

# Pillar

## AGREEMENT FOR PROFESSIONAL SERVICES

This **Agreement for Professional Services** (hereinafter referred to as “**Agreement**”) is entered into this 8th day of February, 2024, between **PILLAR, LLC** (hereinafter referred to as “**Pillar**”), whose address is 14425 State Highway 181, Fairhope, Alabama, and **Client**, who is identified below, for the provision of certain professional services as more particularly set forth in Section 1 (A) below and in accordance with the terms and conditions set forth herein.

Client: The City of Foley

Client Contact Person: Chad Christian

Client Mailing Address: 200 W. Laurel Ave. Suite 225 Foley, Al 36535

Telephone Number: P: 251-970-1104

Client Contact Email: cchristian@cityoffoley.org

Project Name: Pilgrim Road Design - E. Michigan to E Jackson Street

Pillar and Client, for themselves, and their respective successors and assigns, agree as follows:

1. SCOPE OF SERVICES

A. Pillar shall provide the following services to Client (hereinafter referred to as the “**Services**”):

Attachment A - Scope of Services

B. Specifically excluded from this scope of services is the providing of future updates, reviews, or expert opinions or witness services. If Client subsequently requires additional services not listed above, Client and Pillar may negotiate a separate agreement detailing the same.

2. COMPENSATION. Client agrees to compensate Pillar for the Services as follows:

Attachment A - Scope of Services

**ALL OTHER TERMS OF THIS AGREEMENT CONTINUE ON PAGES 2-4 AND ARE INCORPORATED BY THIS REFERENCE.**

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

Pillar, LLC

Client: The City of Foley

By: \_\_\_\_\_ (Sign)

By: \_\_\_\_\_ (Sign)

Print Name: Thomas E. Granger

Print Name: \_\_\_\_\_

Its: Member

Its: Owner

3. PAYMENT OF COMPENSATION.

**Accounts Payable Contact:**

Name:	Phone:	Email:	Address (if different from Client)
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A. Client agrees to reimburse Pillar, on a monthly basis, for all Reimbursable Costs and Reimbursable Expenses incurred by Pillar. "Reimbursable Costs" shall mean Pillar's reasonable out-of-pocket expenses incurred in performing the Services. "Reimbursable Fees" shall mean the actual fees charged by any professionals or other parties with whom Pillar may subcontract to perform any part or all of the Services, plus an administrative charge of ten percent (10%).

B. Pillar shall invoice Client for Services performed during each calendar month. For Services performed on a contract price basis, the amount of each invoice shall reflect the percentage of Services completed as of the date of the invoice, as determined by Pillar in its sole discretion. For Services performed on an hourly basis, each invoice shall list time charges. Monthly invoices shall also include all Reimbursable Costs and Reimbursable Fees for which Client is being charged.

C. Client hereby agrees to pay each invoice in full within fifteen (15) days of the date of the invoice. Payments should be mailed or delivered to Pillar at the address listed on the invoice or at such other address as Pillar may direct. In the event Client fails to pay an invoice in full within fifteen (15) days of the date thereof, such unpaid invoice shall accrue interest at a rate of the lesser of eighteen percent (18%) per annum or at the maximum legal rate. All payments shall be made without any deduction, setoff, or counterclaim of any kind whatsoever.

D. In the event Client fails to pay any Pillar invoice in full within thirty (30) days of the date of the invoice, Client shall be in default hereunder.

4. INDEPENDENT CONTRACTOR RELATIONSHIP. Nothing herein shall create, or be construed to create, between Pillar and Client an employer/employee or principal/agent relationship; rather, the relationship of Pillar and Client shall be that of an independent contractor. Client agrees that Pillar may engage one or more subcontractors to perform some or all of the Services.
5. TERMINATION. Pillar may terminate the performance of any further Services under this Agreement, with or without cause and for any or no reason, upon thirty (30) days written notice to Client. Upon the effective date of such termination, Pillar shall cease work on all Services. Within thirty (30) days of such termination, Client shall pay Pillar in full for all Services performed and all Reimbursable Costs and Reimbursable Fees incurred prior to such termination. Termination by Pillar shall not relieve Client of any obligation to pay Pillar for Services already performed as required hereunder.
6. DELAY. Neither party shall be deemed to be in default of this Agreement to the extent that any delay or failure in the performance of an obligation, other than the payment of money by Client to Pillar, results from any causes beyond its reasonable control and without its fault or negligence. For this purpose, such acts or events include, without limitation, storms, floods, acts of God, epidemics, protest demonstrations, war, terrorism or terrorist acts, riot, strikes, or other industrial disturbances or anticipated site conditions. In the event that such acts or events do occur, Client and Pillar shall attempt to overcome all difficulties arising and to resume as soon as reasonable possible the performance of their respective obligations hereunder.
7. COST ESTIMATES. Pillar may, upon the Client's request, prepare a good faith cost estimate for the Services prior to the commencement of their performance. However, Pillar does not, and Client acknowledges that Pillar does not, warrant that the actual costs of the Services incurred by Client will not deviate from any such cost estimate.

8. LIMITATION OF LIABILITY AND INDEMNIFICATION

A. Under no circumstances shall the total liability of Pillar, its employees, officers, managers, agents, and consultants, for all claims, causes of action, losses, damages, costs, and expenses, including

attorneys' fees, exceed the aggregate amount actually paid to Pillar under this Agreement, regardless of the legal theory under which such liability is imposed. In no event shall Pillar be responsible or held liable for any indirect, incidental, special, consequential, or punitive damages whatsoever, including, without limitation, loss of use of property, loss of profits or other revenue, interest, loss of product, increased expenses or business interruption, however the same may be caused.

B. Client agrees to and does hereby indemnify and hold Pillar, its employees, officers, managers, agents, consultants, successors and assigns harmless from and against all claims, causes of action, liability, losses, damage, costs, and expenses, including reasonable attorneys' fees, arising out of or related to the negligent or intentional acts or omissions of Client, or Client's agents or employees.

C. Client acknowledges and agrees that Pillar is not and shall not be held responsible for or be deemed to have control over the means, methods, techniques, sequences, procedures, or safety precautions and programs utilized by any contractor or other party working on the Project. Client further acknowledges and agrees that Pillar shall not be responsible for any contractor's failure to comply with any construction contract or with any applicable federal or State laws, regulations, ordinances, or industry rules. Client hereby indemnifies and holds Pillar, its employees, officers, managers, agents, consultants, successors and assigns harmless from and against all claims, causes of action, liability, losses, damage, costs, and expenses, including reasonable attorneys' fees, arising out of or related to the negligent or intentional acts or omissions of any contractor or subcontractor of Client or of such contractor's or subcontractor's employees or agents.

D. Client assumes all risk and responsibility for all loss of, damage to, and/or destruction of the Project and all property owned by or in the custody of Client, including its affiliates, however such loss, damage, or destruction may occur and waives any right of recovery it may have against Pillar for any such loss, damage, or destruction and agrees to obtain a waiver of subrogation rights of its insurers against Pillar for any such loss, damage, or destruction.

9. WARRANTIES AND REPRESENTATIONS OF CLIENT. Client warrants and represents to Pillar that:

A. Client is a business entity, validly existing and in good standing under the laws of the state in which it is organized or incorporated and is qualified to do business in the state in which the Project is being constructed or is located.

B. Client has all requisite power and authority to enter into this Agreement.

C. Client is the owner of the real property upon which the Project is being constructed or otherwise carried out (hereinafter referred to as the "**Project Property**"), or Client is the Project Property owner's duly authorized representative, and Client hereby grants Pillar permission to enter the Project Property for the purpose of performing the Services;

D. Client shall promptly provide Pillar with any information or documents requested by Pillar related to the Project; and

E. Client shall obtain and pay all expenses involved in promptly obtaining the easements and rights of way necessary for Pillar to perform the Services identified herein.

10. TITLE TO PLANS AND SPECIFICATIONS.

A. All Final Documents, including but not limited to drawings, specifications, and surveys, prepared by Pillar pursuant to this Agreement which Pillar supplies to Client shall become the property of Client upon Client's payment in full for the Services. For purposes of this Agreement, "**Final Documents**" shall mean only those printed, non-electronic format documents, which are duly marked with the original seal of a Pillar engineer or surveyor. All other notes, work product, drafts, CADD files, electronic, or other data or documents prepared by Pillar shall remain Pillar's sole property at all times, and Client shall have no right to disclose, copy, rely on, or otherwise use the same.

B. Any Final Documents supplied to Client by Pillar in connection with the Project are intended for the sole and exclusive use of Client and its agents and employees for the Project. Client shall indemnify, defend, and hold Pillar harmless from and against all losses, expenses, claims, and damages which may result

from any disclosure, use or reuse of any Final Documents other than in connection with completing construction, maintenance, and/or repair of the Project.

C. Client shall not use any Pillar professional's license seal or stamp in any form or manner as part of any reuse of documents developed under this Agreement.

## 11. DEFAULT

A. Either party's failure to perform or comply with any one or more of the terms of this Agreement shall constitute a default. Except for monetary defaults by Client, the non-defaulting party shall give the defaulting party notice of default, at which time the defaulting party shall have two (2) business days to begin taking steps to cure the default. In the event of monetary default by, Pillar shall give Client written or electronic written notice of such default, and Client shall have one (1) business day to cure the default.

B. Determination of default made by Pillar in good faith under the belief that a default exists under the terms hereof shall be conclusive of the fact of such default and on Pillar's right to proceed as herein provided.

C. In the event of default by Client, Pillar may, in its sole discretion, suspend its performance hereunder. In no event shall Client be relieved of any obligation to pay Pillar for Services already performed as required hereunder.

D. In the event of default by either party, the parties shall pursue resolution of all disputes pursuant to Section 12 below.

## 12. DISPUTE RESOLUTION

A. The parties expressly agree to attempt in good faith to negotiate any controversy or claim of whatever nature arising out of or relating to this Agreement, or the breach thereof. Further, the parties agree to mediate in Baldwin County, Alabama, any dispute that cannot be settled by negotiation. Either party may institute non-binding mediation.

B. Any dispute remaining after completion of mediation between Pillar and Client (or after the mediator has declared an impasse) shall be resolved through binding arbitration before a single arbitrator, which may be initiated by either party and shall proceed under the American Arbitration Association Construction Industry Arbitration Rules in Baldwin County, Alabama. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with the applicable law in a court of competent jurisdiction as set forth below.

C. Alabama state law shall apply to the resolution of all issues, and venue shall exclusively lie in Baldwin County, Alabama.

13. NOTICES. All notices and communications required or permitted to be given to Client or Pillar hereunder shall be in writing and shall be deemed duly given on the earlier of (i) the date when delivered by hand; (ii) upon receipt when delivered by electronic mail, proof of which may be satisfied by delivery confirmation produced by the sender's electronic mail software; (iii) the next business day after delivery by a reputable overnight delivery service; or (iv) three (3) business days after being placed in the United States Mail. All notices shall be directed to the appropriate party at the addresses set forth on Page 1 of this Agreement. A party may change its respective contacts, telephone numbers, addresses, and email addresses set forth above upon written notice to the other party.

14. ENTIRE AGREEMENT. This Agreement constitutes the complete agreement between the parties and supersedes any and all prior understandings, conversations, and proposals. For the sake of convenience, the parties may, from time to time, issue purchase or work orders. However, the contractual terms and conditions of this Agreement may be supplemented, deleted, and/or modified only through written amendments signed by both parties, and not through purchase or work orders or any other such similar document. In the event of any conflict between this Agreement and any of the Attachments hereto, the terms of this Agreement shall control.

15. ASSIGNMENT. Neither party may assign this Agreement without the prior written consent of the other party.
16. APPLICABLE LAW AND INTERPRETATION. All rights and liabilities of the parties under the Agreement shall be interpreted and enforced under the laws of the State of Alabama. The language used in this Agreement shall be construed according to the fair and usual meaning of the language and will not be strictly construed for or against either party.
17. WAIVER. The failure of either party to invoke any provision hereof or assert any right given herein on any one occasion or on any series of occasions shall not amount to or be interpreted as a waiver or release of any such provision or right.
18. SEVERABILITY. The partial or complete invalidity of any one or more provisions of this Subcontract shall not affect the validity or continuing force and effect of any other provision. If any provision of the Agreement is found unenforceable by any court or tribunal, Client and Pillar agree that such provision shall be modified to the minimum extent necessary to render it enforceable and that the remainder of the Subcontract shall not be otherwise affected.
19. TITLES. The titles given to the individual sections or paragraphs of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose.