AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Contract; Engineering at Shady Island

Action Requested: County Manager Signature

Parties to the Agreement:

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:

Contract for in-stream engineering and required permitting for the Shady Island project

Fiscal Impact:

Submitted by: John Cattles **Submitter's Email Address:** jcattles@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
No concerns included in scope of project and in budget. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 8/29/2019

County Attorney Review: (●) Required ( ) Not Required

Comments:
ok db 8/29/19

Reveiwed by: GUNCOUNTY1\mhoyt Discharge Date: 8/30/2019 Certificate of Insurance Required Yes (●) No ( )

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 8/30/2019

(●) Consent Agenda ( ) Regular Agenda ( ) Worksession Time Allotted: 0

Agenda Date: 9/3/2019

Revised April 2015

C L I E N T

M A S T E R A G R E E M E N T

F O R

P R O F E S S I O N A L S E R V I C E S

B e t w e e n

M e r r i c k & C o m p a n y

a n d

G u n n i s o n C o u n t y C o l o r a d o

T a b l e o f C o n t e n t s

Article 1 Merrick's Services....2

Article 2 Changes to Scope of Services, Suspension....3

Article 3 Client Responsibilities....3

Article 4 Records, Audit and Documents....4

Article 5 Confidential & Proprietary Information....5

Article 6 Indemnification & Risk Allocation....5

Article 7 Termination....6

Article 8 Dispute Resolution....6

Article 9 General....6

A.1 - Form of Work Order & A.2, A.3 - Additional Services
B - Insurance
C - Compensation
D - Additional Client Responsibilities

MERRICK®

Client Master Agreement for Professional Services

This Client Master Agreement for Professional Services ("**Agreement**") is made by and between Merrick & Company, a Colorado corporation ("**Merrick**") and Gunnison County Colorado ("**Client**"), effective as of August 1, 2019.

Client desires to obtain professional services for the "**Project**" described on Attachment A, and the parties wish to set forth the terms and conditions for performance of those services.

NOW THEREFORE, for and in consideration of the mutual promises herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Article 1 - Merrick's Services

1.1 **Services and Compensation**. Merrick agrees to perform the services described in **Attachment A.1 ("Form of Work Order")**. Individual tasks will be authorized by written Work Orders issued from time to time by Client and accepted in writing by Merrick. Upon receipt of an executed Work Order, Merrick shall promptly commence and diligently continue the services to completion in compliance with Attachment A, subject to the other terms and conditions of this Agreement.

1.2 Each Work Order hereunder shall refer to this Agreement, shall be governed by the terms and provisions hereof, and shall indicate the scope of and include any required data or specifications for the Work to be performed pursuant thereto. The Work Order shall also include the schedule, budget and any other pertinent information required to perform the Work. Merrick shall not proceed with any phase of any work prior to the receipt of a written Work Order describing such work and its written acceptance of such order.

1.3 **Standard of Care**. Merrick's services shall be performed in a manner consistent with the care and skill ordinarily exercised by professionals practicing in the same locality and specialty under the same or similar conditions. Merrick makes no warranties or guaranties, either express or implied, of any kind, nature or type whatsoever (including those of condition, merchantability, suitability and fitness for a particular purpose or use) regarding the services. Merrick expressly disclaims all such warranties or guaranties. The foregoing is collectively referred to as the "**Standard of Care**."

1.4 **Insurance.** Merrick shall maintain during the term of this Agreement and, if Client is not in default hereunder, for a period of two (2) years after Merrick's services, insurance as set forth in **Attachment B.**

1.5 **Compliance with Laws, Errors**. Merrick shall endeavor to follow and comply with applicable law. Merrick shall be responsible for completeness and accuracy of its services and shall correct its errors or omissions at its own expense. Should Client become aware of errors or omissions in the services or should Client otherwise become dissatisfied with the services, Client shall give prompt written notice to Merrick so that Merrick may take measures to minimize the consequences of such condition, and thereafter allow a reasonable time for correction by Merrick. Proceeding with a construction phase without such notice constitutes a representation by Client that it is unaware of errors or omissions in, and is satisfied with the services at that time.

1.6 **Warranties**. Warranties for machinery, equipment, and the like procured or furnished by Merrick are limited to those provided by the suppliers or manufacturers.

1.7 **Taxes, Licenses**. Merrick shall promptly pay, when due, taxes, excises, license fees directly applicable and chargeable to the services it performs under this Agreement. Merrick shall take out and keep current applicable licenses required to perform the services.

1.8 **Project Execution**. Client and Merrick agree to work together, and with other members of the project team, on the basis of trust, good faith and fair dealing, and shall take actions reasonably necessary to enable each other to perform this Agreement in a timely, efficient and economical manner. Client shall endeavor to promote harmony and cooperation among Client, Merrick, and other members of the project team.

1.9 **Compensation**. Client shall pay Merrick for its basic services as provided in **Attachment C**. If changes to the scope of services or additional services cause an increase or decrease in Merrick's services, an equitable adjustment shall be made to Merrick's compensation under Article 2 before proceeding with such services, and this Agreement shall be modified in writing accordingly.

1.10 **Equal opportunity**. The parties hereby incorporate the requirements of 41 C.F.R. § 60-1.4(a) and 29 C.F.R. § 471, Appendix A to Subpart A, if applicable. Client and Merrick shall abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a), if applicable. These regulations prohibit discrimination against qualified protected veterans and qualified individuals with disabilities ,and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and qualified individuals with disabilities.

Article 2 - Changes to Scope, Suspension

2.1 **Changes to Scope**. A partial itemization of additional services available is set forth in Attachment A. Client may request that Merrick perform these and other additional services or make changes to the scope of services. Such changes or additions may include the work required to evaluate such a request. Except where time is of the essence (in which case changes or additions may be authorized verbally and later confirmed in writing), Merrick and Client shall agree in writing to the exact nature of the change or addition prior to its implementation. This writing, when signed by both parties, shall constitute an authorization for changes or additions and shall contain a description of the services, the commencement date and expected completion date for the services, and shall address costs and any special conditions applicable to the services.

2.2 **Adjustment to Compensation**. The parties shall in good faith attempt to reach a written agreement adjusting Merrick's compensation in an equitable manner if changes or additions cause an increase or decrease in Merrick's services including, without limitation, field changes, delays due to no fault of Merrick that cause Merrick to incur additional costs, changes in Client's ownership or personnel. If such an equitable adjustment cannot be reached, Merrick shall perform such services on a cost plus basis. In this event, Merrick shall keep an accurate record of its services, supported by time sheets, invoices and other documentation reasonably requested by Client. Merrick shall accurately substantiate costs in a clear and precise manner. If Client is current in its obligations under this Agreement, Merrick's profit mark-up shall be limited to ten percent (10%) for services performed on a cost plus basis.

2.3 **Suspension**. Client may at any time, by written notice to Merrick, suspend further performance of Merrick's services. Upon receiving notice of suspension, Merrick shall promptly suspend performance of the services to the extent specified. During the period of a suspension, Merrick shall care for and protect its services in progress. For a period of ninety (90) days, consecutive or in the aggregate, Client may withdraw the suspension of performance of the services as to all or part of the suspended services by written notice to Merrick specifying the effective date and scope of withdrawal. Merrick shall then resume performance of the services for which the suspension was withdrawn. If suspension or delays last longer than ninety (90) days, Merrick may terminate this Agreement. An equitable adjustment shall be made to Merrick's compensation under **Attachment C** and to any scheduling or deliverable dates justified by the suspension or withdrawal of suspension, and this Agreement shall be modified in writing accordingly. In calculating any equitable adjustment when a suspension is withdrawn, Merrick is entitled to the start-up costs and fees associated with resuming services.

2.4 **Disputed Services.** If Merrick disagrees with a request by Client for a non-compensable correction of defects or errors or omissions in the services, then in addition to or in lieu of the other provisions of this Agreement, Merrick may invoice Client for additional compensation in performing the services.

Article 3 - Client Responsibilities

3.1 **Representatives.** The representatives identified in Article 9 shall have, respectively, authority to act for the designated party in all things pertaining to this Agreement including, without limitation, authority to make changes to the scope of services or request additional services or suspend services, authority to transmit instructions, receive information, interpret and define policies and decisions with respect to the services, and to make decisions on that party's behalf when requested to do so by the other party.

3.2 **Project Requirements.** Client shall cooperate with Merrick in all aspects of the Project and shall provide information and criteria of Client's requirements for the Project including, without limitation, objectives and constraints, space, capacity and performance requirements, flexibility and expendability, and any time or budgetary limitations. Client

shall provide access to the project site, furnish copies of specifications and standards which it will require to be included in the services, and shall examine and respond promptly to Merrick's submissions. Client shall consult with Merrick on a regular basis concerning the timeliness, cost and adequacy of services during the phases of scheduled work and the work progress dates and promptly furnish to Merrick written notice of any noncompliance therewith. Client agrees to properly and adequately scope, insure and allocate risk on the Project.

3.3 **Work of Others.** Merrick shall not be responsible for taking precautions for protection of the work or safety of the public through or around the Project operations and Merrick shall not be responsible for the means, methods, techniques, sequencing or procedures of the work of others. Additional responsibilities of Client may be specified in **Attachment D ("Additional Client Responsibilities")**.

Article 4 - Records, Audit & Documents

4.1 **Records, Audit**. Merrick shall maintain records of performance and make them available for inspection and audit (if payment terms are the type capable of audit) by Client at all reasonable times during the course of services and, if Client is not in default of this Agreement, for a period of two (2) years after performance of services. Audits shall be conducted in accordance with generally accepted auditing principles consistently applied.

4.2 **Instruments of Service**. Designs, drawings, calculations, specifications, Electronic Data (defined in Attachment A) and similar services, in either electronic or hard copy form, prepared by Merrick and its lower-tier contractors are instruments of service, not products or goods, for use solely on the Project ("**Instruments of Service**"). Merrick and its lower-tier contractors, as authors and owners of their respective Instruments of Service, retain all common law, statutory and other reserved rights, including copyrights. Distribution of Instruments of Service for regulatory or other Project purposes is not a publication in derogation of the reserved rights.

4.3 **License**. Upon execution of this Agreement and so long as Client is not in default of its obligations to Merrick, Merrick grants Client a nonexclusive license to reproduce all finished Instruments of Service solely for use on the Project (the "**License**"), subject to the following: (a) if Client is in default of this Agreement, including instances where Merrick terminates the Agreement for nonpayment, the License is terminated without the necessity of further action on the part of the parties; (b) if Client terminates this Agreement for Merrick's default (or for Client's convenience and Client is not in default of its obligations to Merrick), the License is terminated without the necessity of further action on the part of the parties and is replaced by a nonexclusive license permitting Client, subject to the other provisions of this Agreement, to authorize properly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project. Merrick retains the right to use, sell, and/or modify any databases developed and/or modified in performing its services.

4.4 **Reuse of Instruments of Service**. The licenses granted are not assignable without Merrick's prior written consent, and no license or right is granted or implied under this Agreement, except as provided above. The Instruments of Service and other documents prepared by Merrick and its lower-tier contractors under this Agreement are not intended or represented to be suitable for reuse by Client or others on extension(s) of the work or any other project. Any such reuse or unauthorized use by Client without the express written consent of Merrick shall be at Client's sole risk and without liability or loss exposure to Merrick, and Client shall indemnify, defend and hold Merrick and its lower-tier contractors harmless from any and all claims, damages, losses and expenses, including reasonable attorney fees, arising out of or resulting from such unauthorized use or reuse.

4.5 **Publicity**. Client, its officers and its employees shall not use Merrick's name, publish articles, give press releases, or make speeches about, or otherwise publicize in any way the results achieved or the services performed by Merrick under this Agreement, without first obtaining Merrick's written consent, which consent shall not be unreasonably withheld.

4.6 **Proprietary Property**. At Merrick's expense, Merrick shall defend any suits brought against Client based on a claim that the use of any design, process, apparatus, or any part, methodology, software, publication, or other proprietary right ("**Proprietary Property**") furnished by Merrick under this Agreement constitutes an infringement of any patent, trademark, or copyright of the United States; provided that Merrick is notified promptly in writing by Client of such a claim or contention and given the authority, information, and assistance for the defense (at Merrick's expense) thereof. Notwithstanding the foregoing, Merrick shall not be liable to Client for claims under this Article resulting from the use of Proprietary Property that is suggested for use by or on behalf of Client, or that is not developed or proposed by Merrick.

Article 5 - Confidential & Proprietary Information

5.1 **Confidential Information**. Merrick and Client, to the extent of their rights and abilities to do so, may exchange technical data and information reasonably required of each to perform this Agreement. It is anticipated these exchanges will include technical methods, design details, techniques and pricing data of Merrick, together with trade secrets and other confidential and proprietary information of the parties which, when marked or designated as such in writing, will be "**Confidential Information.**" Each party will treat as confidential all Confidential Information and except as necessary for the Project, each party agrees that under no circumstance will it make use of or disclose Confidential Information to any third party or use Confidential Information to the detriment or competitive disadvantage of the other party. Each party agrees to limit disclosure of the Confidential Information to its officers, directors, members, managers, employees and agents and then only to the extent reasonably necessary to effectuate the purposes of the Project. The party receiving Confidential Information shall take diligent precautions to see to it that those persons to whom disclosures are made keep the Confidential Information confidential.

5.2 **When Restrictions Do Not Apply**. These restrictions shall not apply to the extent Confidential Information was in the public domain at the time of the disclosure or subsequently becomes a part of the public domain through no fault of the party receiving the Confidential Information; was known to the receiving party at the time of the disclosure; was readily ascertainable from public or trade sources at the time of its disclosure; was independently developed by the receiving party without violating the terms of this Agreement; or is the subject of demand by subpoena, court or governmental order or other similar mandatory legal process in which case the party against whom the demand or request is made shall forthwith give written notice to the other party to preserve the opportunity to resist and/or respond to such process. Confidential Information retained in the unaided memories (e.g. no intentional memorization) of the receiving party's employees who have had access to Confidential Information is not subject to the foregoing.

5.3 **Duration**. The provisions of this Article shall survive expiration or termination of this Agreement and shall apply for a period of two (2) years thereafter. In addition to and without prejudice to its other rights and remedies, a party shall be entitled to injunctive relief upon proof of a breach or threatened breach of this Article.

Article 6 - Indemnification & Risk Allocation

6.1 **Indemnification**. Merrick agrees to indemnify Client and hold harmless from and against damages, losses and judgments, including reasonable attorney fees, claimed by third parties for property damage or bodily injury, including death, caused by the negligence of Merrick in connection with Merrick's professional services. If the negligence or fault of both Merrick and Client is the cause of such damage or injury, the loss, cost, or expense shall be shared between Merrick and Client in proportion to their relative degrees of responsibility and the right of indemnity shall apply for such proportion.

6.2 **Personnel**. It is intended that performance of Merrick's services shall not subject the personnel of either party, including employees, officers, directors, members, managers and shareholders (collectively, "**Personnel**"), to any personal legal exposure for any risk associated with the Project. Each party agrees that any claim, demand or suit shall be made only against a party and not against any of its Personnel.

6.3 **Risk Allocation**. Client and Merrick agree that notwithstanding any other provision in this Agreement to the contrary (including any other provision with the same or similar limiting language), to the fullest extent permitted by law: (a) the total liability in the aggregate of Merrick and its Personnel and independent professional associates, and any of them, to Client and anyone claiming by, through or under Client, for any and all injuries, claims, losses, expenses, or damages whatsoever (including, without limitation, indemnity obligations, contract damages, attorney's fees and expert-witness fees) arising out of or in any way related to Merrick's services, the Project, or this Agreement, from any cause or causes whatsoever and regardless of the legal theory asserted, shall not exceed the total compensation received by Merrick under this Agreement (or if separate task orders are issued, then the total compensation received by Merrick for services under each applicable task order); (b) Client and Merrick waive claims against each other: (i) for incidental, special, indirect, punitive or consequential damages arising out of or relating to this Agreement, and Merrick shall not be liable for any cost or expense that provides betterment, upgrade or enhancement of the Project; and (ii) and against the contractors, consultants and employees of the other for damages to the extent that the damages sustained by either Merrick or Client are covered by property insurance.

6.4 **Survival**. The provisions of this Article shall survive expiration or termination of this Agreement and shall apply to all services provided to Client by Merrick, whether within or not within the scope of services of this Agreement, except as the parties may otherwise provide in a signed writing making specific reference to this Article.

Article 7 - Termination

7.1 **Termination for Default**. Subject to the other provisions of this Agreement, this Agreement may be terminated in whole or in part in writing by either party in the event of a substantial failure by the other party to fulfill its obligations under this Agreement. No such termination shall be effective until the other party is given not less than ten (10) days written notice of intent to terminate and an opportunity for consultation with the terminating party prior to termination.

7.2 **Termination for Convenience**. This Agreement may be terminated in whole or in part in writing by Client for its convenience. No such termination shall be effective until Merrick is given not less than ten (10) days written notice of intent to terminate and an opportunity for consultation with Client prior to termination.

7.3 **Document Turnover**. Upon receipt of a notice of termination, Merrick shall promptly discontinue all services affected (unless the notice directs otherwise and Client is not in default). If Client is not in default of this Agreement, Merrick shall deliver or otherwise make available to Client all finished services, subject to the terms and conditions of Article 4; provided, however, Merrick shall not be responsible for the accuracy, completeness or workability of documents prepared by Merrick if changed or completed by Client or by another party.

7.4 **Payment on Termination**. Subject to the provisions of Attachment C, Merrick shall be paid for its costs and services performed, less allowances for negligent services which must be corrected. If this Agreement is terminated for Client's convenience, in addition to payment for costs and services performed, Client shall pay Merrick as a termination expense ten percent of the total amount invoiced, or to be invoiced by Merrick through the effective date of termination. Merrick's final invoice to Client, which may be submitted after the effective date of termination, may calculate such sum.

Article 8 - Dispute Resolution

8.1 **Mediation**. Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to and decided by mediation according to the rules and procedures put in place by the Judicial Arbiter Group ("JAG") in Denver, Colorado. In addition to and prior to arbitration, the Parties shall endeavor to settle disputes by mediation. Demand for mediation shall be filed in writing with the other party to this Agreement and with JAG. A demand for mediation shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal, equitable, or litigation proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of repose or limitations.

8.2 **Litigation**. Any claim, dispute, or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to litigation.

8.3 **Certification**. Client shall make no direct or indirect claim for professional negligence against Merrick unless Client has first complied with the provisions above and provided Merrick with a written certification executed by an independent, licensed professional, currently practicing in the field(s) of work called for under this Agreement. This certification shall (a) contain the name and license number of the certifier; (b) specify each act or omission the certifier contends was a violation of the Standard of Care, and (c) detail the basis for the certifier's opinion that each such act or omission constitutes such a violation. The certificate shall be provided to Merrick at least thirty (30) calendar days prior to the assertion of any claim in litigation, judicial, or other alternative dispute resolution proceeding and compliance with the provisions of this Article shall be a condition precedent to such a proceeding.

Article 9 - General

9.1 **Conflict of Interest, No Contingent Fees.** Merrick represents it has no known direct or indirect interest, which would conflict with the performance of its services under this Agreement. Except as disclosed to Client and except for the compensation to be paid hereunder, Merrick represents it has not directly or indirectly paid or agreed to pay any person or company any fee, commission, contribution, donation, gift, or any other type of consideration to solicit or secure an award of this Agreement.

9.2 **Subcontracts.** Except as provided in the Attachments, Merrick shall not subcontract any part of its services under this Agreement without first providing notice to Client. Merrick shall obligate each subcontractor of every tier to consent to compliance with all applicable provisions of this Agreement. Nothing contained in any subcontract of any tier shall create a contractual relationship between Client and any such subcontractor.

9.3 **Governing Law & Costs**. This Agreement shall be governed by the laws of Colorado without reference to conflict of law principles, if any. In the event of an action to enforce the terms and conditions of this Agreement or of any of the rights or obligations arising from this Agreement, the prevailing party shall be awarded the costs of such action, including reasonable attorney fees and expert witness and consulting fees.

9.4 **Entire Agreement, Amendments**. This Agreement sets forth the entire agreement of the parties, supersedes all prior negotiations and understandings, and governs any services by Merrick prior to execution of this Agreement. Except as otherwise expressly provided in this Agreement, this Agreement may be modified or amended only upon the signed written agreement of both parties. Merrick shall not be required to execute any documents subsequent to the signing of this Agreement that increase Merrick's contractual or legal obligations or risks, or jeopardize the availability of or increase the cost of its insurance, and Client shall make no request of Merrick that would be contrary to Merrick's professional responsibilities. Merrick and Client have each read and fully understand the terms of this Agreement, each has had the opportunity to have it reviewed by counsel, and this Agreement shall be construed evenly and not against or in favor of a party in the event of an ambiguity.

9.5 **Severability**. If any provision of this Agreement is held to be invalid or unenforceable by an authority with competent jurisdiction, the remainder of this Agreement shall be unaffected and enforceable, and there shall be deemed substituted for the affected provision a valid and enforceable provision as similar as possible to the affected provision.

9.6 **Assignment**. This Agreement is for personal services and, except for subcontracting contemplated to perform the services; neither party may assign its rights nor delegate the performance of its duties hereunder without the prior written approval of the other party. Any assignment, voluntary or involuntary, in violation of the foregoing shall be voidable.

9.7 **Third Party Beneficiaries**. Nothing in this Agreement, express or implied, shall confer any rights or remedies upon, or create any contractual relationship with or cause of action in favor of any third party. This Agreement is not intended to benefit any third party, except as expressly provided.

9.8 **Successors and Approved Assigns**. This Agreement shall inure to the benefit of and shall be binding upon the parties and their respective legal representatives, successors, and approved assigns.

9.9 **Non-Waiver**. No delay or failure by either party to exercise any right under this Agreement, and no partial or single exercise of that right shall constitute a waiver of that or any other right.

9.10 **Independent Contractor**. Merrick shall perform its services as an independent contractor and not as an agent, employee, fiduciary, representative, joint venturer or partner of Client.

9.11 **Force Majeure**. Merrick shall not be in default of its obligations if performance is prevented or delayed by an existing or future *force majeure* condition or any other cause beyond the reasonable control of a party to this Agreement including, without limitation, act of government, act of God, act of Client or Client's contractor, meteorological phenomenon, power failures or blackouts, strike, shortage of labor or materials, insurrection, embargo, fire, flood, earthquake, electromagnetic interference, explosion, riot, wars or armed conflicts, rebellion, civil disobedience, sabotage, epidemic, emergencies or natural disasters.

9.12 **Notices & Authorized Representatives**.
Authorized representatives of Client and Merrick are:

Client:		**Merrick:**	
Technical:	John Cattles	Technical:	Richard E. McLaughlin, P.E.
Contractual:	John Cattles	Contractual:	Carter E. Boardman

Modifications or amendments required or permitted under this Agreement should be made by the Contractual Representatives, and technical directions and communications concerning the services should be made by the Technical Representatives. Change of an authorized representative should be made in writing but may be effected by course of conduct without writing.

Notice required or permitted hereunder shall be in email format or in writing and delivered in a manner most efficient under the circumstances. Subject to the foregoing and unless otherwise specifically provided, notice shall be given by (1) email, (2) hand delivery, or (3) certified mail (postage prepaid & return receipt requested), delivered as follows**:**

Client:
200 E. Virginia Ave.
Gunnison, CO 81230
Attn: John Cattles
Telephone No.: (970) 641-8560
Facsimile No.: _____
Email: jcattles@gunnisoncounty.org

Merrick:
5970 Greenwood Plaza Blvd.
Greenwood Village, CO 80111
Attn: Ben Nielsen
Telephone No.: (303) 751-0741
Facsimile No.: (303) 751-2581
Email: ben.nielsen@merrick.com

or at such other address as a party hereto may designate by written notice. Notice shall be deemed effective on the date of delivery if hand delivered or faxed (to be an effective notice by fax, there must be a written confirmation of the date and time of the transmission, generated contemporaneously by the transmission device in the ordinary course), or on the third day after mailing if sent by certified mail.

9.13 **Headings**. The captions and headings of this Agreement are for convenience and reference only, and do not affect the construction or interpretation of any of its provisions.

9.14 **Pronouns & Terms**. In this Agreement the singular includes the plural, the plural the singular, and the use of any gender is applicable to all genders.

9.15 **Continuing Anti-Corruption Covenant**. Client covenants and agrees throughout the duration of this agreement that it shall, and shall cause each of its affiliates and any other person or firm working on behalf of Client, as well as each of their respective directors, officers, managers, members, employees, subcontractors, and agents, to: (a) at all times, strictly comply with all applicable anti-corruption laws including, without limitation, the U.S. Foreign Corrupt Practices Act (the "FCPA") and the U.K. Bribery Act (the "U.K. Bribery Act"); (b) not directly or indirectly offer or accept anything of value to improperly obtain or retain business; (c) provide training on applicable anti-corruption laws, including but not limited to the FCPA and the U.K. Bribery Act; and (d) promptly and thoroughly investigate any indication of non-compliance with applicable anti-corruption laws and to timely report and remediate same, including cooperation with any governmental investigation in respect thereof.

9.16 **Counterparts**. This Agreement may be executed in multiple original, facsimile or electronic counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

Incorporation of Attachments

The following Attachments are incorporated into and made a part of this Agreement:

A.1 - Form of Work Order & A.2, A.3 - Additional Services
B - Insurance
C - Compensation
D - Additional Client Responsibilities

IN WITNESS WHEREOF, the parties execute this Agreement as of the effective date first written above.

Gunnison County Colorado	**Merrick & Company**
_____	_____
Signature	Signature
_____	_____
Printed Name & Title	Printed Name & Title

A t t a c h m e n t s

A – Form of Work Order & Additional Services

B -- Insurance

C -- Compensation

D – Client Responsibilities

Attachment A.1

Form of Work Order

BETWEEN
CLIENT
AND
MERRICK & COMPANY

MERRICK PROJECT NO.: _____
WORK ORDER NO.: Task 1
DATE OF WORK ORDER: _____

WORK ORDER TITLE: **Design Services for Shady Island River Park**

SCOPE OF SERVICES:

Based upon our experience with similar projects, RFP requirements, and review of the Master Plan, we have developed a proposed scope of work with the core purpose of evaluating existing conditions, developing the design, permitting, and creating construction documents that reflect the vision for the river. Some of the scope for upland and river work can be defined and separated reasonably well, but other aspects are more efficiently integrated. For this reason, we are presenting a "Base Scope" for in-river planning, design, and permitting that we believe can be accomplish as a more stand-alone effort, and "Integrated Scope" to be discussed further with the County and Upland Design Team to find the most cost-effective integration of work.

Our proposed BASE Scope of work is outlined below and includes:

- Preliminary Design
- Final Design
- Permitting

Our proposed Integrated Scope of work is outlined below and includes:

- Construction Phase Services
- Erosion Sediment Control Drawings

The level-of-effort included in the scope of services is based upon the approximated effort shown on the attached Project Budget Worksheets.

Base Scope

Task 1 – Preliminary Design

A. Review of select available literature and data for the project provide to MWDG by the client:

- Survey & mapping in AutoCAD/GIS/PDF format
- *NOTE: It is unclear if the required survey of the existing river channel and FEMA flood model cross sections has been completed. MWDG can add this to the scope of work if not completed but is currently not included in the scope of fee presented.*
- Existing river project as-built drawings/information (bridges/bank stabilization/channel restoration/upland parks/etc.)
- Flood risk mapping & existing flood infrastructure
- Utilities – river crossings, stormwater outfalls
- Master Plan documents
- Wetland & Waters of the U.S. mapping data/exhibits
- Restoration criteria (if exists) for aquatic and riparian habitat
- Geotechnical/soils investigations

  NOTE: It is anticipated that a soils investigation including geotechnical recommendations for compaction, foundations, slab designs will be provided to MWDG.

B. Hydrologic & Hydraulic Analysis:

Hydrologic analysis will be determined from stream gage date to include exceedance curves, annual average daily flows and return event not available in current flood hydrology (1-yr, 2-yr, 5-yr). Existing available flood hydrology will be used for flood analysis.

Team will perform initial hydraulic analysis for development of in-river concepts. Due to the curvature of the river at the project site, MWDG will use the TuFLow, 2-dimensional hydraulic model for design of habitat and bank stabilization.

Deliverables: Hydrology and hydraulic results to be included in design memorandum

C. Flood Hydraulics:

A flood analysis meeting FEMA requirements will be required to obtain a Floodplain development permit. The Effective FEMA model and workmaps showing section locations will be provided to MWDG in electronic format (HEC-RAS) by the Client. Corrected Effective, Existing Conditions and Proposed Conditions models will be created to determine project impacts on flood conveyance. For scoping purposes, it is anticipated that the project will meet a "No Rise" condition. Flood modeling of proposed upland features such as building, bridges and similar improvements is not

included. A FEMA CLOMR/LOMR is not included but can be added to the scope should a rise in base flood elevations occur for the proposed concept.

Deliverables: Technical memorandum for Gunnison County Floodplain Development Permit

D. Stability Analysis:

Structural calculations and analysis for in-river/bank structures including seepage and piping, uplift, shear forces, and toe scour will be performed to determine the design of subsurface cutoffs, boulder and riprap sizing and toe protection of structures.

Deliverables: Results to be included in design memorandum & design drawings

E. Preliminary Design Drawings:

Create design drawings for each reach with cross sections and details. Designs will be developed to a level to support permit applications including boat ramp, bank/channel stabilization structures, side channel restoration, river restoration elements, habitat enhancements, vegetation, access, bank amenities.

Deliverables: Cover Sheet (22"x34"): 1 sheet
Site Plan (22" x 34"):
1 sheet Grading Plan
(22"x34"): 1 sheet
Boat Ramp Plan
(22"x24"): 1 sheet
Cross sections (22" x
34"): 1 sheet
River Restoration Details
(22"x34"): 2 sheets Planting
Plan (22"x34"): 2 sheets
Planting Details (22"x34"): 1 sheet

F. Technical Design Memorandum & Estimate of Costs:

A technical memorandum will summarize design objectives, design analysis/results, and present an engineer's opinion of probably costs. Design plans and details will also be attached to the memorandum.

Deliverables: Design Technical Memorandum

Task 2 – Final Design

A. Final Design Drawings:

Further develop drawings for each reach with cross sections and details. Designs will be developed to a level to support Contractor Bidding including boat ramp, bank/channel stabilization structures, side channel restoration, river restoration elements, habitat enhancements, vegetation, access, bank amenities.

Deliverables: Cover Sheet (22"x34"): 1 sheet
Site Plan (22" x 34"):
1 sheet Grading Plan
(22"x34"): 1 sheet
Boat Ramp Plan
(22"x24"): 1 sheet
Cross sections (22" x
34"): 1 sheet
River Restoration Details
(22"x34"): 2 sheets Planting
Plan (22"x34"): 2 sheets
Planting Details (22"x34"): 1 sheet

B. Specifications:

It is anticipated that the Landscape Architect or Civil Engineer for the Park (under separate contract with the Client) will be preparing the Contract Documents for contractor bidding and award. MWDG will provide technical specifications based upon our companies standard specifications and Special Construction Provisions to be included in the contract documents assembled by others. MWDG will also provide a list of payment items with estimates of quantities. It is anticipated that "front-end" contract documents, agreement, notice to proceed, notice of award, bonding forms, and general conditions, etc. will be completed by others.

Deliverables: Specifications (pdf electronic files)
Payment Schedule and
Estimate of Quantities Opinion
of Probable Construction Costs
final

A. Agency Consultation:

The design team will hold and attend two agency consultation meetings via telephone. It is expected that meetings with USACE and Colorado Parks and Wildlife will be required.

Deliverables: Attend two teleconferences

B. USACE CWA 404 Permit:

Based on the Master Plan, it is anticipated that wetland and Waters of the U.S. have been adequately delineated. Bio-Environs will prepare the 404 permit application and supporting documents for the work included in our scope of work for Gunnison County. Authorization under a Regional General Permit and Nationwide Permits including but not limited to RGP #12, NWP #13, NWP #36 and/or NWP #42 is anticipated. An Individual 404 Permit is not anticipated or considered in the fee. Should an Individual Permit be required, the design team will notify the County and present a revised scope and fee. As part of the permitting a desktop Biological Assessment (BA) and Cultural Resources study will be completed. A CSQT analysis is not include in this scope of work. If one is determined to be needed (based upon future regulations? a scope of work can be developed.

Deliverables: 404 application w/ supporting documentation including desktop BA and Cultural Resources Report.

C. Gunnison County Floodplain Development Permit:

Complete a Floodplain Development Permit application on Gunnison County's behalf. Flood analysis and documentation from the Preliminary Design will be used to support the application. A flood map revision (CLOMR/LOMR) is not anticipated.

Deliverables: -Floodplain Development Permit application w/ supporting documentation

Note: Any local, state, or federal permits not specifically listed in this scope of work are to be completed by others.

Integrated Scope

Task 4 – Construction Phase Services

The level of integration with the upland construction work and consultants or County construction management will dictate the level of MWDG support. In the Pricing Section of the proposal we present a range of effort to facilitate discussions and decisions by the County as to what level of MWDG support is needed. This task and subsequent cost in the budget worksheet reflect significant MWDG involvement during construction on in-river improvements. At the lower end of the cost range would have MWDG review submittals and address contractor questions by phone without site visits.

Construction phase services shall be billed on a time and expense basis. This proposal includes an estimate allowance for these services, however due to the variability in

performance of construction contractors and other factors beyond our control, the actual cost could be higher or lower.

Specific Construction Phase Services anticipated in this scope of work:

- Bidding Support – Call in to pre-bid meeting, address bidder questions
- Attend pre-construction conference with contractor
- Office support - respond to contractor questions, issue clarifications and sketches as needed
- Review contractor submittals/shop drawings
- Review tests provided by testing agency
- Review Contractor's pay requests (not more than once per month)
- Part-time observations of construction activities (4 trips to site budgeted)

Deliverables: Meeting Agendas & Minutes, On-site Observation w/ daily reports & photos, review of Pay Requests, sketches, responses to Contractor questions.

Task 5 – Erosion Sediment Control Plans

This scope would likely be more cost-effectively developed by the Upland Design Team as the entire project will likely seek a single construction activities disturbance permit.

A. Erosion and Sediment Control Plans:

It is anticipated that a Park SWMP plan will be prepared by others. MWDG will prepare plans and details with inclusion in the overall project SWMP plan. MWDG will coordinate with the Park Civil Engineer in preparing construction erosion and sediment control drawings for bank and river improvements.

Deliverables: Erosion and Sediment Control Plans (3)

SCHEDULE:

The project schedule will likely be dictated by permitting approval and funding. The USACE 404 Permit typically requires 6-9 months to obtain for a Nationwide and Regional General Permits and 12-24 months for an Individual Permit. We believe that an Individual Permit will likely not be required due to the scope of the work and the restrictions that the USACE Sacramento District place on such projects. However, this will be confirmed during agency consultation. We estimate a design and permitting schedule of 8-15 months. The following is a breakdown of the estimated schedule:

- **Preliminary Design:** 3 months
- **Final Design:** 4 months

- **Permitting Support:** 4-12 months
  - Note: 404 Permit will be submitted at the end of Preliminary Design, so Final Design is concurrent with Permitting Support
- **Construction Phase (In-River Only):** 4-6 months
  - Note: In-River work must be completed during the low flow winter months

FEE:

Merrick shall work for an hourly plus expenses not to exceed amount (without prior authorization) according to the fee schedule below:

Base Scope

Task 1 – Preliminary Design	$35,500
Task 2 – Final Design	$28,250
Task 3 – Permitting Support*	$18,250
Total Base Scope	**$82,000**

Integrated Scope

Task 4 – Construction Phase Services*,**	$2,000 - $25,000
Task 5 – Erosion, Sediment Control Drawings**	$2,500

*Note: Tasks 3 and 4 are considered Special Services – services that are difficult to predict the scope and effort due to factors outside the control of the design team. We have provided budget estimates or allowances for this proposal. Should the scope and resulting fee increase we will notify the County and obtain authorization prior to performing the work.

**Note: Tasks 4 and 5 are "Integrated Scope" items to be discussed further with the County and Upland Design Team to find the most cost-effective integration of work die to the potential for overlap of efforts between teams.

CLIENT	MERRICK & COMPANY
_____	_____
BY:	BY:
_____	_____
NAME:	NAME:
_____	_____
DATE:	DATE:

MERRICK®

Attachment A.1- Continued
Attached Project Budget Worksheets

Shady Island River Park In-River Enhancements
BASE SCOPE Project Budget Worksheet June 20, 2019

McLaughlin Whitewater design group
A DIVISION OF MERRICK & COMPANY

ESTIMATED HOURS

Tasks	Merrick						Subconsultants		Extended	Subtotal
	Rick Senior PM	Ben Senior Engineer	Layton Sr Dsn Engineer	Jenn/Chels/ Steven Dsn Engineer	Expenses	Merrick total	Bio Environs total	Subs +6% total	Task	Cost
	$214	$169	$132	$115		79%	20%			
	14.0	46.0	130.0	322.0	$0	$64,960	$16,000	$16,960	$81,920	$81,920
1 Preliminary Design						0.00			$0	$35,397
1.A Review of available information			8	8		1,976.00			$1,976	
1.B Hydrologic & Hydraulic Analysis (2-D model)		4	8	40		6,332.00			$6,332	
1.C Flood Hydraulics		2	4	30		4,316.00			$4,316	
1.D Stability Analysis		2	4	8		1,786.00			$1,786	
1.E Preliminary Design Drawings (10 Sheets 22"x34")	4	8	30	80		15,368.00	2,250	2,385.00	$17,753	
1.F Technical Design Memorandum & Cost Estimate		2	8	16		3,234.00			$3,234	
2 Final Design						0.00			$0	$28,285
2.A Final Design Drawings (10 Sheets 22"x34")	8	8	40	120		22,144.00	2,250	2,385.00	$24,529	
2.B Specifications	2	8	8	8		3,756.00			$3,756	
3 Permitting Support						0.00			$0	$18,238
3.A Agency Consultation		8	8			2,408.00	500	530.00	$2,938	
3.B USACE Section 404 Permit		4	4	8		2,124.00	9,500	10,070.00	$12,194	
3.C Gunnison County Floodplain Development Permit			8	4		1,516.00	1,500	1,590.00	$3,106	

Shady Island River Park In-River Enhancements
INTEGRATED SCOPE Project Budget
Worksheet June 20, 2019

McLaughlin Whitewater design group
A DIVISION OF MERRICK & COMPANY

ESTIMATED HOURS

Tasks	Merrick						Subconsultants		Extended	Subtotal
	Rick Senior PM	Ben Senior Engineer	Layton Sr Dsn Engineer	Jenn/Chels/ Steven Dsn Engineer	Expenses	Merrick total	Bio Environs total	Subs +6% total	Task	Cost
	$214	$169	$132	$115		100%	0%			
	4.0	10.0	124.0	58.0	$2,000	$27,584	$0	$0	$27,584	$27,584
4 Construction Phase Services						0.00				$25,040
4.1 Bidding support - addressing contractor questons, review of bids - Allowance		8	12	8		3,856.00			$3,856	
4.2 Pre-construction meeting attend by phone, office support/address questions, review submittals, pay request review - Allowance	4		40	40		10,736.00			$10,736	
4.3 Four 2-day site visits during construction - Allowance			64		2,000	10,448.00			$10,448	
5 Erosion Sediment Control Drawings						0.00			$0	$2,544
5.1 Drawings (3 sheets 22"x34")		2	8	10		2,544.00			$2,544	

Attachments A.2 and A.3
Additional Services

A.2 Additional Services

The following services, and any other services not specifically described in Statement of Services, are not included in Merrick's basic services. An undertaking for Additional Services shall not be presumed by course of conduct or custom in the industry. Additional Services may be provided if authorized by Client in writing. Additional Services shall be paid by Client as provided in the Agreement, in addition to the compensation for Merrick's basic services.

A.2.1. Providing financial feasibility or other special studies.

A.2.2. Providing planning surveys, site evaluations, environmental studies or comparative studies of prospective sites, and preparing special surveys, studies and submissions required for approval of governmental authorities or others having jurisdiction over the Project.

A.2.3. Providing services relative to future facilities, systems and equipment, which are not intended to be constructed during the Construction Phase.

A.2.4. Preparing documents of alternate, separate or sequential bids or extra services in connection with bidding, negotiation or construction prior to the completion of the Construction Documents Phase, when requested by Client.

A.2.5. Providing coordination of Work performed by separate contractors or by Client's own forces.

A.2.6. Providing services in connection with the work of a construction manager or separate consultants retained by Client except as provided elsewhere in this agreement.

A.2.7. Providing Detailed Estimates of Construction Cost, analyses of owning and operating costs, or detailed quantity surveys or inventories of materials, equipment and labor.

A.2.8. Providing interior design and other similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment other than permanently installed laboratory case work and equipment, if beyond the scope of this Project.

A.2.9. Making revisions in Drawings, Specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given, are required by the enactment or revision of codes laws or regulations subsequent to the preparation of such documents or are due to other causes not solely within the control of Merrick.

A.2.10. Preparing as-built drawings, or preparing drawings, specifications and supporting data and providing other services in connection with Change Orders to the extent that the adjustment in the basic Compensation resulting from the adjusted Construction Cost is not commensurate with the services required of Merrick, provided such Change Orders are required by causes not solely within the control of Merrick.

A.2.11. Making investigations, surveys, valuations, inventories or detailed appraisals of existing facilities, and services required in connection with construction performed by Client or others.

A.2.12. Providing consultation concerning replacement of any Work damaged by fire or other cause during construction and furnishing services as may be required in connection with the replacement of such Work.

A.2.13. Providing services made necessary by the default of the Contractor or others, or by major defects or deficiencies in the Work of the Contractor or others, or by failure of performance of either the Client or Prime Contractor under the Contract for Construction.

A.2.14. Preparing a set of reproducible record drawings showing significant changes in the Work made during construction based on marked-up prints, drawings and other data furnished to Merrick.

A.2.15. Providing extensive assistance in the utilization of any equipment or system such as initial start-up or testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.

A.2.16. Providing services after issuance to the Client of the final Certificate of Occupancy.

A.2.17. Preparing to serve or serving as an expert witness in connection with any public hearing, arbitration proceeding or legal proceeding.

A.2.18. Providing services of consultants for other than the normal architectural, structural, mechanical and electrical engineering services of the Project.

A.2.19. Providing any other services not otherwise specifically included in this Agreement.

A.2.20 Claims arbiter service, including interpretation and decisions on matters concerning performance of Client and any contractor.

A.3 Provisions Applicable to all Services

A.3.1. RFI's. When it is within its scope to make written responses to requests from a contractor for clarification and interpretation of the requirements of the contract documents ("**RFI**"), Merrick shall provide written responses to such RFI's with reasonable promptness, anticipated to be an average of five (5) business days. If an RFI seeks information readily apparent from reasonable observation of field conditions or a review of the contract documents (or reasonably inferable therefrom), Merrick shall be entitled to additional compensation for the time spent in responding to such an RFI.

A.3.2. Shop Drawings. When it is within its scope to review and approve or take other appropriate action on the contractor submittals, such as shop drawings, product data, samples and other data, which a contractor is required to submit, Merrick shall do so but only for the limited purpose of checking for conformance with the design concept and the information shown in the construction documents. Such review shall be provided with reasonable promptness, anticipated to be an average of fifteen (15) business days. This review shall not include review of the accuracy or completeness of details, such as quantities, dimensions, weights or gauges, fabrication processes, construction means or methods, coordination of the work with other trades or construction safety precautions, all of which are the sole responsibility of the contractor or others. Review of a specific item shall not indicate that Merrick has reviewed the entire assembly of which the item is a component. Merrick shall not be responsible for any deviations from the construction documents not brought to the attention of Merrick in writing by the contractor. Merrick shall not be required to review partial submissions or those for which submissions of correlated items have not been received.

A.3.3. Work Rejection of Contractors. Merrick shall have the authority to reject any work that is not, in the judgment of Merrick, in conformance with the construction documents or work plans. Neither this authority nor Merrick's good-faith judgment to reject or not reject any work shall subject Merrick to any liability or cause of action to the contractor, subcontractor or any other suppliers or persons performing work on the project, and Client agrees to indemnify, defend and hold Merrick harmless from any and all damages, losses, liabilities and expenses, including attorney fees and expert and consulting fees, arising out of or resulting from such claim.

A.3.4. Certifications. Merrick shall be under no duty or obligation to execute any instruments, no matter by who requested, that would result in Merrick having to certify, guarantee or warrant the existence or nonexistence of conditions that Merrick cannot ascertain, or that were not within the scope of services. When a certification by Merrick is within the scope of its services or otherwise made, such certification means an expression of Merrick's professional opinion based on its information, knowledge and belief. It does not constitute a warranty or guarantee or have any meaning expanded beyond the foregoing definition.

A.3.5. Accurate Data. Unless the scope of services in Attachment A includes an explicit undertaking by Merrick to confirm the accuracy of plans, drawings, specifications, criteria, maps, surveys or other documents or information

furnished by or on behalf of Client ("**Client Data**"), Merrick shall be entitled to rely upon Client Data as accurate and correct without investigation. If subsequent errors are discovered in Client Data which necessitate re-performance of services, Merrick shall be compensated for such extra services. Merrick shall not be liable for errors or omissions in Client Data.

A.3.6. Cost Estimates. Since Merrick has no control over such things as the cost or availability of labor, materials, equipment or services furnished by others, nor over any contractors' method of determining prices, nor over competitive bidding or market conditions, any cost estimate provided for under this Agreement or otherwise made by Merrick shall be on the basis of Merrick's professional experience and judgment; but Merrick cannot and does not guarantee or warrant that the bids or negotiated costs will not vary from estimates prepared by Merrick. If Client wishes greater assurance as to cost estimates, Client shall employ an independent cost estimator.

A.3.7. Extra Services. Extra services by Merrick to modify its services or deliverables to meet any Client imposed cost limitation shall entitle Merrick to additional compensation.

A.3.8. Contractors' Work. Design review, construction observation, or quality assurance services performed by Merrick shall not guarantee the performance of and Merrick shall not have responsibility or liability for damages arising from the acts or omissions of any contractor, subcontractor, supplier or any other entity or person furnishing materials or performing any work on the Project.

A.3.9 Construction Observation. The following applies in the event Client requests that Merrick evaluate, monitor or observe construction, regardless of the name given to such services. Merrick will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed to in writing by Client and Merrick, in order to observe the progress and quality of the work completed by the contractor. Such visits and observation are not intended to be an exhaustive check or a detailed inspection of the contractor's work but rather are to allow Merrick to become generally familiar with the work in progress and to determine, in general, if the work is proceeding in accordance with the construction documents. Based on this general observation, Merrick will inform Client about the progress of the work and advise Client about observed deficiencies in the work. If Client desires more extensive project observation or full-time project representation, Client will request that such services be provided by Merrick as additional services in accordance with the terms of this Agreement. Merrick will not supervise, direct or have control over contractors' work nor have any responsibility for the construction means, methods, techniques, sequences or procedures selected by a contractor, nor for a contractor's safety precautions or programs in connection with the work. Client agrees to assign these responsibilities to an appropriate party. Merrick will not be responsible for any acts or omissions of a contractor, any subcontractor, any entity performing any portions of the work or any agents or employees of any of them. Merrick does not guarantee the performance of any contractor and will not be responsible for a contractor's failure to perform its work in accordance with the applicable documents or law.

A.3.10. Design without Construction Administration. The following is applicable if Merrick's services do not include Project observation or review of contractor's performance or any other construction phase services, and such services are provided by Client or by a third-party on its behalf: (a) Client assumes full responsibility for interpretation of the contract documents and for construction observation; (b) Client waives claims against Merrick in any way connected thereto; (c) Client agrees, to the fullest extent permitted by law, to indemnify, defend and hold Merrick harmless from any and all claims, damages, losses, liabilities and expenses, including attorney fees and expert and consulting fees, arising out of or resulting from claims arising from modifications, clarifications, interpretations, adjustments or changes made to the contract documents to reflect changed field or other conditions, except for claims caused by the sole negligence or willful misconduct of Merrick.

A.3.11. Hazardous Materials. In the event Merrick or any other party encounters hazardous materials at the jobsite, or should it become known in any way that hazardous materials may be present at the jobsite or any adjacent areas that may affect the performance of Merrick's services, Merrick may, at its option and without liability for consequential or any other damages, suspend performance of its services until Client retains an appropriate specialist to identify, abate and/or remove the hazardous materials, and warrant that the jobsite is in compliance with applicable laws and regulations. Since Merrick's scope of services does not include services related to the presence of hazardous materials, hazardous materials encountered in the performance of Merrick's services shall be the responsibility of Client, and Client waives all claims and causes of action against Merrick in connection with hazardous materials. As used in this section, "hazardous materials" is defined in its broadest sense.

A.3.12 ADA. Since the Americans with Disabilities Act contains general provisions subject to differing interpretations on a case-by-case basis, services in connection therewith shall be on the basis of Merrick's professional experience and judgment but Merrick cannot and does not guarantee or warrant its services will be in compliance therewith.

A.3.13 BIM. The following is applicable if the Project will be designed using Building Information Modeling (”BIM”). BIM’s intent is to assist the Client’s and the design teams’ understanding and coordination of the design, but it may not necessarily result in savings for Client or reduce or eliminate change orders or construction coordination issues. Merrick recommends that Client maintain a reasonable contingency in the estimate and budget for design errors or omissions and design coordination change orders. In the event of an error or omission in the services, Client agrees to give prompt written notice to Merrick, and Merrick agrees at no additional cost to Client to design, document and process corrective measures. There are no representations or expectations regarding BIM, except as provided in this Agreement.

A.3.13.1 BIM produced by Merrick and any Merrick Consultants are for design intent only and are not intended to be used for construction coordination, fabrication, estimating, quantity takeoffs, sequencing or other construction purposes. BIM models may be developed to various levels of detail (e.g. LOD 100, 200, or 300). The level of development of the model shall be defined between the parties. BIM also allows “clash detection” to show interferences with the design. If clash detection is provided specific parameters for clash detection shall be defined by Merrick which may include interference distances, materials or systems between which clash detection is to be performed, frequency and level of design completion at which clash detection will be performed.

A.3.14 Electronic Data. The following is applicable if Merrick provides Client with electronic data created by Merrick for the Project, including, as applicable, CAD files and BIM data (collectively, “Electronic Data”). Electronic Data does not include vendor, fabricator, contractor or any third party supplied electronic data.

A.3.14.1 Subject to the scope of services, Merrick will make Electronic Data in an original format produced by Merrick available to Client at the end of Schematic Design Phase, the end of Design Development Phase, the end of the Construction Document Phase, and at the time Construction Bid Packages are issued, as applicable. When distributing Electronic Data, Client agrees to make its use by third parties subject to the following conditions (the “**Disclaimer**”):

A.3.14.2, see below:

Recipient acknowledges and agrees to the following by its acceptance or utilization of the Data (defined below) and to the additional terms and conditions of the Agreement between Merrick and its Client on the Project:
Designs, drawings, calculations, specifications, Electronic Data, CAD files and similar services, in either electronic or hard copy form, prepared by Merrick are instruments of service for use solely on the Project (collectively, “**Data**”). Data does not constitute the sale or delivery of products or goods Improper use or any reuse of Data after termination of the Merrick/Client Agreement or upon suspension or completion of the Project are at recipient’s sole risk and without liability to Merrick, and each recipient waives all claims against (regardless of the legal theory) and agrees to indemnify, defend and hold Merrick harmless from any and all claims, damages, losses, liabilities and expenses, including attorney fees and expert and consulting fees, arising out of or resulting from such use or reuse. No privity of contract with Merrick is created by access to Data, and no independent right of action against Merrick or its personnel is created thereby including, without limitation, third-party beneficiary or fiduciary status. There are no warranties or guaranties, either express or implied, of any kind, nature or type whatsoever (including those of condition, merchantability, suitability and fitness for a particular purpose or use) regarding the Data, and all such warranties and guaranties are expressly disclaimed. Electronic transfer from one system to

another can generate errors in Data, thereby making it unreliable; consequently in the event of a difference between Data and hard-copy Construction Documents, the later controls.

A.3.14.3 Merrick will transfer Electronic Data in accordance with its customary practice under the circumstances which may include electronic mail, File Transfer Protocol sites, secure project websites, or disc copies. Because the current state of technology does not allow for transfer from one system or format to another without the possibility of generating errors: (1) no representation or warranty, express or implied, can be or is made regarding the reliability or accuracy of Electronic Data; (2) in the event of a difference between Electronic Data and hard-copy Construction Documents, the later controls; (3) Client agrees Merrick is not liable for, and Client waives claims against, and agrees to indemnify, defend and hold Merrick harmless from any and all claims, damages, losses, liabilities and expenses, including attorney fees and expert and consulting fees, arising out of: (a) Client's failure to make use of Electronic Data by third parties subject to the Disclaimer; (b) Client's transfer of Electronic Data by any means; (c) use, modification or misuse of the Electronic Data by parties other than Merrick; (d) the limited life expectancy and decline of accuracy or readability of the Electronic Data over time; (e) use of electronic Data by third parties receiving it; (f) the incompatibility of software or hardware used by Merrick. Client agrees to include language similar to the foregoing in its agreements with other firms working on the Project who will have access to Electronic Data.

A.3.15 LEED® The following is applicable if the LEED® or any Green Building Rating System or other similar environmental guidelines (collectively "LEED®") is used on the Project. LEED® utilizes certain design and usability recommendations to promote an environmentally friendly and energy efficient facility. In addressing these guidelines, Merrick shall perform its services consistent with the Standard of Care. Because LEED® is subject to various and possibly contradictory interpretations and certification or decisions by third parties, compliance may involve factors beyond the control of Merrick including, but not limited to, the Client's use and operation of the completed Project. Therefore, Merrick cannot and does not warrant or represent that the Project will achieve LEED® certification.

A.3.15.1 Merrick shall not be responsible for contractors' failure to adhere to the contract documents and applicable law, nor for any changes to the design made by Client without Merrick's direct participation and written approval. Likewise, Merrick shall not be responsible for any environmental or energy issues arising out of Client's use and operation of the completed Project.

A.3.15.2 Client acknowledges that the achievement of LEED® certification is subject to third parties over whom Merrick has no control, and may require the cooperation of Client, the contractors and others. Utilizing LEED® may impact the available design and product options and may impact the overall cost, schedule and performance of the completed project, and may involve the use of untested, experimental green products. Client accepts these potential impacts in recognition of the importance it has placed on the values of a LEED® building. As applicable, Client agrees to execute Merrick's standard form "Client Waiver and Informed Consent to use Experimental Green Products."

A.3.15.3 If Client's program includes goals or requirements for Project energy usage, energy related tax credits, deductions, incentives, etc., Client agrees to timely confirm such goals and usage in writing to Merrick. Client agrees it will review and execute all agreements that are a part of the LEED® certification process and be responsible for the LEED® application. Client waives any and all claims and damages, including consequential damages, against Merrick if LEED® certification for the Project is discontinued. If Energy Modeling is included in the scope, Client acknowledges that, per ASHRAE 90.1: "*Neither the proposed building performance nor the baseline building performance are predictions of actual energy consumption or costs for the proposed design after construction. Actual experience will differ from these calculations due to variations such as occupancy, building operation and maintenance, weather, energy use not covered by this procedure, changes in energy rates between design of the building and occupancy, and the precision of the calculation tool.*" If an Energy Audit is included in the scope, any cost or savings estimates provided by Merrick are strictly estimates and not guarantees of performance.

A.3.16 Procurement Agent The following is applicable if Merrick performs procurement services as agent for Client. Client will provide either through itself or through others the schedule, budget and all other necessary information to perform the services including, without limitation, plans, drawings, sketches, schematics, studies, reports, calculations,

specifications, drawdown schedules, payment requisitions, construction schedules. Except as limited in Merrick's scope, Merrick is authorized to perform all applicable procurement services including, without limitation, negotiating and entering into contracts, purchase orders or other arrangements with third parties (collectively, "Vendor Agreements"), including change or cancellation orders, in Client's name. Client agrees to promptly and timely review and execute Vendor Agreements and pay vendors according to their terms and conditions. Merrick agrees to take reasonable steps, in accordance with the Standard of Care, to minimize delays and demand that vendors comply with their Vendor Agreements, but Merrick cannot and does not warrant or guarantee performance by these firms. Procurement services are professional services, not the sale of goods. Merrick makes no warranties, representations or guaranties, either express or implied, of any kind, nature or type whatsoever (including those of condition, merchantability, suitability or fitness for a particular purpose or use, or abilities of vendors), and expressly disclaims them regarding the materials and services. Client waives all such claims against Merrick and agrees to look solely to the warranties, representations or guaranties given or made by vendors, if any. When it is within Merrick's scope to negotiate terms of Vendor Agreements, Merrick will endeavor to secure favorable commercial terms, but there can be no assurance Merrick will be successful in doing so. Consequently, Client's signature on a Vendor Agreement, or Merrick's submission of a Vendor Agreement to Client for approval, as applicable, shall constitute Client's acceptance and ratification of its terms and conditions. Client agrees to promptly and timely examine and respond to Merrick's submissions. Merrick agrees at all times to contract with vendors in Client's name, with Merrick as agent for Client, and for title to be issued in Client's name. Each Vendor Agreement shall identify Client as the principal, and Merrick as agent authorized to act on behalf of Client and language to the effect that "Vendor covenants and agrees that any claim under the Vendor Agreement shall be made against Client only, Vendor waiving any and all claims against Merrick regardless of the legal theory."

Attachment B

Schedule of Insurance

Merrick shall maintain during the term of this Agreement and, if Client is not in default hereunder, for a period of two (2) years after performance of Merrick's services, insurance of the kinds and with the limits indicated below:

Worker's Compensation Insurance as required by statute, including **Employers Liability**, with limits of $1,000,000 each accident; $1,000,000 disease - policy limit; $1,000,000 disease - each employee.

Commercial General Liability Insurance with limits of $1,000,000 per occurrence and $2,000,000 aggregate.

Business Automobile Liability Insurance with limits of $1,000,000 per occurrence, combined single limits (owned, hired & non-owned).

Umbrella/Excess Liability Insurance with limits of $3,000,000 per occurrence.

Professional Liability Practice Policy with limits of $1,000,000 per claim and $2,000,000 annual aggregate.

Certificates of insurance evidencing these coverages shall be submitted to Client at the commencement of Merrick's services. The coverages are subject to the terms, exclusions and conditions of the policies with the insurer's liability equivalent to Merrick's under this Agreement when a covered claim has limits in excess of Merrick's liability. Merrick will provide the Client a 30-day advance written notice of cancellation. Failure to submit the certificates or endorsements or failure of Client to insist upon submission shall not relieve Merrick of its duty to maintain the required insurance.

Unless otherwise provided, Client shall maintain insurance upon the entire work at the site to the full insurable value thereof. This insurance shall include the interests of Client, the owner, Merrick, any other beneficially interested person or entity, and shall insure against the perils of fire and extended coverage and shall include "all risk" insurance for loss or damage. If Client does not intend to maintain such insurance, Client shall inform Merrick in writing prior to commencement of Merrick's services in which case, at the option of Merrick, Merrick may then obtain insurance to protect its interests. If Merrick is damaged by failure of Client to maintain such insurance and to so notify Merrick, then Client shall bear all costs properly attributable thereto. Client shall require that all contractors of any tier on this project obtain and maintain insurance, with appropriate limits, to cover the perils of their undertakings and the allocation of risk on the Project.

To the extent damages are covered by property insurance whether within a deductible, self-insured layer, Client and Merrick and their insurers waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance. Client or Merrick, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them similar waivers in favor of the other parties enumerated herein.

MERRICK®

Attachment C

Compensation

C.1. Payment Provisions

C.2. Provisions Applicable to all forms of Payment

C.2.1. Client shall make an initial payment of $ 0.00 as a retainer upon execution of this Agreement. Upon receipt of the retainer Merrick shall commence services. The retainer shall be held by Merrick and applied against the final invoice. If the amount of the retainer exceeds the final invoice, Merrick shall refund the balance with the final invoice. If the final invoice exceeds the retainer, Client shall promptly remit the amount due. Interest earned on the retainer shall in all instances be for the account of Merrick and shall not be included in any refund or remittance calculation.

C.2.2. Except where the payment provisions above provide or require otherwise, Merrick shall submit invoices to Client on a periodic basis with a summary of services performed in accordance with Merrick's standard invoicing practices. Client shall notify Merrick of any objection within fourteen (14) calendar days of the invoice date, identifying the reasons there for in writing and timely paying that portion of the invoice not in dispute. Invoices will be considered acceptable to Client if no such objections are made.

C.2.3. Unless otherwise provided in this Agreement, payment is due upon presentment of an invoice. Invoices not paid within thirty (30) days of presentment (except any portion of an invoiced amount in dispute and resolved in favor of Client) shall accrue interest at the rate of 1.5 percent per month, compounded annually. Interest shall be calculated from the date of an invoice, with payments credited first to interest and then to principal. If Merrick and Client are unable to resolve any invoice dispute within sixty (60) days of the invoice, Client agrees on the sixtieth (60th) day to pay the disputed amount into the Escrow Account and thereafter be subject to the dispute resolution procedures in Article 8. The Escrow Account shall be established by a nationally recognized institution, who shall administer the Escrow Account as Escrow Agent. The Escrow Agent has instructions to pay disputed funds placed in the Escrow Account to the winner of the dispute resolution, or upon agreement of Merrick and Client, whichever is first to occur. Any interest accrued shall be given to the prevailing party or as otherwise agreed between the parties.

C.2.4. Payment to Merrick shall not be withheld, postponed or made contingent on the construction, completion or success of the project or upon receipt by Client of offsetting reimbursement or credit from other parties who may have caused additional services or expenses. No withholdings, deductions or offsets shall be made from Merrick's compensation for any reason except upon compliance with the certification requirements of Article 8.

C.2.5. Timely payment by Client to Merrick is a material part of the consideration of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, including any other provision with the same or similar limiting language, if timely payment is not made Merrick may, without limiting any other rights or remedies it may have and without incurring liability to Client or others for damages, including special, indirect, or consequential damages: (a) suspend services or terminate this Agreement; and/or (b) terminate Client's ownership rights in the Instruments of Service; and/or (c) exercise any and all other remedies available at law or in equity, in conjunction with or separately from the foregoing.

C.2.6. If during the term of this Agreement circumstances or conditions that were not originally contemplated by or known to Merrick are revealed, to the extent that they affect the scope of services, compensation, schedule, allocation of risks or other material terms of this Agreement, Merrick may call for renegotiation of appropriate portions of this Agreement. Merrick shall notify Client of the changed conditions necessitating renegotiation, and Merrick and Client shall promptly and in good faith enter into renegotiation of this Agreement. If terms cannot be agreed to, either party may then terminate this Agreement.

C.2.7. In the event of an action to enforce the payment terms and conditions of this Agreement, Merrick shall be awarded the costs and expenses of such action, including attorney fees, expert witness and consulting fees, and the value of Merrick's time and expenses spent in connection with such collection action, computed according to Merrick's prevailing fee schedule and expense policy.

Attachment D

Additional Client Responsibilities

As outlined in individual task orders.