (1)#12	40	LF	\$ 0.12	\$ 0.53	\$ 5	\$ 21	\$ 26	\$ 37
Fuse - 30 Amp	1	EA	\$ 10	\$ 100	\$ 10	\$ 100	\$ 110	\$ 162
Provide power for Fan Coil Unit-Music/Admin								
Conduit - 3/4" Rigid Conduit	60	LF	\$ 1	\$ 2	\$ 47	\$ 140	\$ 187	\$ 264
Conductors - (2)#12	60	LF	\$ 0.24	\$ 1.06	\$ 14	\$ 64	\$ 78	\$ 112
Ground - (1)#12	60	LF	\$ 0.12	\$ 0.53	\$ 7	\$ 32	\$ 39	\$ 56
Fuse - 30 Amp	1	EA	\$ 10	\$ 100	\$ 10	\$ 100	\$ 110	\$ 162
Provide power for Fan Coil Unit-Administration								
Conduit - 3/4" Rigid Conduit	60	LF	\$ 1	\$ 2	\$ 47	\$ 140	\$ 187	\$ 264
Conductors - (2)#12	60	LF	\$ 0.24	\$ 1.06	\$ 14	\$ 64	\$ 78	\$ 112
Ground - (1)#12	60	LF	\$ 0.12	\$ 0.53	\$ 7	\$ 32	\$ 39	\$ 56
Fuse - 30 Amp	1	EA	\$ 10	\$ 100	\$ 10	\$ 100	\$ 110	\$ 162
Provide Power for (9) infrared radiant heaters								
Conduit - 3/4" Rigid Conduit	400	LF	\$ 1	\$ 2	\$ 316	\$ 932	\$ 1,248	\$ 1,761
Conductors - (2)#12	400	LF	\$ 0.24	\$ 1.06	\$ 96	\$ 424	\$ 520	\$ 746
Ground - (1)#12	400	LF	\$ 0.12	\$ 0.53	\$ 48	\$ 212	\$ 260	\$ 373
Fuse - 30 Amp	3	EA	\$ 10	\$ 100	\$ 30	\$ 300	\$ 330	\$ 485
<b>Subtotal - Electrical</b>					\$ 293	\$ 1,262	\$ 1,555	\$ 5,596
<b>Sub Totals</b>					\$ 39,285	\$ 69,821	\$ 109,107	\$ 153,276
Sales Tax (Material Only)	9.25%							\$3,634
Freight (Material Only)	2%							\$786
Contingency	30%							\$45,983
*Total Construction Cost								

## SALAS O'BRIEN ENGINEERING, INC. STANDARD TERMS AND CONDITIONS

1. **Billing.** Salas O'Brien Engineers, Inc. ("Engineer") shall bill "Client" on or about the 1st of the month. Billing to be based on percentage of completion.
2. **Payment.** All invoices are due and payable within thirty (30) days of invoice date. Interest may be charged at 1.5% monthly on all invoices over thirty days. In the event if any payment is unpaid on any invoice in excess of sixty (60) days, Client shall be deemed to be in substantial breach of the Agreement and Engineer may, in its sole discretion, elect to suspend its services hereunder without prejudice. Client shall reimburse Engineer for all costs of collections, including reasonable attorneys' fees.
3. **Extra Services.** Services in addition to those set forth in the Agreement shall be charged at the Engineer's then prevailing rates and shall be in addition to the above agreed upon fees. No additional services shall be performed without written authorization from the Client.
4. **Dispute Resolution.** The parties shall, as soon as reasonably practicable after one party gives written notice of a dispute to the other party, meet and confer in good faith regarding such dispute at such time and place as mutually agreed. All discussion pursuant to this Section 4 shall be considered a settlement negotiations for the purpose of laws protecting statements, disclosures or conduct in such context, and all offers or other statements or conduct shall be protected under such laws. If no resolution is reached, the parties shall, within forty-five (45) days of the first meeting referred to above, attempt to settle the dispute by formal mediation in San Jose, California. If the parties cannot agree upon a mediator within such forty-five (45) day period, the American Arbitration Association in San Jose, California shall administer the mediation. Such mediation shall occur no later than ninety (90) days after the dispute arises. All findings of fact and results of such mediation shall be in written form prepared by such mediator and provided to each party to such mediation. In the event that the parties are unable to resolve the dispute through formal mediation pursuant to this Section 4, the parties shall be entitled to seek any and all available legal remedies.
5. **Indemnification.** The Engineer agrees to indemnify and hold the Client harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by the Engineer's grossly negligent acts, errors or omissions in the performance of professional services under this Agreement (except to the extent caused by the Client's negligent or intentional act or omission). The Client agrees to indemnify and hold the Engineer harmless from any damage, liability or cost (including reasonable attorneys' fees and cost of defense) to the extent caused by a material breach of this Agreement by Client or the negligent acts, errors or omissions of the Client or contractors, subcontractors, consultants or others for whom the Client is legally liable, and arising from the project that is the subject of this Agreement.
6. **Insurance.** During the term of this Agreement, each party agrees to provide evidence of insurance coverage to the other party. In addition, the Engineer agrees to use commercially reasonable efforts to maintain continuous professional liability coverage for the period of design and construction of this project, and for a period of ten years following substantial completion, if such coverage is reasonably available at commercially affordable premiums. For the purposes of this Agreement, "reasonably available" and "commercially affordable" shall mean that more than half the design professional's practicing in the State of California as engineers for similar services are able to obtain such coverage.
7. **Owner's Consultants.** It is understood and agreed that the Client may contract directly with other design professionals for design services:  

Engineer shall have no responsibility for any portion of the project designed by the Client's other consultants. The Engineer shall not be required to check or verify other consultants' construction documents and shall be entitled to rely on the accuracy and completeness thereof, as well as the compliance of such documents with applicable laws, codes, statutes, ordinances and regulations. The Client agrees, to the fullest extent permitted by law, to indemnify and hold the Engineer harmless from any damage, liability or cost, including reasonable attorneys' fees and defense costs, arising in any way from the services performed by any other consultants to the Client. The Client further agrees to require all other consultants under separate contract to coordinate their construction documents with those of the Engineer, to promptly report any conflicts or inconsistencies to the Engineer and to cooperate fully in the resolution of those conflicts or inconsistencies.
8. **Third Party Beneficiaries.** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or the Engineer. The Engineer's services under this Agreement are being performed solely for the Client's benefit, and no other entity shall have any claim against the Engineer because of this Agreement or the performance or nonperformance of services hereunder. The Client agrees to include a provision in all agreements with third parties, Home Owner's Associations and other entities involved in this project to carry out the intent of this Section 8.
9. **Liability.** The Engineer is not responsible for job safety in, on, or around the project site (or sites). Any reviews the Engineer may make are not, and are not intended to be, reviews of safety practices. Client understands and agrees that the Engineer is not responsible for means, methods, or sequences of construction or job site safety or for the Contractor's errors. IN RECOGNITION OF THE RELATIVE RISKS AND BENEFITS OF THE PROJECT TO BOTH THE CLIENT AND THE ENGINEER, THE RISKS HAVE BEEN ALLOCATED SUCH THAT THE CLIENT AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO LIMIT THE LIABILITY OF THE ENGINEER AND ITS SUBCONSULTANTS TO THE CLIENT AND TO ALL CONSTRUCTION CONTRACTORS AND SUBCONTRACTORS ON THE PROJECT FOR ANY AND ALL CLAIMS, LOSSES, COSTS, DAMAGES OF ANY NATURE WHATSOEVER OR CLAIMS EXPENSES FROM ANY CAUSE OR CAUSES, SO THAT THE TOTAL AGGREGATE LIABILITY OF THE ENGINEER AND ITS SUBCONSULTANTS SHALL NOT EXCEED \$150,000.00, OR THE ENGINEER'S TOTAL FEE FOR SERVICES RENDERED ON THIS PROJECT, WHICHEVER IS GREATER. SUCH CLAIMS AND CAUSES INCLUDE, BUT ARE NOT LIMITED TO NEGLIGENCE, PROFESSIONAL ERRORS OR OMISSIONS, STRICT LIABILITY, BREACH OF CONTRACT OR WARRANTY. ADDITIONALLY, IN NO EVENT SHALL THE ENGINEER, TO THE FULLEST EXTENT PERMITTED BY LAW, BE LIABLE FOR INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES, EVEN IF SUCH DAMAGES WERE FORESEEABLE
10. **Opinion of Probable Cost.** In providing opinions of probable cost or construction cost, Client understands and agrees that the Engineering has no control over the costs or the price of labor, equipment or materials, or over the Client's method of pricing, and that the opinions of probable construction costs provided herein are to be made on the basis of the Engineer's qualifications and experience. The Engineer makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual costs.
11. **Force Majeure.** The failure of the Engineer to perform its obligations shall not be a breach of this Agreement or give rise to any right of termination or reversion if such failure is caused by restrictions of governmental agencies, labor disputes, inability to obtain necessary materials or any other reason beyond the Engineer's control; in the event of delay from any such cause, the obligation to perform shall be postponed for a period of time reasonably related to such cause.
12. **Additional Items.** If project is suspended or abandoned prior to the completion of professional services, fees will become payable only for the services completed at the time of such suspension or abandonment. This Agreement may be terminated by either party at the conclusion of any phase by 10 days written notice.
13. **Successors and Assigns.** Neither party shall assign any rights or obligations under the Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld. Any assignment of rights shall not work as a novation of obligations thereunder without written agreement. Any attempt to assign any rights, duties, or obligations under the Agreement without the other party's written consent will be void; provided that either party may assign this Agreement to a surviving entity in connection with any merger, acquisition or consolidation.
14. **Entire Agreement.** This Agreement and its attachments set forth the entire agreement between the parties and supersedes any and all prior or contemporaneous agreements of the parties with respect to the subject matter contained herein. Engineer shall not be bound by, and specifically objects to, any term, condition, or other provision inconsistent with or in addition to any provision of this Agreement that is submitted by Client in any correspondence or any other document, unless Engineer specifically agrees to such provision in writing by an authorized representative. No change, amendment, or modification of any provision of this Agreement shall be valid unless set forth in a written instrument signed by both parties.
15. **Governing Law.** This Agreement shall be governed by the laws of the State of California.
16. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which together shall constitute only one agreement. Signatures sent by facsimile transmission or in PDF format shall be deemed to be originals for all purposes of this Agreement.