



City of Foley, AL

407 E. Laurel Avenue
Foley, AL 36535

Signature Copy

Resolution: 21-1192-RES

File Number: 21-0320

Enactment Number: 21-1192-RES

A RESOLUTION APPROVING ENGINEERING DESIGN GROUP'S PROPOSAL FOR
PROFESSIONAL SERVICES FOR TURN LANES ON COUNTY ROAD 12 AND JAMES ROAD

WHEREAS, We received a proposal from Engineering Design Group, LLC. for Topographic Survey and Civil Construction Design for turn lanes on County Road 12 and James Road, and

WHEREAS, We are proposing a shift of funds from an Alston Street Project to this project account.

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Foley, Alabama, as follows:

SECTION 1: Approves a proposal from Engineering Design Group, LLC. for Topographic Survey, Civil Construction Designs and Geotechnical Investigations and appropriates \$29,100.00 under Account No. 400-3020-5152 R65 Prof.

SECTION 2: This Resolution shall become effective immediately upon its adoption as required by law.

PASSED, APPROVED AND ADOPTED this 21st day of June, 2021.



President's Signature

[Handwritten Signature]

Date

6-21-21

Attest By City Clerk

[Handwritten Signature]

Date

6-21-21

Mayor's Signature

[Handwritten Signature]

Date

6/24/21



May 5, 2021

City of Foley
Engineering Department
200 N. Alston Street,
Foley, AL 36535

Attn: Chad Christian, PE – City Engineer

Re: Proposal of Professional Services – County Road 12 Roadway Widening

Dear Chad,

Engineering Design Group, LLC (EDG) is pleased to submit this proposal of professional services associated with the above-referenced project. Our understanding of the project is that the City proposes a roadway improvements project to widen County Road 12 in order to add a left turn lane for eastbound traffic and the increase radii size for the right turn from westbound traffic. The project is located at the Cottages on the Green subdivision entrance. The exact location is shown on the attached Exhibit A.

We will provide topographic and right-of-way surveying, civil construction documents, bidding administration, construction administration and geotechnical investigations. EDG will engage a licensed geotechnical firm to perform the geotechnical investigations. Our scope of work is described in more detail on the following pages. We understand that the project will be funded by the City, and Federal, State or grant funds are not required.

Thank you for the opportunity to present our proposal. We look forward to working with you on this project.

This agreement is provided with the expectation that it is not being used in a price comparison with other professional services firms. Alabama law prohibits licensed engineers and land surveyors from participating in any process that solicits prices from two or more licensed engineers or land surveyors simultaneously. The law defines this practice as bidding and participation by a licensee is prohibited. If this agreement is being used in this manner, we must by law, withdraw this agreement from consideration.

Attachments: Exhibit A – Conceptual Roadway Improvements

Scope of Services

1.1 Topographic and Right-of-Way Survey

Engineering Design Group will perform a topographic survey for the use in basis of design for this project. The limits of the survey are as required to include the current conceptual footprint of the project. Contours will be shown at 1-foot intervals, and will be based from USGS datum. Spot elevations will be shown in flat areas. Two benchmarks will be set on site. Visible drainage structures will be shown indicating top and invert elevations as well as type and size of pipes. Visible improvements will be shown including buildings, walls, fences, sidewalks, curbs, parking areas, and paved areas. Landscaped areas and tree lines will be shown on survey, individual shrubs and trees will not be shown on survey. The limits of the survey will extend 100' into existing streets to which our new improvements will tie.

We will show visible utilities and subsurface utilities as marked by utility companies or as shown on maps. We will coordinate with Alabama One Call requesting all subsurface utilities situated in public right-of-way marked to enable an accurate location and depiction of the subsurface utilities. Alabama One Call does NOT mark any utilities that are within the limits of private property.

1.2 Geotechnical Investigations

EDG will engage a licensed geotechnical firm registered in the State of Alabama to perform pre-design subsurface investigations. The purpose of our investigation will be to determine the subgrade soil and ground water conditions along the proposed turn lane improvements on Highway 12 at Cottages on the Green. We will make recommendations regarding site grading, subgrade preparation and pavement build-up. This proposal is based on four (4) manual hand auger borings to depths of about 4 feet to be performed along the proposed roadway. The borings will include Dynamic Cone Penetrometer soundings to help determine the consistency (firmness) of underlying subgrade soils.

A geotechnical technician will be on-site during the field exploration to locate the boring points and observe the soil conditions encountered in the borings. Boring locations may be adjusted based on soil and ground water conditions encountered. Soil laboratory testing will include soil grain size determination and Atterberg limit determination to classify the soils along with in-situ soil moisture content determination.

1.3 Civil Construction Documents

We will develop a set of civil construction documents for the roadway improvements per City of Foley regulations. Our civil engineering design will be based on the survey information provided in item 1.1 above. The layout of the improvements will generally follow the conceptual plan but will be dictated by the final design. We will

submit the civil engineering plans to the City of Foley Engineering department for review and address any comments. We will meet with you and any necessary City Officials as needed to work through any design issues that arise during design. The Construction Documents will include the following design information, at a minimum:

- a. Geometric Layout Plan - Plan will provide horizontal control for the layout of the permanent roadway improvements.
- b. Demolition Plan – Plan will include limits of demolition work associated with the project.
- c. Roadway Striping and Signing Plan – Plan will provide design and layout of the proposed roadway striping, pavement markers and signage.
- d. Site Grading and Drainage Plan-Plan will include existing and finished contours and storm water drainage facilities.
- e. Storm Drainage Profiles - We will provide necessary profiles for storm drainage pipes associated with the improvements (if required).
- f. Roadway Cross-sections – We will provide cross-sections of the roadway at 50 foot intervals along the length of the project.
- g. Temporary Construction Traffic Control Plans – Plan will include typical traffic control measures per the MUTCD latest edition.
- h. Phased Erosion Control Plan-Plan will include the necessary structural BMP devices for the control of sedimentation at the site. We will provide phased erosion control plans, the purpose of which will be to mitigate soil erosion at the various stages of site construction. We anticipate two phases: initial site improvement construction, and final stabilization.
- i. Notes and Details-We will provide standard notes and details which pertain to the site's specific construction requirements.

1.4 Bidding Administration

In this task we will work with you to develop the project manual which will include the front end documents for the purposes of advertising and administering the bidding process. We assume that we will include general and supplemental conditions already developed by the City for the purposes of project bidding. We will attend one pre-bid and bid opening. We will respond to contractor pre-bid request for information.

1.5 Construction Administration

In this task we will perform construction review to evaluate the contractor's general conformance with plans and specifications. We will review shop drawings and submittals, make periodic site visits to observe construction, answer contractor construction RFIs and review contractor pay request for recommendation regarding processing to the City. Detailed construction inspections, exhaustive or continuous project review or inspection services are not included within this scope of proposal.

1.6 Additional Services

Service needs that arise and are required but have not been included in our original scope of services will be performed on an hourly basis according to the attached fee schedule. We will not proceed with additional work without the Client's approval.

Exclusions

Items specifically **NOT INCLUDED** in this scope of work include: Permitting fees, ADEM construction stormwater permitting (it is assumed that land disturbance will be less than 1 acres and therefore will not require permitting through ADEM's office), ALTA Survey, Individual Tree Locations, Landscape Design, Utility relocations (we assume that the concept will be revised to avoid utility relocations), Construction phase Geotechnical Testing, Corps of Engineers Permitting, Structural Design of Retaining Walls and Storm Water Monitoring. If any of these items becomes necessary, we will perform those tasks as Additional Services or help you to contract with an entity which provides that service.

2.0 Compensation and Payment for Services:

Engineering Design Group, LLC's fee for the scope of services outlined in Part 1.0 is as follows:

2.1 Topographic Survey	\$ 4,200.00 Lump Sum
2.2 Civil Construction Documents	\$22,500.00 Lump Sum
2.3 Bidding Administration	\$ 4,500.00 Lump Sum
2.4 Construction Administration	\$ 5,400.00 Budget Estimate
2.5 Geotechnical Investigations	\$ 2,400.00 Lump Sum
2.6 Additional Services	Hourly Rates, as Required

Our receipt of a signed copy of this proposal will serve as our formal notice to proceed with the above described scope of services.

Engineering Design Group, LLC can commence work immediately upon receipt of your written authorization to proceed. If this proposal is acceptable, please authorize Engineering Design Group, LLC to proceed with the above Scope of Services by signing in the appropriate location and returning a copy to Engineering Design Group, LLC.

Sincerely,
Engineering Design Group, LLC



David A Dichiaro, P.E., Alabama License #35032

"This cost proposal is accepted as written and Engineering Design Group, LLC is hereby authorized to commence the work as described in the above Scope of Services"

Authorization by:



Title:

Mayor

Date:

6/24/21

HOURLY RATE SCHEDULE AND REIMBURSABLE EXPENSES

Personnel time for additional services covered under this agreement will be invoiced based on the following Rate Schedule. These Rates are subject to adjustment on January 1st of each year.

Engineering Rate Schedule

- | | |
|--------------------------|-------------------|
| • Principal in Charge | \$150.00 per hour |
| • Project Manager | \$130.00 per hour |
| • Senior Design Engineer | \$120.00 per hour |
| • Project Engineer | \$105.00 per hour |

Surveying Rate Schedule

- | | |
|------------------------------|-------------------|
| • Field Crew | \$145.00 per hour |
| • Professional Land Surveyor | \$125.00 per hour |
| • Senior Drafter | \$ 95.00 per hour |
| • Drafter | \$ 85.00 per hour |

Reimbursable Expenses

Expenses incurred for work covered under this contract will be invoiced at cost plus 15 percent. These expenses include, but are not limited to:

- Printing
- Shipping
- Permitting and Application Fees
- Outside Consultants
- Travel – (Travel will be reimbursed at \$0.58 per mile)

Payment

Services rendered in accordance with this proposal will be invoiced monthly based on work completed. Invoices are due upon receipt and will be considered delinquent if not received within 30 days after receipt. Engineering Design Group LLC may, without legal consequence, suspend services until payment is received.

Client agrees that payment for services rendered shall not be contingent or dependent upon any conditions or any action or undertaking of the Client other than those conditions, if any, specifically set forth in this agreement.

TERMS AND CONDITIONS:

1. **CONTRACT** - These Contract Provisions and the accompanying Proposal constitute the full and complete Agreement between the parties and may be changed, amended, added to, superseded, or waived only if both parties specifically agree in writing to such amendment of the Agreement. In the event of any inconsistency between these Contract Provisions and any proposal, contract, purchase order, requisition, notice to proceed, or like document, these Contract Provisions shall govern.
2. **RIGHT OF ENTRY** - When entry to property is required for the CONSULTANT to perform its services, the Client agrees to obtain legal right-of-entry on the property.
3. **DOCUMENTS** - All reports, notes, drawings, specifications, data, calculations, and other documents, including those in electronic form, prepared by CONSULTANT are instruments of CONSULTANT's service that shall remain CONSULTANT's property. The Client agrees not to use CONSULTANT-generated documents for marketing purposes, for projects other than the project for which the documents were prepared by CONSULTANT, or for future modifications to this project, without CONSULTANT's express written permission.

Any reuse or distribution to third parties without such express written permission or project-specific adaptation by CONSULTANT will be at the Client's sole risk and without liability to CONSULTANT or its employees, subsidiaries, independent professional associates, subconsultants, and subcontractors. Client shall, to the fullest extent permitted by law, defend, indemnify, and hold harmless CONSULTANT from and against any and all costs, expenses, fees, losses, claims, demands, liabilities, suits, actions, and damages whatsoever arising out of or resulting from such unauthorized reuse or distribution.

4. **DISPOSAL OF SAMPLES** - CONSULTANT will discard samples upon completion of the work covered under this Agreement, unless the Client instructs otherwise in writing.
5. **HAZARDOUS MATERIALS** - The scope of CONSULTANT's services for this Agreement does not include any responsibility for detection, remediation, accidental release, or services relating to waste, oil, asbestos, lead, or other hazardous materials, as defined by Federal, State, and local laws or regulations.
6. **CONSTRUCTION PHASE SERVICES** - If CONSULTANT performs any services during the construction phase of the project, CONSULTANT shall not supervise, direct, or have control over Contractor's work. CONSULTANT shall not have authority over or responsibility for the construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the work of the Contractor. CONSULTANT does not guarantee the performance of the construction contract by the Contractor and does not assume responsibility for the Contractor's failure to furnish and perform its work in accordance with the Contract Documents.
7. **STANDARD OF CARE** - CONSULTANT and its employees, subsidiaries, independent professional associates, subconsultants, and subcontractors will exercise that degree of care and skill ordinarily practiced under similar circumstances by design professionals providing similar services. Client agrees that services provided will be rendered without any warranty, express or implied.

CONSULTANT shall exercise usual and customary professional care in its efforts to comply with applicable codes, regulations, laws, rules, ordinances, and such other requirements in effect as of the date of execution of this Agreement.

8. **OPINION OF PROBABLE COSTS** - When required as part of its work, CONSULTANT will furnish opinions of probable cost, but does not guarantee the accuracy of such estimates. Opinions of probable cost, financial evaluations, feasibility studies, economic analyses of alternate solutions, and utilitarian considerations of operations and maintenance costs prepared by CONSULTANT hereunder will be made on the basis of CONSULTANT's experience and qualifications and will represent CONSULTANT's judgment as an experienced and qualified design professional. However, users of the probable cost opinions must recognize that CONSULTANT does not have control over the cost of labor, material, equipment, or services furnished by others or over market conditions or contractors' methods of determining prices or performing the work.
9. **SUSPENSION OF WORK** - The Client may, at any time, by written notice, suspend further work by CONSULTANT. The Client shall remain liable for, and shall promptly pay CONSULTANT for all services rendered to the date of suspension of services, plus suspension charges, which shall include the cost of assembling documents, personnel and equipment, rescheduling or reassignment, and commitments made to others on Client's behalf.

Client shall pay CONSULTANT pursuant to the rates and charges set forth in the Proposal. CONSULTANT will submit monthly

invoices to Client for services rendered and expenses incurred. If Client does not pay invoices within thirty (30) days of submission of invoice, CONSULTANT may, upon written notice to the Client, suspend further work until payments are brought current. The Client agrees to indemnify and hold CONSULTANT harmless from any claim or liability resulting from such suspension.

10. **CHANGES OR DELAYS** - Unless the accompanying Proposal provides otherwise, the proposed fees constitute CONSULTANT's estimate to perform the services required to complete the Project. Required services often are not fully definable in the initial planning; accordingly, developments may dictate a change in the scope of services to be performed. Where this occurs, changes in the Agreement shall be negotiated and an equitable adjustment shall be made.

Costs and schedule commitments shall be subject to renegotiation for unreasonable delays caused by the Client's failure to provide specified facilities, direction, or information, or if CONSULTANT's failure to perform is due to any act of God, labor trouble, fire, inclement weather, act of governmental authority, failure of transportation, accident, power failure, or interruption or any other cause beyond the reasonable control of CONSULTANT. Temporary work stoppage caused by any of the above may result in additional cost beyond that outlined in the accompanying Proposal.

11. **LIABILITY** - To the fullest extent permitted by law, the total liability, in the aggregate, of CONSULTANT and CONSULTANT's officers, directors, employees, agents, and consultants to Client and anyone claiming by, through or under Client, for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to CONSULTANT's services, the Project or this Agreement, from any cause or causes whatsoever, including but not limited to, negligence, strict liability, breach of contract or breach of warranty shall not exceed the total compensation received by CONSULTANT under this Agreement.
12. **CONFLICTS OF INTEREST** - This assignment may involve parties with adverse interests to clients with whom CONSULTANT has current or past relationships. It is CONSULTANT policy to make reasonable attempts to identify such relationships prior to acceptance of a professional assignment, but CONSULTANT cannot assure that conflicts or perceived conflicts will not arise, and CONSULTANT does not accept responsibility for such occurrences.
13. **REIMBURSABLE EXPENSES** - CONSULTANT will bill direct non payroll expenses at cost plus 10%. Direct expenses include all reasonable expenses resulting from required responses to subpoenas or court orders related to work under the Contract.
14. **MISCELLANEOUS** - Governing Law: The laws of the state in which the CONSULTANT office executing this Agreement is located shall govern the validity and interpretation of this Agreement.

Invalid Terms: In the event any of these Contract Provisions are found to be illegal or otherwise unenforceable, the unenforceable Contract Provision will be stricken. Striking such a Contract Provision shall have no effect on the enforceability of the remaining Contract Provisions and those remaining Contract Provisions shall continue in full force and effect as if the unenforceable Contract Provision were never included in the Agreement.

Mediation: The Client and CONSULTANT agree to submit all claims and disputes arising out of this Agreement to non-binding mediation prior to the initiation of legal proceedings. This provision shall survive completion or termination of this Agreement; however, neither party shall seek mediation of any claim or dispute arising out of this Agreement beyond the period of time that would bar the initiation of legal proceedings to litigate such claim or dispute under the applicable law.

CONSULTANT Reliance: CONSULTANT shall be entitled to rely, without liability, on the accuracy and completeness of any and all information provided by Client, Client's consultants and contractors, and information from public records, without the need for independent verification.

Certifications: CONSULTANT shall not be required to sign any documents, no matter by whom requested, that would result in CONSULTANT's having to certify, guaranty, or warrant the existence of conditions that CONSULTANT cannot ascertain.

Third Parties: Nothing contained In this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Client or CONSULTANT. CONSULTANT's services hereunder are being performed solely for the benefit of the Client, and no other entity shall have any claim against CONSULTANT because of this Agreement or CONSULTANT's performance of services hereunder.

Consequential Damages: Neither the Client nor the CONSULTANT shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of, or connected in any way to the Project or this Agreement. This mutual waiver includes, but is not limited to, damages related to loss of use, loss of profits, loss of income, loss of reputation, unrealized savings or diminution of property value and shall apply to any cause of action including negligence, strict liability, breach of contract and breach of warranty.



May 5, 2021

City of Foley
Engineering Department
200 N. Alston Street,
Foley, AL 36535

Attn: Chad Christian, PE – City Engineer

Re: Proposal of Professional Services – County Road 12 Roadway Widening

Dear Chad,

Engineering Design Group, LLC (EDG) is pleased to submit this proposal of professional services associated with the above-referenced project. Our understanding of the project is that the City proposes a roadway improvements project to widen County Road 12 in order to add a left turn lane for eastbound traffic and the increase radii size for the right turn from westbound traffic. The project is located at the Cottages on the Green subdivision entrance. The exact location is shown on the attached Exhibit A.

We will provide topographic and right-of-way surveying, civil construction documents, bidding administration, construction administration and geotechnical investigations. EDG will engage a licensed geotechnical firm to perform the geotechnical investigations. Our scope of work is described in more detail on the following pages. We understand that the project will be funded by the City, and Federal, State or grant funds are not required.

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Attachments: Exhibit A – Conceptual Roadway Improvements

Scope of Services

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2.0 Compensation and Payment for Services:

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Engineering Design Group, LLC can commence work immediately upon receipt of your written authorization to proceed. If this proposal is acceptable, please authorize Engineering Design Group, LLC to proceed with the above Scope of Services by signing in the appropriate location and returning a copy to Engineering Design Group, LLC.

Sincerely,
Engineering Design Group, LLC



David A Diciara, P.E., Alabama License #35032

"This cost proposal is accepted as written and Engineering Design Group, LLC is hereby authorized to commence the work as described in the above Scope of Services"

Authorization by:



Title:

Mayor

Date:

6-21-21

HOURLY RATE SCHEDULE AND REIMBURSABLE EXPENSES

Personnel time for additional services covered under this agreement will be invoiced based on the following Rate Schedule. These Rates are subject to adjustment on January 1st of each year.

Engineering Rate Schedule

- | | |
|--------------------------|-------------------|
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Surveying Rate Schedule

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TERMS AND CONDITIONS:

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3. **DOCUMENTS** - All reports, notes, drawings, specifications, data, calculations, and other documents, including those in electronic form, prepared by CONSULTANT are instruments of CONSULTANT's service that shall remain CONSULTANT's property. The Client agrees not to use CONSULTANT-generated documents for marketing purposes, for projects other than the project for which the documents were prepared by CONSULTANT, or for future modifications to this project, without CONSULTANT's express written permission.

Any reuse or distribution to third parties without such express written permission or project-specific adaptation by CONSULTANT will be at the Client's sole risk and without liability to CONSULTANT or its employees, subsidiaries, independent professional associates, subconsultants, and subcontractors. Client shall, to the fullest extent permitted by law, defend, indemnify, and hold harmless CONSULTANT from and against any and all costs, expenses, fees, losses, claims, demands, liabilities, suits, actions, and damages whatsoever arising out of or resulting from such unauthorized reuse or distribution.

4. **DISPOSAL OF SAMPLES** - CONSULTANT will discard samples upon completion of the work covered under this Agreement, unless the Client instructs otherwise in writing.
5. **HAZARDOUS MATERIALS** - The scope of CONSULTANT's services for this Agreement does not include any responsibility for detection, remediation, accidental release, or services relating to waste, oil, asbestos, lead, or other hazardous materials, as defined by Federal, State, and local laws or regulations.
6. **CONSTRUCTION PHASE SERVICES** - If CONSULTANT performs any services during the construction phase of the project, CONSULTANT shall not supervise, direct, or have control over Contractor's work. CONSULTANT shall not have authority over or responsibility for the construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the work of the Contractor. CONSULTANT does not guarantee the performance of the construction contract by the Contractor and does not assume responsibility for the Contractor's failure to furnish and perform its work in accordance with the Contract Documents.
7. **STANDARD OF CARE** - CONSULTANT and its employees, subsidiaries, independent professional associates, subconsultants, and subcontractors will exercise that degree of care and skill ordinarily practiced under similar circumstances by design professionals providing similar services. Client agrees that services provided will be rendered without any warranty, express or implied.

CONSULTANT shall exercise usual and customary professional care in its efforts to comply with applicable codes, regulations, laws, rules, ordinances, and such other requirements in effect as of the date of execution of this Agreement.

8. **OPINION OF PROBABLE COSTS** - When required as part of its work, CONSULTANT will furnish opinions of probable cost, but does not guarantee the accuracy of such estimates. Opinions of probable cost, financial evaluations, feasibility studies, economic analyses of alternate solutions, and utilitarian considerations of operations and maintenance costs prepared by CONSULTANT hereunder will be made on the basis of CONSULTANT's experience and qualifications and will represent CONSULTANT's judgment as an experienced and qualified design professional. However, users of the probable cost opinions must recognize that CONSULTANT does not have control over the cost of labor, material, equipment, or services furnished by others or over market conditions or contractors' methods of determining prices or performing the work.
9. **SUSPENSION OF WORK** - The Client may, at any time, by written notice, suspend further work by CONSULTANT. The Client shall remain liable for, and shall promptly pay CONSULTANT for all services rendered to the date of suspension of services, plus suspension charges, which shall include the cost of assembling documents, personnel and equipment, rescheduling or reassignment, and commitments made to others on Client's behalf.

Client shall pay CONSULTANT pursuant to the rates and charges set forth in the Proposal. CONSULTANT will submit monthly

invoices to Client for services rendered and expenses incurred. If Client does not pay invoices within thirty (30) days of submission of invoice, CONSULTANT may, upon written notice to the Client, suspend further work until payments are brought current. The Client agrees to indemnify and hold CONSULTANT harmless from any claim or liability resulting from such suspension.

10. **CHANGES OR DELAYS** - Unless the accompanying Proposal provides otherwise, the proposed fees constitute CONSULTANT's estimate to perform the services required to complete the Project. Required services often are not fully definable in the initial planning; accordingly, developments may dictate a change in the scope of services to be performed. Where this occurs, changes in the Agreement shall be negotiated and an equitable adjustment shall be made.

Costs and schedule commitments shall be subject to renegotiation for unreasonable delays caused by the Client's failure to provide specified facilities, direction, or information, or if CONSULTANT's failure to perform is due to any act of God, labor trouble, fire, inclement weather, act of governmental authority, failure of transportation, accident, power failure, or interruption or any other cause beyond the reasonable control of CONSULTANT. Temporary work stoppage caused by any of the above may result in additional cost beyond that outlined in the accompanying Proposal.

11. **LIABILITY** - To the fullest extent permitted by law, the total liability, in the aggregate, of CONSULTANT and CONSULTANT's officers, directors, employees, agents, and consultants to Client and anyone claiming by, through or under Client, for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to CONSULTANT's services, the Project or this Agreement, from any cause or causes whatsoever, including but not limited to, negligence, strict liability, breach of contract or breach of warranty shall not exceed the total compensation received by CONSULTANT under this Agreement.
12. **CONFLICTS OF INTEREST** - This assignment may involve parties with adverse interests to clients with whom CONSULTANT has current or past relationships. It is CONSULTANT policy to make reasonable attempts to identify such relationships prior to acceptance of a professional assignment, but CONSULTANT cannot assure that conflicts or perceived conflicts will not arise, and CONSULTANT does not accept responsibility for such occurrences.
13. **REIMBURSABLE EXPENSES** - CONSULTANT will bill direct non payroll expenses at cost plus 10%. Direct expenses include all reasonable expenses resulting from required responses to subpoenas or court orders related to work under the Contract.
14. **MISCELLANEOUS** - Governing Law: The laws of the state in which the CONSULTANT office executing this Agreement is located shall govern the validity and interpretation of this Agreement.

Invalid Terms: In the event any of these Contract Provisions are found to be illegal or otherwise unenforceable, the unenforceable Contract Provision will be stricken. Striking such a Contract Provision shall have no effect on the enforceability of the remaining Contract Provisions and those remaining Contract Provisions shall continue in full force and effect as if the unenforceable Contract Provision were never included in the Agreement.

Mediation: The Client and CONSULTANT agree to submit all claims and disputes arising out of this Agreement to non-binding mediation prior to the initiation of legal proceedings. This provision shall survive completion or termination of this Agreement; however, neither party shall seek mediation of any claim or dispute arising out of this Agreement beyond the period of time that would bar the initiation of legal proceedings to litigate such claim or dispute under the applicable law.

CONSULTANT Reliance: CONSULTANT shall be entitled to rely, without liability, on the accuracy and completeness of any and all information provided by Client, Client's consultants and contractors, and information from public records, without the need for independent verification.

Certifications: CONSULTANT shall not be required to sign any documents, no matter by whom requested, that would result in CONSULTANT's having to certify, guaranty, or warrant the existence of conditions that CONSULTANT cannot ascertain.

Third Parties: Nothing contained In this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Client or CONSULTANT. CONSULTANT's services hereunder are being performed solely for the benefit of the Client, and no other entity shall have any claim against CONSULTANT because of this Agreement or CONSULTANT's performance of services hereunder.

Consequential Damages: Neither the Client nor the CONSULTANT shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of, or connected in any way to the Project or this Agreement. This mutual waiver includes, but is not limited to, damages related to loss of use, loss of profits, loss of income, loss of reputation, unrealized savings or diminution of property value and shall apply to any cause of action including negligence, strict liability, breach of contract and breach of warranty.

