

City of Piedmont
COUNCIL AGENDA REPORT

DATE: May 1, 2023

TO: Mayor and Council

FROM: Rosanna Bayon Moore, City Administrator

SUBJECT: Consideration of a Second Amendment to the City's Agreement with Griffin Structures for Geotechnical Testing and Observation and Special Inspection Services for the Piedmont Community Pool Project and Approval of an Amended Overall Budget for the Contract

RECOMMENDATION

By a single motion, take the following actions:

1. Approve the proposed amendment to the City's agreement with Griffin Structures to have Subconsultant GEOCON Consultants, Inc. perform Geotechnical Testing and Observation and Special Inspection Services for the Piedmont Community Pool Project, based on a time and materials basis, at an amount not to exceed \$251,315.
2. Approve an amended overall budget for this contract of \$1,214,015, which includes the originally approved budget of \$612,700 and a first amendment of \$350,000 and authorize the City Administrator to spend up to this amount.

BACKGROUND

On June 7, 2021, Council awarded an agreement to Griffin Structures to provide oversight of the Piedmont Community Pool Project, from design development through construction, with a focus on keeping the Project on-schedule and on-budget. On August 15, 2022, Council awarded an amendment to Griffin Structures to assist in an expanded role during the time-intensive construction phase of the project and provide the City with continuous, full time project management assistance.

This second amendment is for Griffin Structures to engage the services of GEOCON Consultants, Inc. (GEOCON) as a subconsultant for the provision of Geotechnical Observation and Testing, and Materials Testing services. GEOCON is an engineering firm that assisted the city during design development and prepared the project geotechnical report with design recommendations. This scope of work would be for GEOCON to ensure that design recommendations are implemented by the contractor during construction. In addition, GEOCON will perform concrete and rebar sampling and testing to meet design and building code requirements and to ensure high quality construction practices are followed.

Griffin Structures will perform oversight of GEOCON, and they will coordinate inspection and testing activities. Administration of the GEOCON agreement by Griffin Structures is critical to the success of the inspection and testing program, and to ensure that all design and building code requirements are met.

FISCAL IMPACT

The fee for GEOCON services is \$218,535. The administrative services fee and reimbursable expenses for Geotechnical Testing and Observation and Material Testing Services, shall not exceed \$251,315 for an overall not to exceed contract price of \$1,158,315. Including the original \$55,700 contract contingency, the new overall budget for the Griffin Structures contract will be \$1,214,015.

These testing and inspection costs were excluded from Griffin Structures fees and estimated in the Total Project Budget that was presented to Council on December 5, 2022. Similar to other direct project costs, the cost of the additional services in this amended agreement will be paid from voter approved Measure UU bonds.

CITY ATTORNEY REVIEW

The attached Amendment to Agreement for Professional Services was reviewed and approved as to form by the City Attorney

.

ATTACHMENTS

- A. Agreement with Griffin Structures

By: Daniel Gonzales, Public Works Director

SECOND AMENDMENT TO CONTRACT

This Second Amendment to Contract (“Amendment”) is made and entered into on this ____ day of May, 2023 (the “Effective Date”) by and between the City of Piedmont, a California municipal corporation (“City”), and Griffin Structures Inc. (“Independent Contractor”).

R E C I T A L S

A. City and Independent Contractor entered into a Contract, dated June 7, 2021 (as amended by the Amendment to Contract dated August 15, 2022, “Original Contract” and, together with this Amendment, “Contract”), under which Independent Contractor provides certain project management, owner’s representative, and other services to the City in connection with the City’s Community Pool Project (“Project”).

B. The parties now wish to amend the Original Contract to add as Additional Services the additional scope (“GEOCON - Geotechnical Testing and Observation and Special Inspection Services”) described in Exhibit A attached hereto and incorporated herein, approve Independent Contractor engaging GEOCON Consultants, Inc. (“Subconsultant”) as a subconsultant perform the Geotechnical Testing and Observation and Special Inspection Services, and increase the NTE by \$251,315 as provided in Exhibit A.

C. All capitalized terms not otherwise defined in this Amendment shall have the respective meanings provided in the Original Contract.

A G R E E M E N T

NOW, THEREFORE, the parties hereto agree as follows:

1. The parties agree that the Recitals set forth above are true and correct and are incorporated herein.
2. The City hereby approves the Geotechnical Testing and Observation and Special Inspection Services Scope as Additional Services under the Contract.
3. The City hereby consents to Independent Contractor engaging Subconsultant to perform the Geotechnical Testing and Observation and Special Inspection Services. City has requested Independent Contractor to contract with a geotechnical engineer (the “Consultant Contract”), and Independent Contractor has agreed to do so based on the City’s acknowledgement and agreement to the following: (1) the services provided by the geotechnical engineer will be performed by “design professionals” (as defined by Civil Code §2782.8) so that the indemnity obligation related to such services will be governed by Section 9.c. of the Contract, and (2) if City makes any claim arising out of or related to professional negligence based on the services provided by the geotechnical engineer, then Independent Contractor may assign the Consultant Contract to City, in which case City will directly assert its claim(s) against the geotechnical engineer and will not assert any claims (including indemnity or defense) against Independent Consultant relating to the services of the geotechnical consultant. City has reviewed and approved the terms of the Consultant Contract and will accept the assignment of the Consultant Contract from Independent Contractor. Nothing herein will limit Independent Contractor’s liability for failing to perform oversight of Subconsultant, or to coordinate inspection and testing activities.

4. As provided in Exhibit A, the Not to Exceed fees and reimbursable expenses for the Augmented Geotechnical Testing and Observation and Special Inspection Services Scope are \$251,315, bringing the total NTE under the Contract to \$1,214,015.

5. Unless explicitly amended by this Amendment, all terms and provisions of the Contract shall remain in full force and effect.

[Signature Page Follows]

CONTRACTOR

GRIFFIN STRUCTURES INC.

By: _____
[Title]

CITY

CITY OF PIEDMONT, a California municipal corporation

By: _____
Jen Cavanaugh, Mayor

ATTEST:

John Tulloch, City Clerk

APPROVED AS TO FORM:

Michelle Marchetta Kenyon, City Attorney
Deepa Sharma, Assistant City Attorney

Exhibit A

GEOCON - Geotechnical Testing and Observation and Special
Inspection Services

[attached]



EXHIBIT A

Mr. Daniel Gonzales
Director,
Department of Public Works
120 Vista Ave,
Piedmont CA, 94611

Re: Add Service Request No. 2

Dear Mr. Gonzales:

Per your directive, Griffin Structures Inc. is presenting this Add Service Request No. 2 to engage the services of GEOCON Consultants Inc. under the Griffin Structures Contract.

GEOCON will be providing Geotechnical Engineering Services and Testing and Inspection Services for the Piedmont Community Pool as follows:

Geotechnical Services	\$ 97,225
Testing and Inspection Services	\$ 121,310
Sub Total for GEOCON services	\$ 218,535

Griffin Structures Administration services 15% of the GEOCON contract = \$ 32,780

TOTAL for ASR No. 2 \$ 251,315

The total cost of this ASR is covered by the project budget as approved by the City.
Enclosed is the proposal from GEOCON for reference.

Best wishes,

George Sanen
CCM, DBIA, LEED AP
Project Executive

GEOCON

CONSULTANTS, INC.

G E O T E C H N I C A L ■ E N V I R O N M E N T A L ■ M A T E R I A L S



Proposal No. LE-23-014
February 9, 2023

Griffin Structures
1850 Warburton Avenue, Suite 120
Santa Clara, California 95050

Attention: Mr. George Sanen

Subject: FLEMONT COMMUNITY POOL
/// MAGNOLIA AVENUE
FLEMONT, CALIFORNIA
PROPOSAL FOR GEOTECHNICAL TESTING AND OBSERVATION, SPECIAL INSPECTION AND
MATERIALS TESTING SERVICES DURING CONSTRUCTION

Dear Mr. Sanen:

Per your request, we are pleased to submit this proposal for geotechnical, special inspection and materials testing services during site development and construction for the subject aquatics facility in Flemont, California. We have based our estimated effort on the information in the project plans and the baseline construction schedule that you provided. Shoring plans were not available at the time of this estimate, so assumptions were made as to the observation and inspection requirements during construction of temporary shoring walls. We understand that prevailing wage requirements apply to the services proposed herein.

PROJECT DESCRIPTION

The Flemont Community Pool project will include site development (grading, temporary shoring and permanent retaining walls, onsite and offsite underground utilities, etc.), construction of two new pools, and construction of a new two-story aquatics building. The new pools will utilize gunite shells atop structural concrete walls. The new aquatics building will utilize conventional shallow footings and permanent concrete stem walls for foundation support. Both reinforced masonry walls and cold-formed steel framing will comprise the building's seismic-force-resisting system. Elevated concrete slab atop metal decking will support the upper level of the facility. Various other ancillary improvements such as pedestrian flatwork, stairs, ramps, landscaping, and lighting are also planned.

SCOPE OF SERVICES – GEOTECHNICAL TESTING AND OBSERVATION

Based on the information presented above and our understanding of the project, our anticipated geotechnical services and estimated fees are outlined below. Our services will be provided on an on-call, time-and-materials basis as requested by representatives of Griffin Structures and will be largely contingent upon the pace of construction and contractor performance. Our field technicians will be equipped with a vehicle and sufficient field-testing equipment to provide the results of typical field tests at the site. Costs for our field technicians will be invoiced per the attached 2022 *Schedule of Fees*. We anticipate our field technicians will be onsite for:

- Geotechnical observation and compaction testing during site grading, including over-excavations
- Geotechnical observation during construction of temporary shoring retaining walls
- Geotechnical observation of foundation excavations
- Geotechnical observation and compaction testing during the placement of underground utility bedding materials and backfill operations
- Geotechnical observation and compaction testing during subgrade preparation and the placement of aggregate base materials for exterior flatwork, stairs, ramps, and pavements.

6671 Brisa Street ■ Livermore, California 94550 ■ Telephone (925) 371-5900

- Geotechnical testing and observation during paving operations

TABLE I – ESTIMATED FEES FOR GEOTECHNICAL SERVICES

Item		Estimated Fee
Part I: Geotechnical Testing and Observation during Mass Grading and Temporary Shoring Retaining Wall Construction		
Field Technician	estimated 2½ days and 22½ total hours	\$33,375
Project Engineer	estimated 2 site visits and 8 total hours	\$1,200
Senior Engineer	estimated 2 site visits and 8 total hours	\$1,500
Laboratory Testing		\$675
Subtotal Part I:		\$36,820
Part II: Geotechnical Testing and Observation During Site Development and Building Construction		
Onsite Utilities: Field Technician	estimated 12 trips and 108 total hours	\$16,020
Offsite Utilities: Field Technician	estimated 10 trips and 90 total hours	\$13,350
Onsite Hdwk, etc.: Field Technician	estimated 7 trips and 28 total hours	\$4,150
Offsite Hdwk and Paving: Field Technician	estimated 7 trips and 32 total hours	\$4,680
Foundation Excavations: Field Technician	estimated 8 trips and 40 total hours	\$5,820
Geotechnical Laboratory Testing		\$1,800
Asphalt Laboratory Testing		\$420
Subtotal Part II:		\$46,240
Part III: Geotechnical Testing and Observation During Pool Construction		
Field Technician	estimated 2 trips and 16 total hours	\$2,200
Project Engineer	estimated 1 site visit and 5 total hours	\$630
Senior Engineer	estimated 1 site visit and 5 total hours	\$750
Subtotal Part III:		\$3,580
Part IV: Reporting, Geotechnical Consultation and Engineering Review		\$10,110
TOTAL ESTIMATED FEE – GEOTECHNICAL SERVICES:		\$97,225

SCOPE OF SERVICES – SPECIAL INSPECTION AND MATERIALS TESTING

Based on the information presented above and our understanding of the project, our anticipated special inspection and materials testing services and estimated fees are outlined below. Our services will be provided on an on-call, time-and-materials basis as requested by representatives of Griffin Structures and will be largely contingent upon the pace of construction and contractor performance. Costs for our inspectors will be invoiced per the attached 2022 Schedule of Fees. All vehicles and basic field testing equipment are included in the hourly inspector rate. We anticipate our inspectors will be onsite for:

- Special inspection of rebar, anchor bolts, and embedded hardware prior to concrete placement
- Special inspection and testing of concrete during placement
- Special inspection of rebar and block placement for CMU walls
- Special inspection and testing during grout placement

- Special Inspection of cold-formed steel seismic force resisting system (SHRS) (framing, shear wall, and diaphragm fasteners, etc.)
- Special Inspection of welded connections
- Special Inspection of post-installed anchors
- Special Inspection of rebar, anchor bolts, and embedded hardware prior to gunite placement
- Special Inspection and testing of gunite during placement

TABLE II – ESTIMATED FEES FOR SPECIAL INSPECTION AND MATERIALS TESTING SERVICES

Item	Estimated Fee
Part I: Special Inspection and Materials Testing Services During Site Development and Building Construction	
Reinforced Concrete - Pre-Pour: Special Inspector - estimated 9 trips and 70 total hours	\$9,925
Concrete Placement: Special Inspector - estimated 13 trips and 88 total hours	\$11,685
Post Installed Anchors: Special Inspector - estimated 10 trips and 78 total hours	\$10,275
CMU: Special Inspector - estimated 9 trips and 66 total hours	\$9,125
Cold-Formed Steel SHRS: Special Inspector - estimated 3 trips and 24 total hours	\$3,160
Onsite Welding: Special Inspector - estimated 15 trips and 150 total hours	\$24,715
Offsite Welding: Special Inspector - estimated 10 trips and 120 total hours	\$15,900
Materials Laboratory Testing - Concrete	\$1,800
Materials Laboratory Testing - Masonry	\$300
Materials Laboratory Testing - Grout	\$480
Subtotal - Part I:	\$87,365
Part II: Special Inspection and Materials Testing Services During Pool Construction	
Reinforced Concrete - Pre-Pour: Special Inspector - estimated 2 trips and 16 total hours	\$2,265
Concrete Placement: Special Inspector - estimated 6 trips and 42 total hours	\$5,565
Reinforced Gunite - Pre-Pour: Special Inspector - estimated 2 trips and 16 total hours	\$2,265
Gunite Placement: Special Inspector - estimated 7 trips and 64 total hours	\$9,120
Materials Laboratory Testing - Concrete	\$750
Materials Laboratory Testing - Gunite	\$1,920
Subtotal - Part II:	\$21,885
Part III: Project Management, Reporting and Engineering Review	
	\$12,060
TOTAL ESTIMATED FEE – SPECIAL INSPECTION AND MATERIALS TESTING SERVICES:	\$121,310

ADDITIONAL SERVICES / SCHEDULING

Any services requested that are not discussed or listed herein will be considered as "additional services" and will be billed at the appropriate unit rates identified on the attached 2022 *Schedule of Fees*. We request that our office be contacted at least 48 hours prior to the time our services are needed (72 hours before project inception and for welding inspections) to allow for proper scheduling.

LIMITATIONS

The proposed geotechnical scope of services does not include the evaluation or identification of the potential presence of hazardous or corrosive materials. As our client, please recognize that construction monitoring is a technique employed to reduce the risk of problems arising during construction. Provision of construction testing is not insurance, nor does it constitute a warranty or guarantee of any type. Even with diligent construction testing, some latent construction defects may be missed. In all cases, contractors shall retain responsibility for the quality of their work, for adhering to plans and specifications, and for repairing defects regardless of when they are found.

Geocon will perform its services in a manner consistent with the standards of care and skill ordinarily exercised by members of the profession practicing under similar conditions in the geographic vicinity and at the time the services will be performed. No warranty or guarantee, express or implied, is provided as part of the services offered by this proposal.

AUTHORIZATION

Please carefully review the contents of this proposal and the attached *2022 Schedule of Fees*, which is incorporated into and made a part of this proposal. If they meet with your approval, please forward the applicable contract documents for our review and execution.

We appreciate the opportunity to continue our professional services on this project. Please contact us if you have any questions regarding this proposal or if we may be of further service.

Sincerely,

GEOCON CONSULTANTS, INC.



Jacob Bishop-Moser, P.E.
Project Engineer



Shane Hodacker, GE
Vice President

Attachment: 2022 Schedule of Fees

(1/e-mail) Addressee



G E O T E C H N I C A L ■ E N V I R O N M E N T A L ■ M A T E R I A L S



2022 SCHEDULE OF FEES

PROFESSIONAL SERVICES			
Engineering Assistant/Laboratory Technician.....			\$85/hr.
Engineering Field Technician/Special Inspector I			85/125(PW)*/hr.
Engineering Field Technician/Special Inspector II			95/135(PW)*/hr.
Engineering Field Technician/Special Inspector III/Equipment Operator			105/145(PW)*/hr.
Word Processor/Technical Editor/Draftsman			85/hr.
Research Assistant/Technical Illustrator/Senior Draftsman.....			100/hr.
Project Coordinator/GIS Specialist			110/hr.
Staff Engineer/Geologist/Scientist/Field Supervisor			125/hr.
Senior Staff Engineer/Geologist/Scientist			135/hr.
Project Engineer/Geologist/Scientist/Construction Supervisor			145/hr.
Senior Project Engineer/Geologist/Scientist.....			160/hr.
Senior Engineer/Geologist/Scientist/Certified Industrial Hygienist.....			175/hr.
Associate Engineer/Geologist/Scientist			200/hr.
Principal Engineer/Geologist/Scientist/Litigation Support			240/hr.
Deposition or Court Appearance			400/hr.
Attorney Fees (General)			350/hr.
Overtime (>8 to 12 hrs.), Saturday, and Night Rate		1.5X Regular Hourly Rate	
Overtime (>12 hrs.), Sunday, and Holiday Rate		2X Regular Hourly Rate	
Minimum Professional Fee.....			\$500/Project
Minimum Field Services Fee (per day or call out).....			4 Hours
*Prevailing Wage (PW) per requirements of California Labor Code §720, et. Seq.			
TRAVEL			
Personnel		Regular Hourly Rate	
Subsistence (Per Diem)			\$200/day
Vehicle Mileage			0.75/mile
EQUIPMENT & ANALYTICAL TESTS			
Nuclear Gauge	Included in Technician Hourly Rate	Level D PPC/Decon Rinse Equipment	\$50/day
Pick up Truck	\$125/day	pH/Conductivity/Temperature Meter	80/day
Equipment Truck	200/day	55 gallon drum	65/ea.
Direct Push Rig/Operator	185/225(PW)*/hr.	TPHg (CPA 8015M)	90/ea.
Direct Push Sample Liner	10/ea.	TPHd/mo (CPA 8015M)	80/ea.
Equipment Trailer	100/day	Fuel Oxygenate Compounds (CPA 8260D)	110/ea.
Wenner 4 Pin Earth Resistivity Meter	150/day	Volatile Organic Compounds (CPA 8260D)	150/ea.
Coring Machine (concrete, asphalt, masonry).....	200/day	Semi Volatile Organic Compounds (CPA 8270)	300/ea.
Dynamic Cone Penetrometer	250/day	CAM 17 Metals (CPA 8010D)	170/ea.
Dilatometer (DMT) Test Equipment	800/day	Single Metal (CPA 8010D)	30/ea.
Generator or Air Compressor	150/day	STLC or TCLP Extraction	75/ea.
GPS Unit	160/day	Soil pH (CPA 9045C)	25/ea.
Drive Tube Sampler or Hand Auger	50/day	Organochlorine Pesticides (CPA 8081)	125/ea.
Soil Sample Tube (Brass or Stainless)	10/ea.	Naturally Occurring Asbestos (CARD 435)	90/ea.
Water Level Indicator	40/day	Asbestos PLM	20/ea.
Battery Powered Pump	75/day	Asbestos 1,000 pt Count	80/ea.
Photo Ionization Meter	150/day	48 hr/24 hr Turnaround Time	60%/100% surcharge
LABORATORY TESTS			
COMPACTION CURVES		SOIL AND AGGREGATE STABILITY	
4 inch mold (D1557/D698).....	\$225/ea.	Resistance Value, R Value (D2844/CAL301).....	\$300/ea.
6 inch mold (D1557/D698).....	225/ea.	R Value, Treated (CAL301)	325/ea.
California Impact (CAL216).....	225/ea.	California Bearing Ratio (D1883)	175/pt.
Check Point	100/ea.	Stabilization Ability of Lime (C977)	180/ea.

SOIL AND AGGREGATE PROPERTIES			
#200 Wash (D1140/C117)	\$90/ea.	Moisture Determination, tube sample (D2216)	\$20/ea.
Wet Sieve Analysis to #200 (D422/CAL202)	120/ea.	Moisture Determination and Unit Weight (D2937)	40/ea.
Dry Sieve Analysis, 1.5" Aggregate (D6913)	350/ea.	Atterberg Limits: Plasticity Index (D4318)	200/ea.
Hydrometer Analysis (D422)	165/ea.	Sand Equivalent (D2419/CAL217)	100/ea.
Sieve Analysis with Hydrometer (D422)	200/ea.	pH and Resistivity (CAL843)	120/ea.
Specific Gravity, Soil (T100)	100/ea.	Sulfate Content (CAL417)	90/ea.
Specific Gravity Coarse Aggregate (C127)	60/ea.	Chloride Content (CAL422)	50/ea.
Specific Gravity Fine Aggregate (C128)	75/ea.	Organic Content (D2974)	65/ea.
		Cut/Extract Shelby Tube	100/ea.
SHEAR STRENGTH			
Unconfined Compression (D2166)	\$100/ea.	CONCRETE / MASONRY / REINFORCING STEEL	
Direct Shear (3 pts.)(D3080)	325/ea.	Compressive Strength, Cast Cylinders (C39)	\$30/ea.
Unconsolidated Undrained Triaxial Shear (D2850)	125/pt.	Compressive Strength, Cores (C42)	60/ea.
Unconsolidated Undrained Triaxial Staged (D2850)	175/ea.	Flexural Strength Beams (C78/C293)	80/ea.
Consolidated Undrained Triaxial Shear (D4767)	300/pt.	Splitting Tensile Test (C496)	80/ea.
Consolidated Undrained Triaxial Staged (D4767)	375/ea.	DSA Masonry Shear (DSA 207)	75/ea.
Consolidated Drained Triaxial Shear (CM1110)	400/pt.	Shotcrete Panel Coring and Comp. Strength (C1140)	80/ea.
Consolidated Drained Triaxial Staged (CM1110)	500/ea.	Rebar Tensile / Bend (up to #11/#11 and Larger)	200/250/ea.
PERMEABILITY, CONSOLIDATION AND EXPANSION			
Permeability, Flexible Wall (D5084)	\$300/ea.	CMU Compressive Strength (C140)	100/ea.
Permeability, Rigid Wall (D5856)	300/ea.	Compressive Strength, Grout (C1019/UDC 21 19)	30/ea.
Consolidation (D2435)	60/pt.	Compressive Strength, Mortar (C109/UDC 21 15,16)	30/ea.
Expansion Index (D4829/UDC 29 2)	225/ea.	CMU Unit Wt., Dimen., Absorption (C140)	75/ea.
Swell/Collapse (D4546)	165/pt.	Compressive Strength, Masonry Prism (C1314)	250/ea.
AGGREGATE QUALITY			
Sieve Analysis to #200 (C136)	\$120/ea.	HOT MIX ASPHALT	
L.A. Rattler Test (500 rev.) (C131)	200/ea.	HMA Air Voids, Gyrotron (T269)	\$525/ea.
Durability Index (D3744/CAL229)	165/ea.	Hamburg Wheel Tracker (T324)	1,000/ea.
Fine Aggregate Angularity (CAL 234)	125/ea.	Theoretical Max. Specific Gravity (D2041/CAL309)	175/ea.
Flat and Elongated Particles (D4791/CAL 235)	150/ea.	Ignition/Sieve Analysis (C136/CAL202)	220/ea.
Percent Crushed Particles (CAL205)	150/ea.	HMA Core Unit Weight (D1188/CAL308)	100/ea.
		% Asphalt, Ignition Method (D6307/CAL382)	125/ea.
		% Asphalt, Ignition Calibration (D6307/CAL382)	400/ea.
		Tensile Strength Ratio (T283)	1,000/ea.

*2X surcharge on rush turnaround for laboratory testing

TERMS AND CONDITIONS

1. Listed are typical charges for the services most frequently performed by Gecon. Prices for unrelated services as well as special quotations for programs involving volume work will be provided upon request. Laboratory test prices shown are for laboratory work only, and include reporting of routine results not calling for comments, recommendations or conclusions.
2. Sampling and testing is conducted in substantial conformance with the latest applicable or designated specifications of the American Society for Testing and Materials, Caltrans, American Association of State Highway and Transportation Officials, or other pertinent agencies.
3. Saturday, night work, and overtime hours are charged at time and one half; Sundays and holidays at double time. Per diem may apply when location of work dictates.
4. Equipment and materials will be billed at cost plus 15%. Outside services including subcontractors and rental of special equipment are billed at cost plus 15%. Hourly services are billed portal to portal from closest office in accordance with the stated hourly rates herein, with a minimum four hour charge.

PIEDMONT COMMUNITY POOL**AGREEMENT BETWEEN
CLIENT AND CONSULTANT
FOR PROFESSIONAL SERVICES**

THIS AGREEMENT IS MADE AS OF FEBRUARY 10, 2023.

BETWEEN THE CLIENT:**GRIFFIN STRUCTURES, INC.**

1 Technology, Building I, Suite 829
Irvine, CA 92618

Telephone: 949-497-9000

Facsimile: 949-497-8883

E-Mail: Jhughes@griffinstructures.com

Designated Client Representative: Jon Hughes

^a

THE CONSULTANT:**GEOCON CONSULTANTS INC.**

6671 BRISA STREET

LIVERMORE, CA. 94550

Telephone: 925-371-5900

E-Mail Address: rodacker@geoconinc.com

Designated Consultant Representative: Shane Rodacker

License No.: [REDACTED]

Federal Tax I.D or FICA No: [REDACTED] - [REDACTED]

**FOR THE FOLLOWING
PROJECT:**

**Piedmont Community Pool located at 777 Magnolia
Ave. in Piedmont, California**

ARTICLE 1

SERVICES OF CONSULTANT

1.1 PRIME CONTRACT

1.1.1 **Prime Contract.** Client has entered into a Professional Services Agreement (the “**Prime Contract**”) with Griffin Structures Inc. (“**Public Agency**”) relating to the Piedmont Community Pool Project (the “**Project**”). A copy of the Prime Contract is attached as **Attachment C**. The Prime Contract is incorporated herein and made a part hereof. The Prime Contract and this Agreement will be read as harmonious and complementary to the extent possible; however, if there is a conflict between the terms of this Agreement and Prime Contract, then the terms of this Agreement will prevail.

1.1.2 **Client Services.** Under the Prime Contract, Client is required to provide certain services to Public Agency and perform certain obligations in connection with the Project (collectively, the “**Client Obligations**”). Client is retaining Consultant, as an independent contractor, to provide a portion of the Client Obligations as set forth herein.

1.2 SCOPE OF SERVICES

1.2.1 **Services.** Consultant will provide the Basic Services and Additional Services set forth herein and in **Attachment A**. All work specified in the **Attachment A**, as well as any Additional Services that are requested by Client are herein referred to as the “**Services**.” Consultant will furnish all labor, personnel, and materials necessary to perform and complete the Services in accordance with the time schedule approved by Client, as such time schedule may be revised from time to time by Client and Consultant. Personnel used by Consultant in the performance of the Services will be subject to Client's approval; any personnel objected to by Client (whether or not previously approved by Client) may not be used by Consultant in the performance of any portion of the Services. Only the Services (including any deliverables) described in **Attachment A** are incorporated herein; if **Attachment A** includes any terms and conditions, such terms and conditions are excluded and the terms and conll govern.

1.2.2 **Basic Services.** Consultant's Basic Services consist of those services described in **Attachment A**, including the deliverables described in **Attachment A**, and any other services incidental thereto, as well as those identified in any addendum attached hereto as part of Basic Services (“**Basic Services**”). Other than the specific exclusions set forth in **Attachment A**, there are no other exclusions, assumptions, or qualifications.

1.2.3 **Additional Services.** Any Services, including Additional Services requested after the execution of this Agreement, in addition to the original Services will be performed by Consultant only upon the written request of Client, submission by Consultant of a not-to-exceed or lump sum cost to Client, and Client's prior approval of the cost thereof. All Additional Services will be subject to the terms and conditions of this Agreement and, after execution of a change order or modification to this Agreement specifying the additional work, such additional work will be considered a part of the Services under this Agreement. Notwithstanding anything to the contrary in this Agreement, Client will not be responsible to pay and Consultant will not be entitled to receive compensation for any contingent or Additional Services if such Services are required due to deficiency of Services performed by Consultant or Consultant's failure to perform in accordance with the terms of this Agreement. Consultant will have no claim for any extras whatsoever, unless and until specific written directives are given by Client to Consultant. Additionally, notwithstanding anything to the contrary in this Agreement, Consultant will not be compensated for Services, whether considered Basic or Additional, in excess of the fees set forth in **Attachment B**, unless such excess is approved in advance in writing by Client. If there is a dispute related to compensation or whether Services are considered Basic Services or Additional Services, then Consultant must continue to perform the Services pending resolution of the dispute.

1.3 COORDINATION

Consultant will coordinate and cooperate with Client's personnel and other Project consultants in the completion of Consultant's Services so as to facilitate Client's goals for the Project.

1.4 STANDARD OF CARE

1.4.1 **General Standards.** Consultant's Services will be performed by Consultant or under Consultant's supervision. The standard of care for all professional services performed or furnished by Consultant under this Agreement will be the care and skill ordinarily exercised by first-class firms in Consultant's profession practicing under similar circumstances and experienced in the type of work that is the Project. Consultant warrants that (a) Consultant, and Consultant's employees and subconsultants, are properly licensed, registered, and/or certified as may be required under any applicable federal, state and local laws, statutes, ordinances, rules and regulations (collectively, “**Laws**”) relating to Consultant's performance of the Services and (b) the Services will be performed by individuals possessing the professional and technical experience and expertise required to perform the Services. All Services provided pursuant to this Agreement must comply with all Laws, including without limitation any requirements under any laws relating to terrorism or money laundering.

1.4.2 Technical Accuracy. Consultant will be responsible for the technical accuracy of its Services and documents resulting therefrom, including compliance with Laws and coordination with the work of other consultants, and Client will not be responsible for discovering deficiencies therein. Consultant will promptly (so that the Project is not delayed) correct such deficiencies without additional compensation or reimbursement.

1.4.3 Subconsultants. Consultant may employ such subconsultants as Consultant deems necessary to assist (but not delegate the Services) in the performance or furnishing of the Services; provided, however, that if such employment will result in increased cost to Client, Consultant must first obtain the written approval of Client before any additional costs are incurred; failure to do so will result in Consultant bearing all additional costs associated with such subconsultants. Consultant will not be required to employ any subconsultant unacceptable to Consultant.

1.4.4 Client Responsibilities. Client will make decisions and carry out its other responsibilities hereunder in a timely manner so as not to delay the Services of Consultant. If Consultant will be delayed in the performance of any of its Services as a result of Client's actions or omissions, Consultant must provide Client with notice thereof as soon as possible to mitigate the effects of such Client caused delays. Any time a decision of Client is critical to the performance of Consultant's Services, Consultant will identify the urgency in writing and the time/date a response is required in order for Consultant to meet its requirements by noting such information on the first page of the request in a manner so as to be easily identified.

1.4.5 Independent Contractor. Consultant undertakes performance of the Services as an independent contractor and is wholly responsible for the methods of performance. Consultant has complete and sole responsibility for its employees, agents, subconsultants, and any other persons or entities that Consultant hires to perform or assist in performing the Services, including all tax withholding and workers compensation requirements. Nothing contained in this Agreement will be construed as constituting any relationship between Client and Consultant's employees, agents, subconsultants, or any other persons for which Consultant is responsible. Neither Consultant nor any of Consultant's officers, employees, agents or subconsultants is an employee of Client by virtue of this Agreement or performance of any work under this Agreement.

1.5 USE OF DOCUMENTS

1.5.1 Instruments of Service. Any drawings, specifications, studies, reports, plans, prints, models, computations, sketches, photos, presentations, renderings, computer programs, and all other materials (collectively the "**Instruments of Service**") relating to the Services prepared by and on behalf of Consultant pursuant to this Agreement shall, upon payment to Consultant by Client of the related fees, be deemed assigned to Client as the sole and exclusive property of Client and its assigns, nominees, and successors. Client may assign its rights to such Instruments of Service to the Public Agency. Consultant waives any claim of ownership or copyright to any of the Instruments of Service produced for this Project. It is the intent of the parties that, upon payment for the Instruments of Service, Client will have the exclusive rights to such Instruments of Service as a whole, but Consultant will continue to have the rights to use, reproduce, create derivatives from, or otherwise deploy individual components of the Instruments of Service, so long as such use, reproduction, derivation, or deployment does not individually or in combination produce a work product substantially similar to the Instruments of Service. Client (or Public Agency) would own the copyrights in such Instruments of Service. Consultant will promptly deliver any such Instruments of Service to Client upon demand. Consultant will be able to retain a copy of the Instruments of Service as part of project archival records. If Client should use or allow the use of the Instruments of Service without Consultant's further participation, then Client shall assume all risks attendant in such use and waive any related liability against Consultant, and shall, to the fullest extent allowed by law, release Consultant from and against any and all claims, liability, costs and/or loss related to such use. The foregoing notwithstanding, Consultant may at all times retain possession of any and all Instruments of Service fixed in any electronic medium, provided that Consultant shall provide electronic copies of said Instruments of Service to Client for its use, otherwise subject to the terms of this Agreement.

1.5.2 Confidential. All information obtained by Consultant in the performance of this Agreement and all discussions, work papers, drawings, memoranda, draft and final reports and other documents and materials involved with the Services, whether prepared by Consultant or others, are strictly confidential and may not be used, disclosed or discussed by Consultant, except as required to complete the Services or as required by law, without Client's prior written consent.

1.5.3 Proprietary Specifications. All technical requirements and material, equipment and component specifications for the Project should be developed without using proprietary or sole source specifications unless presented to and accepted in writing by Client.

ARTICLE 2

TIMES FOR RENDERING SERVICE

2.1 SCHEDULE

Before Consultant submits the first invoice to Client, Consultant will prepare for Client's review and approval a schedule of the performance of Consultant's services. This schedule will indicate dates of (or, where applicable, periods of elapsed time allowed for) Client approvals, dates when specific information is required by Consultant from Client, and anticipated approval

periods required for public authorities having jurisdiction over the Project relating to the services of Consultant. Once submitted by Consultant, Consultant will use its best efforts to adhere with the schedule and will not deviate from it without prior written authorization by Client unless the deviation is caused by Client's failure to provide a requested approval or other requested information within the time period set forth in the schedule. Whether or not deviations from the schedule have been authorized by Client, Consultant will update this schedule as necessary to reflect Client-approved changes or unavoidable deviations and to indicate (i.e., those not caused by Consultant or its sub-consultants) the probable impact of those deviations in the performance of Consultant's services and the Project.

2.2 DAYS

For purposes of this Agreement the term "day" means a calendar day of 24 hours, and "business day" means a day that is not a Saturday, a Sunday, or a legal holiday in the State of California.

ARTICLE 3 COMPENSATION

3.1 AMOUNT OF PAYMENT

3.1.1 **Basic Services.** Client will pay Consultant for Basic Services performed or furnished under **Attachment A**, the amount as set forth in **Attachment B** based on the percentage of Services performed and completed.

3.1.2 **Additional Services.** For performance of Additional Services, Client will pay Consultant fees based upon the applicable stipulated sum or, if none, the hourly rates noted in **Attachment B**. Consultant must obtain Client's prior written approval of a not-to-exceed amount for any Additional Services provided under this Agreement as set forth in Section 1.2.3. The fees set forth in **Attachment B** are fixed for the Services. Consultant's ability to adjust its fees for escalation will not go into effect until after December 31, 2021, and then only for Additional Services.

3.1.3 **Reimbursable Expenses.** Client will pay Consultant for reimbursable expenses incurred by Consultant in accordance with and subject to the limitations set forth in **Attachment B**.

3.2 INVOICES

3.2.1 **Invoices.** Invoices will be prepared in accordance with Consultant's standard invoicing practices, and include contract balance statements, and will be submitted monthly to Client by Consultant in accordance with Section 3.2.2, unless otherwise agreed.

3.2.2 **Accompanying Documentation.** Invoices submitted by Consultant must include the following: (a) copies of supporting documentation satisfactory to Client substantiating Consultant's request for compensation for Services, Reimbursable Expenses, or Additional Services covered by the invoice; and (b) lien and stop payment notice waivers and releases executed by Consultant and its subconsultants conditionally releasing all lien and stop payment notice rights in respect to all Services, Reimbursable Expenses, and Additional Services for the time period covered by Consultant's current billing and unconditionally releasing all such rights for the period of time covered by the invoice immediately preceding its current invoice.

3.2.3 **Timing of Invoices.** In order for Client to be able to include Consultant's invoice in Client's application for payment to Public Agency, Client must receive Consultant's invoice (including all required backup documentation) on or before the first day of the month for services during the preceding month. Consultant acknowledges that its failure to timely submit its invoice and backup will result in Consultant's invoice not being included in Client's current application for payment; Consultant's untimely invoice will then be included by Client in the following month's application for payment, resulting in a delay of an extra month in payment of Consultant's invoice.

3.3 PAYMENTS

3.3.1 **Payment by Client.** Consultant acknowledges that Client is relying on funds from Public Agency for payment to Consultant, and that due to processing times for payment applications by Public Agency, payment to Consultant will typically be approximately 60 days after Consultant submits its invoice and all supporting documentation, if Consultant submits its invoice on time as provided in Section 3.2.3 (otherwise, payment will be delayed). Client agrees that undisputed sums payable pursuant to Section 3.1 will be paid by Client within 15 days after Client's receipt of payment from Public Agency, but in any event no later than 150 days after receipt and approval of a complete and correct invoice (including all required documentation) prepared in accordance with this Agreement.

3.3.2 **Disputed Amounts.** Notwithstanding Section 3.3.1, if Client, in good faith, disputes any amount that Consultant claims it is owed under this Agreement, then Client will advise Consultant in writing within 20 days of Client's receipt of Consultant's invoice as to all amounts in dispute and all amounts not in dispute, and Client will pay the non-disputed amounts owed within the time period set forth in Section 3.3.1. Client and Consultant agree to meet with authorized representatives within 10 days after Consultant receives notice of the disputed amount(s) to resolve the matter without third party intervention.

If the parties cannot reasonably agree or compromise as to the disputed sum, then Consultant will proceed with its Services despite the dispute. Client and Consultant will nevertheless reserve their rights to all claims and defenses related to the disputed amount of payment. Each payment made by Client to Consultant will be deemed made to Consultant in trust for Consultant's subconsultants to the extent such subconsultants have not been paid for the services, supplies, equipment, or materials provided by them to Consultant. Acceptance of final payment by Consultant will constitute a waiver by Consultant of all rights, claims, and actions pertaining to the Project against Client.

3.3.3 Payments by Consultant. Consultant must timely pay all invoices of subconsultants retained by Consultant upon receipt of payment from Client in the amount billed by Consultant to Client. Consultant may not include in its invoices any amounts for subconsultants that will not be paid to subconsultants within 30 days. Also, Consultant must provide a copy of the applicable invoice for which subconsultant reimbursement is requested, as well as all back-up associated therewith.

3.3.4 Records. Records of reimbursable expenses, of expenses pertaining to Additional Services, and of Services performed on the basis of hourly rates or a multiple of direct personnel expense will be available to the Client and Public Agency or the Client's or Public Agency's authorized representative at mutually convenient times.

3.4 OTHER PAYMENT PROVISIONS

3.4.1 Reasons for Withholding. Client may withhold payment otherwise due Consultant pursuant to this Agreement for any of the following reasons after notice and reasonable opportunity to cure (to the extent applicable):

- (a) Omission of any Services required hereunder;
- (b) Failure to submit to Client all information, materials, and items required by this Agreement;
- (c) Failure of Consultant to pay its insurance carriers for the insurance services provided to Consultant;
- (d) Failure of Consultant to timely pay its subconsultants;
- (e) Withholding of funds by Public Agency; or
- (f) Failure of Consultant to complete its obligations related to the Project.

3.4.2 Payment Not Acceptance of Services. No payment made under this Agreement will be evidence of the performance of Consultant or acceptance of the Services, and will not be construed as acceptance of delayed or defective Services, or any other breach or non-compliance or non-performance with any portion of this Agreement.

ARTICLE 4

INSURANCE AND INDEMNIFICATION

4.1 INSURANCE

Prior to initiating Services under this Agreement (and at renewals thereafter during the life of the Agreement), Consultant must provide to Client certificates of Consultant's insurance evidencing coverage in force and limits of liability of the types, amounts, and in compliance with the terms and conditions set forth in **Attachment D**.

4.2 INDEMNIFICATION

4.2.1 Definitions. The following terms are defined as follows:

- (a) **"Claims"** means any and all liability and any and all suits, actions, legal proceedings (including arbitration or other dispute resolution proceedings), awards, judgments, claims, losses, injuries, damages, and expenses, including reasonable attorneys' fees and costs and fees of professionals, of whatever kind or character.
- (b) **"Indemnitees"** means and refers to, collectively, Client, Public Agency (including all parties that Client must indemnify under the Prime Contract), and Client's engineers, architects, consultants, officers, directors, members, managers, partners, employees, representatives, agents, and all persons or corporations related to Client.
- (c) **"Indemnitors"** means and refers to, collectively, Consultant, or any officer, director, member, manager, partner, employee, representative, agent, or subconsultant of Consultant.

4.2.2 Indemnity. Except to the extent limited by Section 4.2.3, Consultant, to the fullest extent permitted by applicable law, will indemnify, hold harmless, protect and, at Client's request, will defend (with counsel reasonably approved by Client) Indemnitees from and against any and all Claims occurring during the performance of the Services, Basic or otherwise as provided herein, or arising after completion of such Services, which Claims are in any manner related to or arise from, in whole or in part, (a) the breach by Indemnitors of this Agreement or any covenant, warranty or agreement contained herein; (b) the negligent act or omission, or willful misconduct, of Indemnitors arising out of or in connection with Consultant's performance of Services under this Agreement, (c) any work performed or Services provided under this Agreement including,

without limitation, defects in workmanship or materials or Consultants' presence or activities conducted on the Project, or (d) any patent or copyright infringement or claimed infringement relating to the reports, plans, specifications or designs prepared by Consultant. Notwithstanding anything herein to the contrary, Consultant will not be obligated under this Agreement to indemnify any party from any Claims to the extent such Claims are ultimately determined to be due to the active negligence, sole negligence, or willful misconduct of such party.

4.2.3 Design Professional. If Consultant is a design professional as defined in Civil Code §2782.8(c), then Consultant's duty to indemnify, including the duty and cost to defend, is limited to the extent that the Claims against the Indemnitees arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, and in no event will the cost to defend charged to Consultant exceed Consultant's proportionate percentage of fault (provided, however, that if one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, then Consultant shall meet and confer with the other parties regarding unpaid defense costs).

4.2.4 Subconsultants; Survival; Insurance. Consultant shall require indemnification of the Indemnitees in its contracts with subconsultants on the same basis as set forth herein. This indemnity will apply during the period of this Agreement and will survive the expiration or termination of this Agreement. This indemnity will apply to all Claims and liability regardless of whether insurance is available to cover the Claims or liability. The insurance policy limits will not act as a limitation on Consultant's indemnity.

ARTICLE 5

DEFAULT; REMEDIES; SUSPENSION; ABANDONMENT; AND TERMINATION

5.1 DEFAULT AND REMEDIES

5.1.1 Default. If a party fails to fully comply with any of the terms, provisions, or conditions of this Agreement, then the party claiming the default (the "**Non-Defaulting Party**") will send the other party (the "**Defaulting Party**") a Notice of Default setting forth the nature and extent of the alleged default and, if not otherwise self-evident, the actions necessary to cure the alleged default. The Defaulting Party will respond to the Notice of Default within four business days of its receipt of the Notice of Default whether the Defaulting Party intends to cure the alleged Default and, if so, what action the Defaulting Party intends to take to cure the alleged default and the timing thereof. If the Defaulting Party fails to timely respond, the Non-Defaulting Party will be entitled to exercise any one or more of the remedies set forth in this Agreement.

5.1.2 Remedies. If the Defaulting Party fails to timely respond to the Notice of Default or fails to immediately remedy any default promptly after receipt of the Notice of Default from the Non-Defaulting Party (or if the default is not capable of being immediately cured, fails to immediately commence all necessary action to promptly remedy such default and thereafter diligently prosecute such cure to completion in accordance with the Defaulting Party's response), then the Non-Defaulting Party will, at its sole election without additional notice (except as expressly required below in Section 5.2.2) to the Defaulting Party, be entitled to any of the following remedies, none of which will be deemed exclusive of the other: (a) terminate this Agreement as set forth in Section 5.2.2; (b) pursue any other remedy provided elsewhere in this Agreement or at law or in equity.

5.2 SUSPENSION; ABANDONMENT; TERMINATION

5.2.1 Suspension or Abandonment. If Client intends to suspend or abandon the Project, Client will provide Consultant with a written Notice of Intent to Suspend or Abandon Project setting forth the details of such suspension and/or abandonment and the proposed dates thereof. If the Project is suspended or abandoned by Client for more than 90 consecutive days, this Agreement will, at the election of Client, be deemed terminated on the ninety-first day following Consultant's receipt of the Notice of Intent to Abandon or Suspend. Consultant will be compensated in accordance with Article 3 of this Agreement for all services satisfactorily completed and performed to the effective date of termination within 45 days following Client's receipt of Consultant's final invoice and all work product completed or in the process of being completed.

5.2.2 Termination for Cause. The Non-Defaulting Party will be entitled to terminate this Agreement as set forth in Section 5.1.2 by providing three days' additional written notice to the Defaulting Party in which event this Agreement will be terminated and of no further force or effect on the fourth day after the giving of such three day notice.

5.2.3 Termination for Convenience. At Client's discretion, this Agreement, and the Services of Consultant, may be terminated by Client at any time and for any reason (including for convenience) by giving five days' written notice to Consultant. In such event, Consultant will be paid in accordance with Article 3 of this Agreement for all services satisfactorily completed and performed to the effective date of termination upon Consultant's delivery to Client of all work product, completed or in the process of being completed. This Agreement will be deemed terminated on the sixth day following Consultant's receipt of the Notice of Termination for Convenience unless such Notice is revoked prior to such sixth day.

5.2.4 Effect of Termination. If the Project is abandoned and/or suspended by Client for more than 45 consecutive days and Client has not terminated this Agreement under Section 5.2.2 or 5.2.3, then Consultant may terminate this Agreement by giving written notice to Client, whereupon Consultant will be paid in accordance with Article 3 for all services satisfactorily

performed to the date of termination. If Client fails to make payment to Consultant for services pursuant to the terms of this Agreement or otherwise defaults under this Agreement, Consultant may, in its discretion, after providing Client the notices required in Section 5.1.1, after five days' written notice to Client, suspend performance of all services under this Section 5.2.4 or terminate this Agreement under this Section 5.2.4. Such suspension and/or termination will take effect without further notice. Any final payment amounts due to Consultant under this Agreement will be made by Client within 45 days following Client's receipt of Consultant's final invoice for such amounts and all work product completed within such 45-day period.

5.2.5 Discontinue Services. Upon Consultant's receipt of Notice of Suspension or Abandonment of the Project or Consultant's Services, and upon notice in the event of termination under this Agreement, Consultant will, unless the notice directs otherwise, immediately discontinue all Services in connection with its performance of Services hereunder and will immediately (and in no event later than two business days) deliver to Client all work product completed or in the process of being completed.

5.2.6 Compensation. In the event of termination not the fault of Consultant, Consultant will be compensated for services performed prior to termination, together with Reimbursable Expenses then due. As a condition to payment to Consultant under this Section, Consultant must provide to Client all documents and materials previously delivered to Consultant by anyone involved in the Project as well as the Instruments of Service, materials and information described in Section 1.5. Consultant will then submit to Client a termination invoice, complete with backup data, supporting information and a release/waiver of lien rights upon payment.

ARTICLE 6 MISCELLANEOUS

6.1 ENTIRE AGREEMENT

This Agreement together with the Attachments attached hereto or referenced herein represents the entire and integrated agreements between Client and Consultant and supersede all prior negotiations, representations, understandings or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Client and Consultant. This Agreement may be executed in one or more counterparts, all of which when taken together, will constitute one Agreement.

6.2 INTERPRETATION

This Agreement will not be more strictly construed against either party hereto by reason of the fact that one party may have drafted or prepared any or all of the terms and provisions hereof. This Agreement will not be construed as creating a general agency or partnership or association between the parties, and except as expressly authorized herein neither party will have the authority, express or implied, to bind each other. The headings of the Sections and Articles of this Agreement are inserted solely for convenience of reference and are not a part of and are not intended to govern, limit, or aid in the construction of any term or provision hereof.

6.3 ATTORNEYS' FEES

If any legal action or other proceeding, including arbitration or action for declaratory relief, is brought for the enforcement of this Agreement or because of an alleged dispute, breach, default, or misrepresentation in connection with this Agreement, the Prevailing Party will be entitled to recover reasonable attorneys' fees and other costs, in addition to any other relief to which the party may be entitled. "**Prevailing Party**" will include without limitation: (a) a party who dismisses an action in exchange for sums due; (b) the party who receives performance from the other party of an alleged breach of covenant or a desired remedy where such performance is substantially equal to the relief sought in an action; or (c) the party determined to be the prevailing party by a court of law or arbitrator.

6.4 ACCESS TO RECORDS

Client and its representatives will be afforded access to and the right to copy at its expense all of Consultant's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to this Agreement and the Project during reasonable business hours.

6.5 SURVIVAL

All express representations, indemnifications, and warranties included in this Agreement will survive its completion or termination for any reason.

6.6 SEVERABILITY

Any provision or part of this Agreement held to be void or unenforceable under any Laws will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Client and Consultant, who agree that the Agreement will be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

6.7 SUCCESSORS, ASSIGNS, AND BENEFICIARIES

Client and Consultant, respectively, bind themselves, their successors, assigns, and legal representatives, to the other party to this Agreement and to the permitted successors, assigns, and legal representatives of such other party with respect to all covenants of this Agreement. The parties acknowledge that the decision leading to Client's invitation to Consultant to enter into this Agreement was based on Consultant's depth of experience and a combination of other qualities selected specifically for this Project by the Client. Consultant, therefore, may not assign, transfer, or sublet in whole or in part its interest under the Agreement (including any right to payment), except as specifically provided in this Agreement; any attempted assignment by Consultant in violation of this Agreement is void. The parties also acknowledge that the Client's obligations under this Agreement are those concerning administration together with the financial capability to carry through the terms of payment, which obligations Client is not unique in being able to perform; consequently, Client may assign its interest under this Agreement to a party capable of performing Client's duties. Client may also, upon five days' notice to Consultant, assign or transfer part or all of its interest in this Agreement to Public Agency. Upon any such assignment, Client will be released and discharged of any responsibility under this Agreement. All contracts entered into by Consultant with other parties in connection with the performance of the Services will contain a provision that, upon termination of this Agreement, Client will have the right to assume such contracts upon review of the status of the contract and services provided or to be provided thereunder. Accordingly, such contracts will remain in full force and effect until Client elects, in writing, to not assume such contracts. Public Agency is an express third-party beneficiary of this Agreement.

6.8 NOTICES

All notices, requests, and demands of any kind which either party may be required or desires to serve upon the other party will be in writing and will be served upon such other party by personal service or by mailing a copy thereof by certified mail, postage prepaid, with return receipt requested, addressed to the address of such party set forth in the Agreement or by facsimile provided answer back confirmation of the entire notice is received and notice is thereafter confirmed by registered or certified mail marked "Previously Delivered by Facsimile", or by a reputable overnight courier service. In case of service by mail, service will be deemed complete on the day of actual delivery as shown by the addressee's registered or certified mail receipt or at the expiration of the third business day after the date of mailing, whichever first occurs. In case of service by facsimile, upon receipt at the facsimile number as evidenced by the answer back mechanism of the facsimile machine, and in the case of delivery by courier the day delivered as evidenced by the courier's delivery receipt. The addresses to which and the persons to whom notices, requests and demands will be delivered or sent may be changed from time to time by notice served as hereinabove provided by either party to the other party.

6.9 THIRD PARTIES

Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than Client, Consultant, and Public Agency, and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement.

6.10 SECTION 179(D) ALLOCATION

Consultant agrees that Consultant will not seek, apply for, or accept from Public Agency all or any portion of the Public Agency's allocation of potential deductions relating to the Project under Section 179D of the Internal Revenue Code (26 U.S.C. §179D) without Client's prior written consent.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement Between Client and Consultant for Professional Services, the effective date of which is indicated on page 1.

<u>Client</u> GRIFFIN STRUCTURES, INC. a California corporation By: _____ Its: _____	<u>Consultant</u> <u>Geocon Consultants Inc.</u> a _____ By: _____ Its: _____
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ATTACHMENT A

SCOPE OF SERVICES

SCOPE OF SERVICES – GEOTECHNICAL TESTING AND OBSERVATION

Based on the information presented above and our understanding of the project, our anticipated geotechnical services and estimated fees are outlined below. Our services will be provided on an on-call, time-and-materials basis as requested by representatives of Griffin Structures and will be largely contingent upon the pace of construction and contractor performance. Our field technicians will be equipped with a vehicle and sufficient field- testing equipment to provide the results of typical field tests at the site. Costs for our field technicians will be invoiced per the attached *2022 Schedule of Fees*. We anticipate our field technicians will be onsite for:

- Geotechnical observation and compaction testing during site grading, including over-excavations
- Geotechnical observation during construction of temporary shoring retaining walls
- Geotechnical observation of foundation excavations
- Geotechnical observation and compaction testing during the placement of underground utility bedding materials and backfill operations
- Geotechnical observation and compaction testing during subgrade preparation and the placement of aggregate base materials for exterior flatwork, stairs, ramps, and pavements.

- Geotechnical testing and observation during paving operations

TABLE I – ESTIMATED FEES FOR GEOTECHNICAL SERVICES

	Item	Estimated Fee
Part I:	Geotechnical Testing and Observation during Mass Grading and Temporary Shoring Retaining Wall Construction	
	Field Technician – estimated 25 days and 225 total hours	\$33,375
	Project Engineer – estimated 2 site visits and 8 total hours	\$1,265
	Senior Engineer – estimated 2 site visits and 8 total hours	\$1,505
	Laboratory Testing	\$675
	Subtotal – Part I:	\$36,820
Part II:	Geotechnical Testing and Observation During Site Development and Building Construction	
	Onsite Utilities: Field Technician – estimated 12 trips and 108 total hours	\$16,020
	Offsite Utilities: Field Technician – estimated 10 trips and 90 total hours	\$13,350
	Onsite Flatwork, etc.: Field Technician – estimated 7 trips and 28 total hours	\$4,150
	Offsite Flatwork and Paving: Field Technician – estimated 7 trips and 32 total hours	\$4,685
	Foundation Excavations: Field Technician – estimated 8 trips and 40 total hours	\$5,820
	Geotechnical Laboratory Testing	\$1,800
	Asphalt Laboratory Testing	<u>\$420</u>
	Subtotal – Part II:	\$46,245
Part III:	Geotechnical Testing and Observation During Pool Construction	
	Field Technician – estimated 2 trips and 16 total hours	\$2,265
	Project Engineer – estimated 1 site visit and 5 total hours	\$635
	Senior Engineer – estimated 1 site visit and 5 total hours	<u>\$750</u>
	Subtotal – Part III:	\$3,650
Part IV:	Reporting, Geotechnical Consultation and Engineering Review	\$10,510
	TOTAL ESTIMATED FEE – GEOTECHNICAL SERVICES:	\$97,225

SCOPE OF SERVICES – SPECIAL INSPECTION AND MATERIALS TESTING

Based on the information presented above and our understanding of the project, our anticipated special inspection and materials testing services and estimated fees are outlined below. Our services will be provided on an on-call, time-and-materials basis as requested by representatives of Griffin Structures and will be largely contingent upon the pace of construction and contractor performance. Costs for our inspectors will be invoiced per the attached *2022 Schedule of Fees*. All vehicles and basic field testing equipment are included in the hourly inspector rate. We anticipate our inspectors will be onsite for:

- Special inspection of rebar, anchor bolts, and embedded hardware prior to concrete placement
- Special inspection and testing of concrete during placement
- Special inspection of rebar and block placement for CMU walls
- Special inspection and testing during grout placement

- Special inspection of cold-formed steel seismic force resisting system (SFRS) (framing, shear wall, and diaphragm fasteners, etc.)
- Special inspection of welded connections
- Special inspection of post-installed anchors
- Special inspection of rebar, anchor bolts, and embedded hardware prior to gunite placement
- Special inspection and testing of gunite during placement

TABLE II – ESTIMATED FEES FOR SPECIAL INSPECTION AND MATERIALS TESTING SERVICES

	Item	Estimated Fee
Part I:	Special Inspection and Materials Testing Services During Site Development and Building Construction	
	Reinforced Concrete – Pre-Pour: Special Inspector – estimated 9 trips and 70 total hours	\$9,925
	Concrete Placement: Special Inspector – estimated 13 trips and 88 total hours	\$11,685
	Post-Installed Anchors: Special Inspector – estimated 10 trips and 78 total hours	\$10,275
	CMU: Special Inspector – estimated 9 trips and 66 total hours	\$9,125
	Cold-Formed Steel SFRS: Special Inspector – estimated 3 trips and 24 total hours	\$3,160
	Onsite Welding: Special Inspector – estimated 15 trips and 150 total hours	\$24,715
	Offsite Welding: Special Inspector – estimated 10 trips and 120 total hours	\$15,900
	Materials Laboratory Testing - Concrete	\$1,800
	Materials Laboratory Testing - Masonry	\$300
	Materials Laboratory Testing - Grout	\$480
	Subtotal – Part I:	\$87,365
Part II:	Special Inspection and Materials Testing Services During Pool Construction	
	Reinforced Concrete – Pre-Pour: Special Inspector – estimated 2 trips and 16 total hours	\$2,265
	Concrete Placement: Special Inspector – estimated 6 trips and 42 total hours	\$5,565
	Reinforced Gunite – Pre-Pour: Special Inspector – estimated 2 trips and 16 total hours	\$2,265
	Gunite Placement: Special Inspector – estimated 7 trips and 64 total hours	\$9,120
	Materials Laboratory Testing - Concrete	\$750
	Materials Laboratory Testing - Gunite	\$1,920
	Subtotal – Part II:	\$21,885
Part III:	Project Management, Reporting and Engineering Review	\$12,060
	TOTAL ESTIMATED FEE – SPECIAL INSPECTION AND MATERIALS TESTING SERVICES:	\$121,310

ADDITIONAL SERVICES / SCHEDULING

Any services requested that are not discussed or listed herein will be considered as “additional services” and will be billed at the appropriate unit rates identified on the attached *2022 Schedule of Fees*. We request that our office be contacted at least 48 hours prior to the time our services are needed (72 hours before project inception and for welding inspections) to allow for proper scheduling.

ATTACHMENT B
COMPENSATION

Geotechnical Engineering Services - \$ 97,225.00

Testing and Inspection Services - \$ 121,310.00

Total - \$ 218,535.00

As indicated on the tables of Attachment A- Scope of Work

ATTACHMENT C
PRIME CONTRACT

CONTRACT

This Contract made June 7, 2021 (**“Effective Date”**), between the CITY OF PIEDMONT, California, a municipal corporation, 120 Vista Avenue, Piedmont, California 94611, (**“City”**) and GRIFFIN STRUCTURES INC., a California corporation, (**“Independent Contractor”**).

Recitals

- A. City is a municipal corporation which needs certain services in connection with its Community Pool Project (the **“Project”**) as more specifically set forth hereafter.
- B. Independent Contractor agrees to provide these services to the City under the terms and conditions set forth in this Contract (**“Contract”**).

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties hereby agree as follows:

1. Services/Project Phases and Schedule.

- a. Independent Contractor shall provide the project management, owner’s representative and (if any) other services and work as set forth in Griffin Structures 05/19/2021 Project Management Scope of Work, attached hereto as Exhibit A attached hereto and incorporated herein (**“Basic Services”**).
- b. City may request Consultant to provide services or work in addition to Basic Services, referred to hereafter as **“Additional Services”** (and together with Basic Services, **“Services”**). Additional Services must be authorized by City in writing prior to performance as provided in Section 2 below.
- c. The Project is expected to proceed in the following four Phases, which the following currently estimated schedule:
 - (1) Phase 1 – Pre-Design: July 2021 – November 2021
 - (2) Phase 2 – Design & Permitting: December 2021 – February 2023
 - (3) Phase 3 – Construction: March 2023 – May 2024
 - (4) Phase 4 – Closeout: June 2024 – August 2024

City reserves the right to modify the Project schedule at any time for any reason in its sole discretion.

- d. In the event the Project is delayed due to (1) events or conditions that are outside of the control of Independent Contractor (other than within the control of any permitted subconsultant) or (2) the acts or omissions of parties for whom Independent Contractor is not legally liable (collectively, **“Non-Independent Contractor Delays”**), Independent Contractor’s schedule for completing its Services of performance will be extended. Additionally, if Independent Contractor incurs

additional costs or expenses due to Non-Independent Contractor Delays, Independent Contractor may be entitled to Additional Services compensation, if and to the extent provided in Section 2 below.

2. Compensation.

- a. General. City will pay the Independent Contractor for properly performed Services as provided in this Section 2 and the Griffin Structures 05/25/2021 Revised Fee Proposal, as modified and attached hereto as Exhibit B and incorporated herein.
- b. NTE and NTERC. Excluding Additional Services only, the Not-to-Exceed Price to Independent Contractor for all Services performed under this Contract shall not exceed (“NTE”), plus reimbursable expenses described in Exhibit B (“Reimbursables”) up to a Not-to-Exceed Reimbursables Cost (“NTERC”) of
The NTE includes within its scope the cost of all (if any) permitted subconsultants and, together with the NTERC, shall constitute full compensation for all Services (excluding Additional Services) required, performed or accepted under this Contract. Except for Additional Services, in no event shall Independent Contractor invoice or receive any payment exceeding the NTE and NTERC.
- c. Billing Rates. City will pay Independent Contractor for Services based upon the hourly billing rates of all personnel specified in Exhibit B. The billing rates apply to all of Independent Contractor’s and permitted subconsultants’ (if any) principals, professional personnel and others engaged directly on the Project. Except as provided (if any) in Exhibit B, the billing rates shall remain constant throughout this Contract, and shall not be adjusted for inflation, salary adjustments, cost changes, or any other reason.
- d. Prior Services. If City previously authorized services within the scope of the Services of this Contract, then the services performed and any compensation paid for those services shall be subject to the terms of this Contract and the previous payments deemed payments against the NTE and NTERC.
- e. Percentage of Completion Limitation. Independent Contractor may not invoice or receive payment for the NTE or NTERC greater than Independent Contractor’s percentage completion of the Basic Services, as determined by City based on Services performed.
- f. Additional NTE Breakdown; Independent Contractor’s Right to Reallocate.
 - (1) The NTE is further broken down as follows:

Phase 1 – Pre-Design:
 Phase 2 – Design & Permitting:
 Phase 3 – Construction:
 Phase 4 – Closeout:

- (2) However, as provided in Exhibit B, Independent Contractor may reallocate hours between staff members and tasks to accomplish the overall objectives and requirements of the Project. Additionally, if Non-Independent Contractor Delays require Independent Contractor to perform Basic Services in an amount exceeding the NTE, such excess Basic Services will be deemed Additional Services, and Independent Contractor will be entitled to additional compensation as otherwise provided for Additional Services.
- g. Additional Services Amendments. City will pay Independent Contractor for Additional Services as agreed to in a written addendum or amendment (“**Amendment**”) to this Contract executed by City and Independent Contractor. Payment for all such Additional Services shall be in an amount and upon the terms set out in the Amendment. Each Amendment shall provide for a fixed price or, where payment for Additional Services is to be on an hourly basis, for a Not-to-Exceed amount plus Reimbursables. Amendments must be negotiated and signed by Independent Contractor and City before commencing Additional Services; otherwise, such costs are deemed within Basic Services.
- h. Fixed Fee Exception. Notwithstanding the foregoing, if City and Independent Contractor agree to any fixed fees for any period or Services, those shall control.
- i. Reimbursables Payment. City will pay Independent Contractor for Reimbursables for Basic Services as set forth in this Section 2 and Exhibit B, and for Additional Services as provided in any amendment and this Section 2. All costs not listed will not be allowed. All Reimbursables will be paid without premium or markup.
- j. Independent Contractor Statements for Fees and Reimbursables. Independent Contractor will provide City with monthly statements of Services fees earned and permitted Reimbursable costs incurred for Services provided during the month. Each statement will generally describe the Basic Services and (if any) Additional Services performed, the applicable rate or rates for Basic Services and (if any) Additional Services, the basis for the calculation of fees, a reasonable itemization of all Reimbursable, and receipts or other backup the City may reasonably request. Each statement shall report on Independent Contractor’s total Basic Services, Additional Services (if any) and Reimbursables paid to date.
- k. City Payments; Retained Services Fees. City shall issue payment of 90% of all approved Services fees and 100% of all approved Reimbursables (subject to the NTE and NTERC) within 30 days of receiving each approved statement. The (10%) retained Services fees are subject to release based solely on the City’s discretionary satisfaction with Independent Contractor’s performance of its obligations to the City.

3. **Term.**

This Contract shall begin on the Effective Date. Unless otherwise terminated as provided in this Contract, this Contract shall terminate 30 days after completion of all Project Services.

4. **Limitation on Independent Contractor's Authority.**

Independent Contractor shall have only the specific authority reflected in the Contract. Notwithstanding any provision of the Contract, including Exhibit A, unless specifically authorized in a writing signed by the City's City Administrator, Independent Contractor is not authorized to obligate the City to incur any cost or expense, or to modify any other Project party's scope of work or services.

5. **Independent Contractor Project Manager and Key Personnel.**

- a. Independent Contractor has designated George Sanen as its Project Manager to act as Independent Contractor's Representative in all matters relating to the Contract. Independent Contractor's Project Manager shall be the single point of contact for all Project communications between City and Independent Contractor.
- b. Independent Contractor's Proposal lists the key personnel identified on Exhibit B. Independent Contractor intends to provide to the Project to perform its services under the Contract, and their anticipated start times, anticipated duration of commitment to work on the Project, and for each duration percentage of commitment to work on the Project (together, "**Key Personnel**"). Independent Contractor represents that such staff have the necessary licenses, experience and qualifications to satisfactorily perform the requirements of the Contract and that at all times Independent Contractor shall maintain such staff or similar staff having all necessary licenses, certifications, experience and skills necessary to perform all obligations of the Contract.
- c. Independent Contractor may not change the identity of its Project Manager or any other Key Personnel without prior City written approval, which approval shall not be unreasonably withheld, provided such replacement has similar or greater experience and qualifications.
- d. Independent Contractor acknowledges that the quality and qualifications of the Key Personnel were important factors in City's selection of Independent Contractor for the Project. Independent Contractor and City agree that the personal services of the Key Personnel is a material term of the Contract, and substitution or removal or change in role or level of effort, of such Key Personnel would result in damages to the City, the measure of which would be impractical or extremely difficult to fix, and in lieu of which City and Independent Contractor have agreed to liquidated damages as described below:
 - (1) For any substitution of any Key Personnel individual before the end of the individual's Project commitment period provided in Exhibit B, City may

assess once and Independent Contractor shall accept liquidated damages in the amount of six (6) times the gross monthly salary for the substituted Key Personnel.

- e. Liquidated damages for substitution of Key Personnel shall be deducted from the next applicable statement or, if insufficient, shall be paid by Independent Contractor.
- f. No liquidated damages shall under be due under this Section 5 for any substitution required due to death, incapacity or employment termination of a Key Personnel.

6. Office Space, Supplies, Equipment, Etc.

Unless otherwise provided in this Contract, Independent Contractor shall provide such office space, supplies, equipment, vehicles, reference materials, computers and telephone service as is necessary for Independent Contractor to provide the services under this Contract. Independent Contractor - not City - has the sole responsibility for payment of the costs and expenses incurred by Independent Contractor in providing and maintaining such items.

7. Contractual Relationship.

The parties intend that an independent contractor-employer relationship will be created by this Contract. City is interested only in the results to be achieved, and the conduct and control of the work will lie solely with Independent Contractor. Independent Contractor is not to be considered an agent or employee of City for any purpose, and neither Independent Contractor nor any employees of Independent Contractor are entitled to any of the benefits that City provides for City's employees. It is understood that City does not agree to use Independent Contractor exclusively. It is further understood that Independent Contractor is free to contract for similar services to be performed for other cities, persons or entities during the term of the Contract. Independent Contractor shall be fully responsible for all income, social security or other taxes or deductions, including but not limited to worker's compensation and unemployment deductions, relating to the services it performs for City.

8. Indemnity and Hold Harmless.

- a. To the fullest extent permitted by law, Independent Contractor shall defend (with legal counsel reasonably acceptable to City), indemnify and hold harmless City and its officers, elected officials, employees, and agents (collectively "**Indemnitees**") from and against any and all liability, claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of Independent Contractor or its subconsultants), expense and liability of every kind, nature and description (including, without limitation, fines, penalties, incidental and consequential damages, reasonable court costs and attorneys fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith, and costs of investigation) ("**Liability**"), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Contract by Independent Contractor or by any individual or entity for whom Independent

Contractor is legally liable, including but not limited to, officers, agents, employees, subcontractors or consultants of Independent Contractor.

- b. For design professionals (as that term is defined by Civil Code § 2782.8) acting within the scope of their professional capacity, to the fullest extent permitted by law, Independent Contractor shall, at its own expense, indemnify, protect, defend (by counsel reasonably satisfactory to the City) and hold harmless any Indemnitees from and against any and all Liability, whether actual, alleged or threatened, which arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Independent Contractor, or as may be provided by statute in Civil Code § 2782.8, as may be amended from time to time.
- c. Neither termination of this Contract nor completion of the services shall release Independent Contractor from its obligations under this Section 8, as long as the event giving rise to the claim, loss, cost, damage, injury, expense or liability occurred prior to the effective date of any such termination or completion, and this section shall survive the termination of the Contract.

9. **Insurance.**

- a. The following minimum levels of insurance coverage shall be provided during the term of this Contract. Prior to the execution of the Contract, Independent Contractor shall provide proof of insurance required. Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.
- b. Independent Contractor shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Independent Contractor's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
- c. Coverage shall be at least as broad as:
 - (1) Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 05 09 or 25 04 05 09) or the general aggregate limit shall be twice the required occurrence limit.
 - (2) Automobile Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if Independent Contractor has no owned autos, covering hired, (Code

- 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
- (3) Workers' Compensation: as required by the State of California, with Statutory Limits.
 - (4) Professional Liability (Errors & Omissions): As appropriate to Independent Contractor's services, and not less than \$2,000,000 per occurrence.
- d. The insurance policies are to contain, or be endorsed to contain, the following provisions:
- (1) The City of Piedmont, its Council Members, directors, officers, agents and employees shall be named as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Independent Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Independent Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).
 - (2) For any claims related to this Contract, Independent Contractor's insurance coverage shall be primary insurance coverage (at least as broad as ISO CG 20 01 04 13) with respect to the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Independent Contractor's insurance and shall not contribute with it.
- e. Independent Contractor hereby grants to City a waiver of any right to subrogation which any insurer of said Independent Contractor may acquire against the City by virtue of the payment of any loss under such insurance. Independent Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.
- f. Independent Contractor shall require the insurer to provide City with 30-day prior notice of termination or material change in coverage and ten (10) days prior notice of cancellation for non-payment.

10. Assignability/Subcontracting.

Independent Contractor shall not assign, delegate, subcontract, or transfer any interest in this Contract nor the performance of any Independent Contractor's obligations hereunder, without the prior written consent of the City. Nevertheless, Independent Contractor will remain fully liable and responsible for all services under this Contract.

11. Miscellaneous.

As used in this Contract, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.

12. Notices.

Any notices to be sent pursuant to this Contract shall be given in writing, in person (by hand or by courier), via prepaid U.S. certified or registered mail, return receipt requested, or by recognized overnight (or better) courier that maintains delivery records, addressed to City at 120 Vista Avenue, Piedmont, California 94611, and to Independent Contractor at 1850 Warburton Avenue, Suite 120, Santa Clara, California 95050, or at such other address as each party shall give the other in writing from time to time. Notices shall be deemed received at the time of delivery if on a business day (and if not on a business day or after 5:00 pm local time on a business day, on the next business day) or when delivery is refused..

13. Governing Law.

This Contract shall be governed by the laws of the State of California, including its statutes of limitation but excluding its conflict of law principles. Jurisdiction and venue of litigation arising from this Contract shall be in the County of Alameda, State of California.

14. Modification.

Any modification of this Contract will be effective only if it is in writing signed by all parties to this Contract.

15. Time is of the Essence.

Time is of the essence in the performance of this Contract.

16. Termination.

The following provisions shall govern termination under this Contract:

a. Either party may terminate this Contract for cause as follows:

- (1) The party electing to terminate shall give the other party written notice of termination at least five (5) days prior to the termination date, setting forth very specifically the grounds for termination, the specific provisions of the Contract that has been violated, and a full statement of the facts surrounding the violations(s).
- (2) If the terminated party so elects, the parties shall meet promptly and make good faith efforts to resolve the violation(s) in a mutually agreeable way.
- (3) If any such violation cannot be resolved by the parties at such meeting, or at any mutually agreed extension(s) of such meeting, the termination shall proceed.

- (4) If the violation(s) have not been resolved, the terminating party may proceed with termination, and with retaining other person(s) or entities to provide services, if the terminating party is the City.
- b. The City may terminate the Contract at any time without cause upon at least sixty (60) days prior written notice to the Independent Contractor. In the event of any such termination by City, Independent Contractor shall be paid for services actually performed through the date of termination, and Independent Contractor's work shall be immediately discontinued as of that date, except that City may elect, at City's option, to have Independent Contractor complete one or more projects or specific activities which are then in progress, in which case Independent Contractor shall be paid for such services until completion.

17. Equal Opportunity.

Independent Contractor shall insure that its policies and practices provide equal opportunity to all applicants and employees without regard to race, color, creed, gender, age, religion, national origin, sexual preference, gender identity, marital status, disability, Acquired Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) and in addition, Independent Contractor must comply with the Americans with Disabilities Act.

18. Compliance with Laws.

Independent Contractor shall use the standard of care in its profession to comply with all applicable federal, state, and local laws, codes, ordinances, and regulations. Independent Contractor represents and warrants to City that it has and shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Contract any licenses, permits, insurance and approvals which are legally required for Independent Contractor to practice its profession.

Without limiting the foregoing, Independent Contractor shall, if applicable, comply with all laws, codes, ordinances, and regulations requiring the payment of prevailing wages as set forth in Labor Code § 1770 et seq. Pursuant to AB 1768, effective January 1, 2020, this includes, inter alia, the payment of prevailing wages to personnel performing services considered a covered trade (e.g., operating engineer/heavy equipment operator, surveyor, carpenter, cement mason, electrician, laborer, building/construction inspector (including a geotechnical engineer acting as a construction inspector), and field soils and materials testers (including a geotechnical engineer performing duties covered under soils and materials testing)) that undertake feasibility studies, site assessments and other pre-construction work for a project utilizing public funds.

19. Conflicts.

Independent Contractor represents and warrants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Contract. Without limitation, Independent Contractor represents to and agrees with City that Independent Contractor has no present,

and will have no future conflict of interest between providing the services contemplated under this Contract to City and any interest Independent Contractor may presently have, or will have in the future, with respect to any other person or entity which has any interest adverse or potentially adverse to City, as determined in City's reasonable judgment.

20. Entire Agreement

This Contract constitutes the entire agreement of the parties with respect to the matters set forth herein. Any amendments, modifications, or changes to this Contract shall be in writing and signed by both parties. In the event of a conflict between the terms set forth in this Contract and the terms set forth in any exhibit to this Contract, the terms of this Contract shall govern over the terms of any exhibit.

21. Ownership of Documents.

All plans, studies, documents and other writings, including working notes and internal documents, prepared by and for Independent Contractor, its officers, employees and agents and subcontractors in the course of implementing this Contract, shall become the property of City upon payment to Independent Contractor for such work, and City shall have the sole right to use such materials in its discretion without further compensation to Independent Contractor or to any other party. Independent Contractor shall, at Independent Contractor's expense, provide such reports, plans, studies, documents and other writings to City upon written request. All documents prepared by Independent Contractor are confidential and shall be maintained to preserve their confidential nature. Release of any such documents to third parties shall only be made by the City, or upon written consent of City.

22. Licenses.

Independent Contractor represents and warrants that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature which are legally required of Independent Contractor to practice its profession. Independent Contractor represents and warrants to City that Independent Contractor shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Contract, any licenses, permits, insurance and approvals which are legally required of Independent Contractor to practice its profession.

23. Waiver.

Waiver of a breach or default under this Contract shall not constitute a continuing waiver of a subsequent breach of the same or any other provision under this Contract.

24. No Third Party Beneficiaries.

Nothing in this Contract shall operate to confer rights or benefits on persons or entities who are not parties to this Contract.

25. Severability.

If any portion of this Contract or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal, state or local statute, ordinance or regulation the remaining provisions of this Contract or the application thereof shall not be invalidated thereby and shall remain in full force and effect to greatest extent permitted by law.

26. Construction.

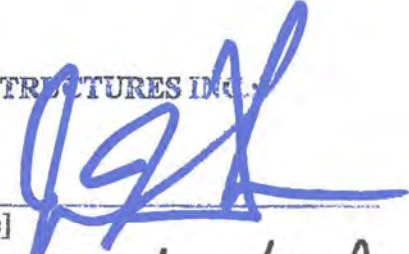
Headings or captions to the provisions of this Contract are solely for the convenience of the parties, are not part of this Contract, and shall not be used to interpret or determine the validity of this Contract. Any ambiguity in this Contract shall not be construed against the drafter, but rather the terms and provisions hereof shall be given a reasonable interpretation as if both parties had in fact drafted this Contract.

IN WITNESS WHEREOF, the parties have executed this Contract at Piedmont, California, the day and year first above written.

CITY OF PIEDMONT:

GRIFFIN STRUCTURES INC.:

By: 
[Mayor or City Administrator]

By: 
[Title] Executive Vice President

Attest:


John O. Tulloch, City Clerk

Approved as to form and legality:


Michelle Marchetta Kenyon, City Attorney

Exhibit A



Piedmont Aquatic Center

City of Piedmont

05/19/2021

**Project Management
Scope of Work**



Marguerite Aquatics Complex, Mission Viejo, CA

SCOPE OF SERVICES

The City intends to retain the services of a Project Manager/Owner's Representative to help shepherd this Project through the program and pre-design, design and construction stages. One of the first duties of the Project Manager will be to assist the City in soliciting proposals for design services based on the adopted Master Plan. Once the design consultant is hired, the Project Manager will assist in the oversight of the design team, as well as assist the City with public outreach. As this Project is funded through General Obligation bonds supported by the community, communication with the community throughout the Project is essential. Similarly, working with City staff to provide updates to the City Council will also be very important.

As the Project progresses, the Project Manager will be expected to coordinate with the various City Staff and Departments (e.g. Recreation, Planning and Building, Public Works, Finance, City Administrator's office, etc.) involved with this Project. It is anticipated that the Project Manager will be integrally involved in reviewing work products from the design consultant, coordinating reviews with the various Departments, assisting in reviewing the constructability of various options, assisting with value engineering of the design, and generally working to ensure that the design meets the City's and Community's needs. Once construction documents have been completed, the Project Manager will work cooperatively with the Public Works/City Engineering Departments to bid the Project in accordance with the applicable City Codes and the Public Contract Code. During the bidding process, the Project Manager will coordinate with City Departments and the design team to ensure that any clarifications or addendums are processed in a timely manner. Once bids are received, the Project Manager will assist the Public Works/City Engineering Department in evaluating the bids and recommending award of contract.

Prior to bidding the Project, the Project Manager will also work with City staff to identify a construction management/inspection consultant for oversight of the day to day construction. If proposals are requested, the Project Manager will assist the City in generating an RFP and distributing the RFP to qualified consultants. The Project Manager will assist in reviewing and evaluating any proposal received in response to the RFP and will assist in determining the recommended consultant to retain for this work.

During construction, the Project Manager is expected to act as the Owner's Representative with respect to oversight of the Project, coordinating with the construction management and inspection firm to keep up on the progress, assisting with the resolution of any issues, keeping the public informed and providing regular updates at City Council meetings. Upon completion of construction, the Project Manager will participate in the final walkthrough of the Project, review of the punch list and generally be involved with the Project closeout.

As communication is essential on this Project, the Project Manager will be expected to assist the City in overseeing community outreach for the entirety of the Project. It is anticipated that there will be a series of public meetings to review the progress of the design and to solicit public feedback. The Project Manager will assist in communicating public comments to the design team and ensure that there is a balance maintained between the work of the design team, community desires and budget limitations. Considerable skill in working on high-profile public projects, involving extensive civic engagement is essential. The selected individual or firm must exhibit

proven, well-developed communication skills - both verbal and written, as well as the ability to manage and negotiate between competing interests. If needed, the Project Manager may consider including a facilitation and public outreach sub consultant on their team.

The Project Manager/Owner's Representative will provide comprehensive Project management services including, but not limited to, those listed below. If the responding individual/firm believes that the Project can be enhanced in any way by the addition of tasks or the deletion of any specified tasks, such information should be included in the proposal.

1. General

Act as the City's representative during the Program and Pre-Design Phase, Design Phase, Construction Phase and Project Closeout Phase of the Piedmont Community Pool Project

2. Program and Pre-Design Phase

- Assist the City in clearly defining the scope of the Project (refinement of the conceptual master plan that has already been developed);
- Assist in communicating with City management, Council, staff, community, and news media to enhance understanding and develop ongoing support for the Project;
- Assist in soliciting (assist in developing a Request for Proposals) and retaining a qualified design team for the Project. This will include participating in a pre-proposal meeting with interested design firms, review of all proposals received, coordinating the circulation of the proposals to a review team and collection of all ranking information, assist in developing a short list of consultants (no more than 3) for interviews, schedule and participate in the interviews, coordinate the ranking results from the interview panel, and assist in negotiating with the selected consultant team.
- Develop project management plan, clearly defining roles, key tasks, project schedule and project management tools to be used;
- Develop and maintain a master schedule and report deviations to the City and resolve schedule issues;
- Establish Project controls and procedures;
- Assist with developing and maintaining a realistic Project budget that includes all construction and non-construction costs including permit fees, site preparation, utilities, design services, construction costs, inspection services, equipment costs, furniture and fixtures and project contingency. Update the Project budget regularly, and deliver Project status reports, no less than monthly; and
- Assist with public outreach and meetings.

3. Design Phase

- Manage work of the design team;
- Collaboratively work with City staff to review design documents for completeness and for conformance with the City's objectives;
- Work with the design team to ensure that the design stays within budget, that the process stays on schedule, and to assist in ensuring constructability of the design;
- Work with City staff and the design team to make suggestions or identify changes that could improve the design, constructability, or reduce costs;

- Assist in leading and participating in public engagement meetings, workshops and City Council meetings and in ensuring that relevant comments and concerns are appropriately addressed by the design team;
- Assist with value engineering studies and, if necessary, coordinate getting an independent estimate to ensure the Project will stay within the budget;
- Coordinate with all relevant regulatory agencies and assist with obtaining all required permits, building permits, and all required approvals;
- Review/recommend payment requests from the design team. If necessary, assist in negotiating any changes to the scope of work and fee as the Project progresses;
- Work with City staff to perform quality control of all design team deliverables (including those of subconsultants), such as plans, drawings and specifications, to ensure quality, completeness, and appropriateness. Note that the Project Manager will be expected to collect all comments from the various City Departments in the review of the comprehensive construction documents and to transmit them to the design team; and
- Conduct, in conjunction with the City and design team, pre-construction orientation conference(s) for the benefit of the contractors interested in bidding the Project.

4. Construction Phase

- Work with the City's selected Construction Manager and inspection team to oversee the Project during construction. Work in this phase of the Project may include, but not be limited to:
 - Work in conjunction with the Construction Manager to monitor the construction schedule and budget and bring any issues to the City Administrator or other City Departments involved;
 - Attend Project meetings as necessary;
 - Prepare monthly reports for updates to the City Administrator, the City Council and the community;
 - Work in conjunction with the Construction Manager to monitor work completed versus budgets and note any issues; and
 - Coordinate regular communication to the City staff, the City Council and the community.
- Change Management
 - Assist the Construction Manager and City staff with identification of appropriate changes in scope; and
 - Assist with validating impact of changes.

5. Project Closeout

- Along with City staff, review any punch lists provided by the Construction Manager to ensure that all items are complete;
- Review the final pay documents with the Construction Manager and City staff and provide final budgetary information to the City; and
- Work with the City as needed to coordinate move in and startup operations of the facility.

Workplan & Approach

Griffin's team has extensive project experience in programming, designing, and managing the construction of more than 50+ aquatic, recreational, and community centers featuring both recreational and competitive pools. Our diverse background in designing these facilities affords us the opportunity to draw on lessons learned and pay the knowledge forward for Clients such as the City of Piedmont

Additionally, as programmers, preconstruction, and construction managers of modern aquatic facilities, we are well informed on the current trends and considerations for facilities of this type. Today, the aquatic facilities we deliver and research are uniquely built structures that are integral to the communities they serve. Aquatic facilities and pools are visible and welcoming spaces that become community hubs for recreation and sports, acting much like a community hub, providing spaces for people to gather.

We will be focused on creating flexibility for the future as well as serving the needs of today, maintaining an obligation to oversee the development of an Aquatic Center through which the voices of the community are heard and every facet of the new facility is considered thoroughly and openly.

Griffin Structures offers a comprehensive approach to all aspects of Project Management involving technical expertise and lessons learned from nearly 40 years of experience. This approach seeks to convey both our depth of technical knowledge and the application of our best practices in a manner most suitable for the City. We recognize and affirm we will deliver the services set forth in Scope of Work sections 1 through 5 of the RFP, however, to further elaborate our understanding and approach to this project, we propose the following work plan.

1. Approach to Staffing

Griffin Structures recognizes the importance of continuity on a project of this scale, and especially in the role of Project Manager. It is for that reason that we are proposing George Sanen to serve as the Project Manager for this project for its entire duration utilizing his extensive experience managing very large and challenging projects throughout the Bay area as well as utilizing his degree in architecture.

Additionally, George will be supported by Lance Solomon and Tim Shaw, both of whom have extensive relevant experience in project management on an aquatics facility, serving as the Project Manager on behalf of the City of San Clemente, and the Construction Manager on behalf of the City of San Bruno. George Sanen will also receive support from And Rob Carnes will bring his extensive understanding of infrastructure and utilities to this project as well. Finally, Jay Helekar will serve in a support capacity for value engineering and in checking estimates that are produced by the design team. All of these key support team members will contribute to value engineering, constructability reviews, issues resolution, and agency coordination under the leadership of George.

On a corporate level, Jon Hughes will serve as the Project Executive and Roger Torriero will bring executive leadership to the team, bringing years of experience in developing aquatics facilities on behalf of the public sector.

2. Initial Assessment

Griffin Structures begins every project with a comprehensive Initial Assessment. This assessment provides the City with a fresh perspective on all aspects of the project currently and allows Griffin to strategically assess the priorities for executing our services. This assessment unfolds in 2 phases:

Initial Investigation: Griffin will meet with the City to establish the initial key concerns and needs of the project. Sometimes it is discovered that the design and bid schedule is in jeopardy, other times the key concern is contractor prequalification. Yet other times, the primary concern is to establish a comprehensive and succinct budget. Whatever the most pressing issue might be, Griffin will establish a short list of priorities, and engage in those key tasks first. Typically, we find that this initial assessment results in the immediate need for one or both of the following tasks:

- a. Establishing a refined project schedule
- b. Establishing a refined project budget

However, should the initial assessment phase unearth other project needs, or if the City has a priority list already established, we will adjust our initial task items accordingly.

Identify Project Objectives: Once this initial assessment and resolution effort is achieved, Griffin will then move toward establishing a standard protocol for the project team as a whole. We have found that clarity and consistency in direction is the single most significant feature of establishing a successful project protocol. To achieve this level of clarity and consistency, Griffin will first establish a clear understanding of City policies and protocols. Because of our extensive experience in the public sector, we are able to effectively mold our approach to the client. We effectively become an extension of City staff. With that in mind, we then establish protocols for all aspects of the project. Specifically, we will:

- c. Establish communication channels and policies.
- d. Oversee document strategies, specifically how information will be communicated to the field.
- e. Identify key challenges to the project
- f. Establish and formalize action items for respective team members
- g. Identify and reinforce key project objectives.

Together, with this two-part approach, Griffin will effectively execute a comprehensive project assessment that will serve as the guiding principles for the project moving forward. Once the Initial Assessment period is completed, we will then begin to employ the following aspects of our approach. In general, our approach can best be summarized under the following 4 aspects: Communication and Document Control, Schedule Management, Financial Controls, and Quality Assurance.

3. Project Delivery Analysis

Recognizing the City has already determined it will proceed on a Design-Bid-Build basis, nonetheless it has been on our experience, having an accurate understanding of the various delivery options available and in-depth expertise in each will allow the City to set this project on the best course to achieve the highest value. Specifically, Griffin Structures is prepared to review Contractor procurement strategies that involve early selection of the Contractor during the design process to assist the team in the development of the Construction documents (Design-Assist). Of course, depending on the City's charter and its procurement policies, Griffin Structures is prepared to execute whatever strategy the City ultimately elects to pursue.

4. Community Engagement & Presentations

In consultation with the City, Griffin will serve as the primary coordinator of public outreach efforts, whether required as a part of the City's jurisdictional authority, or as needed in its role as the owner. This will include both the oversight of consultants who are charged with making presentations and or reporting findings, as well as presenting project updates as needed. As the City's representative, Griffin Structures will oversee the community engagement process and utilize the key team members most suitable for the needs.

Specifically, Griffin Structures will craft a scope of work in the design solicitation that includes all the necessary preparations, presentations, graphic materials and community engagement to make presentations to the Aquatic Subcommittee and the Recreation Commission. Additionally, we will require the design team provide all necessary services to satisfy the Planning Commission Review. These efforts will be performed by the design team but overseen and coordinated by Griffin Structures.

Once under construction, our team will coordinate key update tools, including but not limited to;

- a. 24-hour community hotline for questions or concerns
- b. Project signage
- c. Weekly staff updates
- d. Monthly project updates
- e. Quarterly community updates
- f. All necessary content for website updates.

And of course, as the City's representative our staff will oversee and/or chair any presentations needed by City Council including, recommendations for award, updates, staff reports, issues resolution and/or other needed presentations.

5. Communication & Document Control

Building on the project objectives identified in the initial assessment, Griffin will then begin establishing standardized communication protocols. These protocols are critical in a construction project of this size and scope and are particularly key to a successful design bid build delivery method. Accordingly, Griffin will establish a clear line of communication between the team members which will be utilized during the construction process. Working closely with the City, Griffin will identify the proper channels for all communication between the field (contractors and inspectors) and the support team (design, engineering, and City) to establish seamless communication for the duration of the project.

Document Management: Key to this effort is our approach to document controls. Griffin Structures employs the use of Submittal Exchange for all project document controls. This system is comprehensive, adaptable, and is straightforward and easy to use.

Essentially, the system works as follows:

- a. Once the project is initiated, the Submittal Exchange team will review the entire specification and upload all submittal requirements.
- b. The construction manager will then upload all team members.
- c. If used for design, the system can be easily adapted to carry all necessary documents, and documentflow.
- d. Once under contract the General Contractor will be integrated into the system. Specifications for inclusion in the bid documents will be provided requiring Contractor compliance.
- e. All RFIs, submittals, ASIs, CCDs, Delta's, Daily Reports, Project Photos, SWPPP reports, schedules, and Closeout documents will have a unique tab for cloud storage.

f. All documents that require a review flow will have associated links that clearly identify who is on task.

g. Upon final closeout, all documents will be consolidated into a single digital file that is easily searchable for future need. All As-Builts, O&Ms and Warranties will be included as well as progress documentation.

By utilizing this cloud based format, Griffin Structures is able to establish a single document portal that saves and manages all project documents. Utilizing this cloud based system as a single source of document control provides clear and consistent communication to the field, insures comprehensive document coordination, protects against claims, accelerates the construction schedule by streamlining communications, and ultimately saves the entire project significant costs by eliminating printing and shipping, and improves efficiency. For further information on Submittal Exchange see:
<http://www2.submittalexchange.com/public>



Roberts Pool Aquatic Center

6. Schedule Management

As with communication and document control, schedule management and efficient construction production relies on multiple factors, all of which Griffin has an established protocol.

Griffin will begin by producing a comprehensive master project schedule. This schedule will include all aspects of the project including but not limited to:

- a. Design iterations
- b. Design review times
- c. Permitting phases
- d. Contractor prequalification (if desired)
- e. Bidding
- f. Contracts and insurance,
- g. Phases of construction
- h. City installations
- i. Utility connections
- j. City IT installations
- k. Punch List
- l. Commissioning
- m. Contingency

This initial schedule will serve as the basis for establishing the overall construction duration that will be incorporated into the bid documents. Naturally, Griffin will incorporate the input of all team members in that regard.

Once a Contractor is on board, Griffin will require that they produce a comprehensive construction schedule that incorporates all the elements above that occur during construction, as well as demonstrate a clear and logical critical path. Our extensive construction experience will be able to determine if the contractor has a good understanding of the project that is both realistic and achievable.

Phasing Analysis is also critical to a successful project schedule. Understanding the key components of the project, the City's concerns, neighborhood sentiment, traffic concerns, protection of existing facilities; all these aspects need to be considered and reviewed with regard to the schedule to ensure that the project can achieve the overall objectives.

Griffin will then provide strict communication protocols to insure answers to questions, reviews of submittals, submissions for deferred permits, and requests for inspections are all process timely and effectively.

Corrective measures may need to be implemented, should the contractor fall behind. As described above, the City and project as a whole suffers when the contractor fails. Therefore, Griffin will employ extensive field experience and construction understanding to provide solutions to schedule failures to maintain the overall objectives of the project and protect the City's investment.

By these methods, Griffin will be able to maintain the project schedule and expedite the productivity as needed.

7. Design Solicitation

Given our experience developing projects at risk, Griffin has a robust design solicitation repository that will select the project's best Design Team. Some key features of this effort will be the request and evaluation of past projects of a similar size and character, the experience of the Design Team, familiarity with aquatic facilities, and comprehensive program which establishes a baseline of the design effort, and a clear delineation of scope that will ensure the responses which are received are comprehensive. Additionally, we will work with the City to incorporate our RFP development plan into existing City procurement procedures, if applicable. We will work closely with staff to ensure that the efforts employed are consistent with City regulations while also benefiting from our vast experience managing similar efforts for other Clients.

8. Design Coordination

The key to a successful project, regardless of the form of delivery, is a well-thought design coordination effort. The typical phases of design include Conceptual, Schematic, Design Development, and Construction Documents. But this only scratches the surface as it relates to the interim milestones, meetings, and coordination efforts needed to manage a design process successfully.

Every design management effort requires a clear and concise design schedule. This schedule must have milestones for deliverables, as well as adequate time for City review. At Griffin Structures, we have a comprehensive design schedule approach that allows us to tailor the project schedule to the City needs to maximize efficiency and accountability.

It is also critical that unique design coordination meetings are arranged to address key aspects of design that often go overlooked. These include, but are not limited to, low voltage coordination, utility coordination, authority having jurisdiction coordination, civil coordination with MEPs, building management system coordination (BMS),

facilities maintenance coordination. Ensuring the correct people are engaged to address key concerns of the project is essential to a well-coordinated set of drawings that can be executed efficiently in the field.

Additionally, the design coordination phase must include certain pre-design efforts for deferred submittals typically under the Contractor's purview. These include, but are not limited to, fire sprinklers, fire alarm systems, BMS systems, structural steel trusses, stairs, curtain wall systems, tie-backs and retaining walls, and others. By working through these systems early in the process, the design package can avail itself of early procurement and approval of many of these trades, facilitating construction and accelerating the schedule.

Finally, the design coordination process must engage the dry utility agencies early in the process, including SCE, the gas company, cable, internet, and telephone. These agencies often carry significant backlogs, have dysfunctional organizational structures, and severely impact the design and construction process. For this reason, we engage the utilities early and often recommend hiring a specialty dry utility consultant who can facilitate and accelerate the process.

9. Constructability Review

During the design process, Griffin Structures will perform extensive constructability reviews. Griffin will evaluate key aspects of the design with each review, with a particular attention paid to those items that can result in added cost, extended time, or compromised value.

At each stage of design, the documents reveal different characteristics, which we will be evaluating. At the Concept and Schematic Design phase, our primary focus will be on the efficiency of use, adherence to the program, site layout and massing, facility orientation, and basis of design. Though these aspects of the project do not always provide a detailed analysis of constructability issues, they provide the framework that results in those issues in later iterations. Given our extensive history of delivering

projects of a similar size and nature, we will identify those basic parameters that result in challenges later.

At the Design Development and Construction Document phase of design, we will drill down into the project's critical details in a manner that is unparalleled in our industry. Many Project Managers only look for apparent discrepancies like missing call-outs, flawed notes, and other low-hanging fruit. Our review will search for inconsistencies such as civil and MEP point of connection elevations, waterproofing details and drainage, heat load orientation, framing coordination issues, and countless other pertinent information.

Finally, the key to the usefulness of our reviews is in our use of Bluebeam technology. This tool allows for the digital evaluation of the drawings, highlighting the details in question, and producing a report that is easy to understand and is actionable. Utilizing this tool with our hands-on field experience allows Griffin to produce constructability reviews of the industry's highest quality.

10. Value Engineering

As the design process unfolds Griffin Structures will maintain a continuous Value Engineering effort throughout each stage of the process. Rather than wait for cost estimate to reveal the project is over budget, Griffin will use its depth of knowledge to identify and address potential cost issues in real time. This will mitigate the need for a costly value engineering exercise that could be disruptive to the project schedule and will help to mitigate any sudden reductions in program.

11. CEQA & Environmental

Griffin Structures will include all necessary analysis, documentation, applications, and approvals for CEQA, environmental, and agency approvals to be included in the design solicitation scope of services. Once under contract, Griffin will manage the design team in their efforts and represent the City and its interests throughout the process.



Marguerite Aquatics Complex

12. Financial Controls

Key to the success of any project, are the effective management of financial controls. Griffin has extensive experience in financial controls and is uniquely qualified in employing those controls for the successful execution of public projects.

Master Budget: Griffin Structures will produce a comprehensive Master Budget that captures every cost associated with the project and present this document to the City for approval. This budget will include all consultant costs, design costs, construction costs, as well as any ancillary costs specific to this project to allow for the City to have a clear financial picture of the project from the very beginning.

Many of the costs listed in the initial Master Budget will be based on allowances and typical unit based percentages typical of a project of this type. As consultants are brought on board, and costs are realized as formal proposals, Griffin will update the Master Budget to reflect those changes. Additionally, we will illustrate these updates in such a way as to show the dollar amounts for previous iterations against the present update which will allow the City to maintain a complete record of costs and adjustments throughout the project.

And of course, all financial matters will be held in strict confidence with the City and key allowances, cost considerations, and forecasts will be reconciled with City staff on a regular basis, but no less frequently than on a monthly basis.

Change Management: Construction projects are inherently iterative operations. With multiple efforts, and coordination of tasks and efforts underway concurrently, managing the discovery and correct identification of changes is particularly challenging. Accordingly, we will review and address all possible changes in work in the following manner:

- a. The first component in correctly addressing possible changes in scope and cost is to know what is and is not a real change. With our extensive experience in public projects, we will perform a comprehensive analysis of the issue at hand and determine if a change has in fact occurred. Key to this analysis is our enhanced understanding of contracts and scope so as to determine if in fact the issue is already covered under the existing scope. This approach will be employed for the management of all team members, both with consultants and contractors, as a way of justifying if a change has in fact occurred.
- b. If a change is in fact necessary, we will then seek to execute this change in a manner that results in a no-cost solution to the City. This may involve proposing materials and/or methods that are comparable in scope to the original intent, thus allowing for solutions that do not compromise quality, schedule, or cost.

c. If such an option is not possible, or if unforeseen conditions materialize that result in a true change to the cost of the project, Griffin will then perform a detailed analysis of the best form of execution. This may take the form of a hard estimate for the proposed change, or if in fact a T&M execution is in the best interests of the project. Yet another option is to utilize a T&M/Not to Exceed method which allows for execution of a proposed change while putting a ceiling on the final costs of the change.

d. Finally, any change that is officially recognized will undergo a detailed examination of costs including but not limited to: materials back up, labor analysis, labor rate analysis, detailed subcontractor back-up, time impacts, and a unit cost comparison based on industry trends.

Invoicing: Griffin is keenly aware of the importance of maintaining financial controls over the invoicing process. Accordingly, we will establish a methodical approach to reviewing invoices specifically by executing the following:

- a. Establishing a very detailed Schedule of Values the breaks out both labor and materials for each trade and spec section.
- b. Review all invoices for consistency with improvements installed in the field.
- c. Investigate the Contractors payment policies to subcontractors to avoid issues of non-payment.
- d. Evaluate subcontractor performance to anticipate potential bankruptcies of subcontractors who are not adequately solvent to perform on the job.

Together, with these tools, we will be able to provide financial protection of the client so as to avoid production challenges, protect the City's resources against overpayment, and insure a proper accounting of the health of the project.

Claim Mitigation and Avoidance: Of particular importance to the health of a project is claims management. The most effective way to mitigate claims is to avoid them altogether. This seems obvious but is in fact the most challenging aspect of managing a successful project. To avoid claims there are a few key principles we follow:

a. **Clarity = enforceability:** If the direction is clear, the drawings and specifications consistent, and the direction to the field in line with these documents, then there is little to no chance of a future claim

b. **When everyone succeeds, the City succeeds:** This is a key concept that many professionals do not grasp or pursue. Claims arise out of a need to mitigate against risk or loss. Avoiding risk for all parties lowers the likelihood of claims.

c. **Commitment to Value:** Despite our best efforts, sometimes things go wrong. A submittal is submitted and approved incorrectly. A material specification is discontinued, and its replacement is three times the cost. Drawings do not clearly identify the total scope of work. In instances like these, clear commitment to value rules the process. In each of the instances listed above, Griffin is able to navigate and resolve these issues in a manner that provides value to the City (i.e. little or no cost increase) continued progress (timely decisions that do not delay the schedule) and creative architectural solutions (maintaining the overall quality of the finished product). By having a balanced understanding of all the aspects of value to the project Griffin is able to mitigate the conditions that often result in claims.

d. **Clear Documentation and Legal Understanding:** Despite all of the above, sometimes claims do arise. The key defense against these occurrences is clear documentation, and a comprehensive understanding of the contract and contract code. Griffin Structures employs elite Project Management professionals that have extensive understanding in contracts and contract code, and employs a document management system that produces proper documentation.

13. Bid and Award Services – Other Vendors

It is also critical that the bid process unfolds in an organized manner. This includes the response to bid questions, substitution requests, the issuance of addenda, the bid opening process, duration of bid effort, and the process's overall governance to eliminate the possibility of a protest. Griffin understands this process well and brings leadership and efficiency to this process that all too often descends into a chaotic effort fraught with irregularities.

The bid evaluation process is yet another key to success. Ensuring the bids are both responsive and responsible, that the bidders have included all necessary bid requirements and qualitative sections demonstrating similar project capabilities, Griffin will oversee this effort to provide a comprehensive bid analysis that addresses all essential requirements and facilitates the decision-making process.

14. Bid and Award Services – Other Vendors

Many of the key challenges to a project is the bidding of support services. These include but are not limited to; special inspection and testing, commissioning, sustainability coordination, moving services, surveying, site utilities evaluation, FF&E procurement and installation, Hazardous materials investigation, and abatement monitoring. Griffin has standard documents for the procurement of all these services, which can be incorporated to whatever extent the City chooses. Griffin will work to produce these RFP packages and will oversee the recommendations for award. And most importantly, we will do so at the right time in concert with the schedule's progress to ensure the City receives the highest value.



*Fullerton Multigenerational Community Center &
Aquatic Facilities*

15. Owner Representation During Construction

As mentioned above, the City intends to select another firm to perform Construction Management and that our Project Manager provide Owner Representation during Construction. Because of this unique set of circumstances, and because Owner Representation does not require full time supervision, this approach will facilitate our ability to maintain a single point of contact through this phase of the project.

In the role of Owner Representative, we will oversee the Construction Manager, attend each weekly progress meeting, review any change orders the Construction Manager recommends for approval, and will represent the City in the resolution of issues. In essence, we will function as an extension of staff to the City to ensure continuity of service and to support the productivity of the team. Specifically, our role will be to:

- a. Provide monthly reports to the City staff.
- b. Work closely with City staff to provide staff reports and community updates.
- c. Ensure the project budget and schedule are maintained.
- d. Make presentations to City Council as necessary.
- e. Serve as a fiduciary on behalf of the City to ensure its success.

Additionally, as part of the Construction Manager's scope of work, we will require they perform a level of service that at minimum includes the following:

- Preconstruction Meeting
- Contract Administration
- Submittal Procedures
- Meetings
- Quality Assurance/Quality Control (QA/QC)
- Coordination of Other Consultants
- Construction Observation
- Non-Conforming Work
- Exercise of Contract Perogatives
- Progress Review
- Maintain On-Site Records
- Schedule of Values & Processing of Payments
- Evaluate Change Order Proposal Costs
- Change Order Reports
- Project Status Reports
- Equipment Instruction Manuals, Warranties, and Releases
- Future Facilities Maintenance Plan
- Completion of Contracts & Project
- As-Built Documents
- Training Sessions
- Accounting Records
- Permits
- Initial Start-Up & Testing
- Stormwater Pollution Prevention Plan
- Punch Lists

ATTACHMENT D

CONSULTANT INSURANCE

- 1.1 Insurance.** The policy or policies of insurance maintained by Consultant and each of its subconsultants must provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$2,000,000 per occurrence \$4,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Professional Liability	\$ 2,000,000 per claims made or occurrence

- 1.2 Required Coverage Forms.** The following insurance policies must be written on the following forms:

- A. The Commercial General Liability coverage shall be written on Insurance Service Office (ISO) form CG 00 01, or substitute form providing liability coverage as broad.
- B. The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing liability coverage as broad.

- 1.3 Required Endorsements.** The following insurance policies must include the following endorsements:

- A. The Commercial General Liability policy must contain the following endorsements, which must accompany the Certification of Insurance:
 1. An Additional Insured endorsement using ISO form CG 20 10 or CG 20 33 or a form at least broad, naming (a) Client and its officers, directors, and employees, and (b) City of Piedmont, hereinafter referred to as "Public Agency," and their council members, directors, officers, agents and employees as Additional Insured.
 2. A primary non-contributing endorsement evidencing that Consultant's insurance is primary and any insurance or self-insurance maintained by Client or the Public Agency will be excess and non-contributing.
- B. The Worker's Compensation policy must contain a waiver of subrogation endorsement waiving all rights of subrogation against (a) Client and its officers, directors, and employees, and (b) Public Agency and its council members, directors, officers, agents, employees.
- C. All insurance policies required by this Agreement must waive all rights of subrogation against (a) Client and its officers, directors, and employees, and (b) Public Agency, and its council members, directors, officers, agents and employees when acting within the scope of their appointment or employment.
- D. All insurance policies required by this Agreement must give Client and Public Agency thirty (30) days' notice in the event of cancellation and ten (10) days' notice for non-payment of premium. This shall be evidenced by policy provisions or an endorsement separate from the Certificate of Insurance.
- E. If Consultant's Professional Liability policy is a "claims made" policy, Consultant must maintain professional liability coverage for 3 years following completion of Consultant's services under the Agreement.
- F. The Commercial General Liability policy must contain a severability of interests' clause (standard in the ISO CG 001 policy).

- G. Insurance certificates should be forwarded to both Client and the _____ address listed in the Prime Contract. _____ Public Agency

1.4 Additional Insured. Consultant must name as Additional Insured on Consultant's Commercial General Liability and Automobile policies and as Certificate Holder on Consultant's Professional Liability and Workers' Compensation policies the following: Griffin Structures, Inc., officers, directors, and employees. To the extent commercially available at no additional cost, policy or policies providing insurance as required, with the exception of professional liability and workers' compensation, will defend and include Client and Client's directors, officers, and employees as additional insureds on a primary basis for work performed under or incidental to this Agreement. The form of the endorsement will be ISO CG 20 10 11 85 (Form B) or its equivalent. If the additional insured has other insurance applicable to the loss, then it will be on an excess or contingent basis.

1.5 Certificate of Insurance. Consultant will furnish Client, prior to performing Services under this Agreement and upon expiration of each policy, with Certificates of Insurance (including all endorsements required herein) completed by a duly authorized representative of the insurer certifying that at least the minimum insurance coverage required herein is in effect and specifying that the liability coverage (except for professional liability) is written on an occurrence form and that the insurance coverage will not be canceled by the Insurer without at least 30 days prior written notice to Client, or 10 days in the case of non-payment cancellation. Failure of Client to demand such certificate or other evidence of full compliance with these insurance requirements or failure of Client to identify a deficiency from evidence provided will not be construed as a waiver of Consultant's obligation to maintain such insurance.

1.6 Subconsultant Insurance. All subconsultants performing work on behalf of Consultant pursuant to this Agreement must obtain insurance subject to the same terms and conditions as set forth herein for Consultant. Consultant will not allow subconsultants to work if subconsultants have less than the level of coverage required under this Agreement. It is the obligation of Consultant to provide notice of the insurance requirements to every subconsultant and to receive proof of insurance prior to allowing any subconsultant to begin work. Such proof of insurance must be maintained by Consultant through the entirety of this Agreement for inspection by Client or Public Agency representative(s) at any reasonable time.

1.7 Self-Insured Retentions or Deductibles. All self-insured retentions (SIRs) or deductibles shall be clearly stated on the Certificate of Insurance. If no deductibles or SIRs apply, indicate this on the Certificate of Insurance with a zero (0) by the appropriate line of coverage. Any deductible or self-insured retention (SIR) in an amount in excess of \$25,000 (\$5,000 for automobile liability), must be specifically be approved by Client. The named insured is responsible for reimbursement of any deductible to the insurer. Upon notice of any actual or alleged claim or loss arising out of Consultant's or a subconsultant's work hereunder, the responsible party for any actual or alleged claim shall immediately satisfy in full the SIR provisions of the policy in order to trigger coverage for Consultant and Additional Insureds.

1.8 Failure to Maintain Insurance. If Consultant or any of its subconsultants fails to furnish and maintain the insurance required under this Agreement, then Client (a) may give notice of default to Consultant and thereafter terminate this Agreement if the default is not cured, or (b) may (but will not have the obligation to) purchase such insurance on behalf of Consultant, and Consultant will immediately reimburse the cost of such insurance to Client, and upon demand will furnish to Client any information needed to obtain such insurance. If Consultant fails to pay Client the cost of such insurance, then Client may offset such cost against amounts otherwise payable to Consultant under this Agreement or any other agreement between Consultant and Client, or any affiliate of Client.

1.9 General Provisions. All insurance must be provided through companies authorized to do business in the state in which the Project is located, except professional liability. In addition, certified copies of all insurance policies required will be provided to Client within 10 days of Client's request for such copies. All coverages required of Consultant will be primary over any insurance or self-insurance program carried by Client or Public Agency. If Consultant has any self-insured retentions or deductibles under any of the minimum required insurance coverage, then Consultant must identify on the certificate of insurance the nature and amount of such self-insured retentions or deductibles and provide satisfactory evidence of financial responsibility for such obligations. All self-insured retentions or deductibles will be Consultant's sole responsibility. All insurance policies must be issued by an insurer licensed to do business in the State of California (California Admitted Carrier) or have a minimum rating of A (Secure A.M. Best's Rating) and

a minimum rating of VII (Financial Size Category) as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com.

1.10 Primary Insurance. The insurance policies maintained by Consultant and its subconsultants will be primary insurance and no insurance held or owned by Client will be called upon to cover any loss under the insurance policy(ies) of Consultant or its subconsultants.

ATTACHMENT E

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (the “**Agreement**”) is made of this 10 day of February, 2023 by and between GRIFFIN STRUCTURES, INC., having a place of business at 1 Technology, Building I, Suite 829, Irvine, CA 92618 (“**Client**”) and GEOCON CONSULTANTS Inc., having a place of business at 6671 Brisa Street, Livermore, California 94550 (“**Consultant**”).

Consultant agrees to hold in strict trust and confidence any and all Client-generated or provided information, materials, data, trade secrets, etc. (collectively, “**Confidential Information**”) and agrees that Confidential Information shall be used only in conjunction with Consultant’s scope of services. Consultant agrees that Confidential Information shall not be used (in whole or in part) for any other purpose by Consultant or disclosed or provided to any other third party without the prior written consent of Client. Confidential Information shall also apply retroactively to any and all proposals, submittals, etc. generated by Client in which Consultant was a part.

THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Confidential Information can be in any tangible or electronic medium, including copies, whether authorized or not. The obligations of confidentiality apply to any and all information shared by Client to Consultant, whether or not it is marked “Confidential.”
2. Client shall make Confidential Information available to Consultant solely for the purposes of, and in connection with, Consultant’s performance of services for Client under the Consultant Agreement that this Agreement is attached to.
3. Consultant may neither use nor disclose any Confidential Information for any purpose whatsoever, except in the performance of services for Client, and Consultant may not disclose Confidential Information to any third party or use Confidential Information for Consultant’s own use without the prior written consent of Client.
4. Consultant shall restrict the disclosure of Confidential Information to those personnel who reasonably require access to the Confidential Information in the course of performing work relating to Client. Consultant shall take such precautions as are necessary to ensure that any of its personnel having access to the Confidential Information shall abide by the obligations set forth in this Agreement, and may not disclose it or use it for their own benefit or for the benefit of any third party.
5. At the conclusion of Consultant’s services, or upon demand by Client, Consultant shall return all Confidential Information in Consultant’s possession, including but not limited to proposals, prototypes, written notes, photographs, sketches, models, or memoranda, within three business days of receipt of written demand from Client.
6. Nothing in this Agreement shall be understood as granting any rights or license to Consultant to use, duplicate, reformat, reissue, etc. any Confidential Information provided or generated by Client.
7. If Consultant receives a request, subpoena, or other legal demand for Confidential Information, then Consultant must promptly notify Client in writing so that Client may seek a protective order or take other appropriate action.
8. Consultant acknowledges and agrees that Client has invested considerable time and money that would be difficult to quantify in the training and development of its employees. Therefore, without receiving Client’s prior written permission, Consultant agrees to not hire, retain, or contract with any employee (“**Covered Employee**”) of Client who performs any services related to the Project under this Agreement for a period of two years following the date this Agreement is terminated or for two years following the separation of a Covered Employee from Client’s employment.
9. Consultant and Client acknowledge that if this Agreement is breached, Client will be irreparably and immediately harmed and could not be made whole by monetary damages alone, and that in addition to any other remedy to which Client may be entitled, Client shall also be entitled to injunctive relief.
10. Confidential Information disclosed under this Agreement shall continue to be covered by the terms of this Agreement for a period of three years following termination of this Agreement.

11. No failure or delay by either party to enforce its rights under this Agreement will be deemed a waiver of any of those rights.
12. This Agreement shall be governed and enforced by the laws of the State of California, without regard to its choice of law provisions, and any arbitration or litigation arising out of or relating to this Agreement will be held exclusively in Orange County, California.
13. Both parties to this Agreement have been represented by competent counsel or have been given an opportunity to do so, and both parties have had an opportunity to review and suggest changes to this Agreement. Therefore, the parties agree that this Agreement is deemed to have been jointly prepared by the parties, and any uncertainty or ambiguity existing in it will not be interpreted against any party under the presumptions of California Civil Code Section 1654, but rather will be interpreted according to the rules generally governing the interpretation of contracts.
14. If a lawsuit, arbitration, or other proceeding is instituted by any party to enforce any of the terms or conditions of this Agreement, or to declare rights hereunder, the prevailing party in such litigation, arbitration, or proceedings shall be entitled, as an additional item of damages, to such costs, including but not limited to attorney's fees, arbitrators' fees, arbitration administrative fees, travel expenses, and other out-of-pocket expenses or costs of such litigation, arbitration, or other proceeding as may be fixed by the court, arbitrator, or other judicial or quasi-judicial body having jurisdiction, whether or not such litigation, arbitration, or proceedings proceed to a final judgment or award.
15. In the event of any dispute under or relating to the terms of this Agreement, or the breach thereof, it is agreed that the same shall be submitted to arbitration before the American Arbitration Association, with all proceedings occurring in Irvine, California. The arbitration shall be conducted in accordance with the rules promulgated by the American Arbitration Association. Any award rendered by the arbitrator may be confirmed as a judgment in any state or federal court having jurisdiction.
16. This Agreement shall inure to the benefit of, and may be enforced by, the parties and all their respective successors and assigns.
17. This Agreement states the entire understanding of the parties with respect to its subject matter and may be amended only in a writing signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Confidentiality Agreement as of the date first written above.

<u>CLIENT</u> GRIFFIN STRUCTURES, INC. a California corporation By: _____ Its: _____	<u>CONSULTANT</u> Geocon Consultants Inc. By: _____ Its: _____
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