

GOODWYN, MILLS & CAWOOD, LLC

Professional Services Agreement

PART 1. GENERAL

THIS AGREEMENT, including attachments as hereinafter noted, made and entered into and between Goodwyn, Mills & Cawood, LLC and the Client identified herein, provides for the Professional Services described under Part 3 of this Agreement.

Client: City of Foley

Address: PO Box 1750

City/State/Zip Code: Foley, AL 36535

Contact Person: Chad Christian, P.E.

Phone: 251-970-1104

Short Title: Juniper St Extension, or the "Project"

PART 2. GENERAL DESCRIPTION OF PROJECT SITE:

The extension of South Juniper St from CR 20 to AL HWY 59
Foley, Alabama

PART 3. DESCRIPTION OF PROFESSIONAL SERVICES to be provided by Goodwyn, Mills & Cawood, LLC are identified below:

See Attachment A

PART 4. THE COMPENSATION TO BE PAID Goodwyn, Mills & Cawood, LLC for providing the requested Services shall be as follows:

See Attachment A

IN WITNESS WHEREOF, this Agreement, which is subject to the General Terms and Conditions (Part 5.) is accepted on the later date written below.

City of Foley

GOODWYN, MILLS & CAWOOD, LLC.:

SIGNED:

SIGNED:

TYPED NAME:

Ralph Hellmich

TYPED NAME:

Jeremy Sasser, P.E.

TITLE:

Mayor

TITLE:

Project Manager

DATE:

DATE:

April 8, 2022

Draft Print

04/08/2022 9:55:16 AM

1.0 Right Of Entry

Client will arrange and provide such right of entry to the site as is necessary for GMC to perform the work. It is understood by client that in the normal course of work, some damage may occur. GMC shall take reasonable measures and precautions to minimize damage to the site and any improvements located thereon as the result of its work or the use of its equipment; however, GMC has not included in its fee the cost of restoration of damage which may occur. If Client desires or requires GMC to restore the site to its former condition, upon written request GMC will perform such additional work as is necessary to do so and Client agrees to pay to GMC for the cost.

2.0 Client's Duty To Notify Goodwyn Mills Cawood, LLC

Client represents and warrants that it has advised GMC of any known or suspected hazardous materials, utility lines and pollutants at any site at which GMC is to do work hereunder, and unless GMC has assumed in writing the responsibility of locating subsurface objects, structures, lines or conduits, Client agrees to defend, indemnify and save GMC harmless from all claims, suits, losses, costs and expenses, including reasonable attorney's fees as a result of personal injury, death or property damage occurring with respect to GMC's performance of its work and resulting to or caused by contact with subsurface or latent objects, structures, lines or conduits where the actual or potential presence and location thereof were not revealed to GMC by Client.

3.0 Hazardous Materials

Nothing contained within this agreement shall be construed or interpreted as requiring GMC to assume the status of an owner, operator, generator, storer, transporter, treater or disposal facility as those terms appear within RCRA and any other Federal or State statute or regulation governing the handling, treatment, storage and disposal of pollutants.

4.0 Tests and Inspections

Client shall cause all tests and inspections of the site, materials and work performed by GMC or others to be timely and properly performed in accordance with the plans, specifications and contract documents and GMC's recommendations. Client agrees to indemnify, defend and hold GMC, its officers, employees, and agents harmless from any and all claims, suits, losses, costs and expenses, including, but not limited to, court costs and reasonable attorney's fees in the event that all such tests and inspections are not so performed or GMC's recommendations are not so followed except to the extent that such failure is the result of the negligence, willful or wanton act or omission of GMC, its officers, agents or employees, subject to the limitation contained in paragraph titled "Limitation of Liability".

5.0 Sample Disposal

Unless otherwise agreed to in writing, test specimens or samples will be disposed immediately upon completion of the test. All drilling samples or specimens will be disposed sixty (60) days after GMC's report delivery, unless a written request has been submitted by the Client stating otherwise.

6.0 Site Events

If such are within GMC's scope of work, Client agrees that GMC will not be expected to make exhaustive or continuous onsite inspections but that periodic observations appropriate to the construction stage, or at the Client's request, shall be performed. It is further agreed that GMC will not assume responsibility for the Contractor's means, method, techniques, sequences, or procedures of construction, and it is understood that field services provided by GMC will not relieve the Contractor of his responsibilities for performing the work in accordance with the plans and specifications. The words "supervision", "inspection", or "control" may be conveniently used to mean periodic observation of the work and the conduction of tests by GMC to verify substantial compliance with the plans, specifications, and design concepts. Continuous "inspection" by our employees does not mean that GMC is observing placement of all materials. Full-time inspection means that an employee of GMC has been assigned for eight-hour days during regular business hours.

7.0 Unusual or Concealed Physical Conditions

In the event GMC encounters concealed or unknown conditions of an unusual nature, differing materially from those ordinarily encountered in similar work, the OWNER agrees the GMC's scope of services, times of performance, and compensation shall be equitably adjusted.

8.0 Jobsite Safety

GMC shall not at any time supervise, direct, or have control over Contractor's work, nor shall GMC have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.

9.0 Construction Services

If, under this Agreement, professional services are provided during the construction phase of the project, Goodwyn Mills Cawood, LLC shall not be responsible for or have control over means, methods, techniques, sequences, or procedures; or for safety precautions and programs in connection with the Work. Nor shall Goodwyn Mills Cawood, LLC be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents or for Contractor's failure to comply with applicable laws, ordinances, rules or regulations.

10.0 Changes

Client may request changes in the Scope of Services of the Contract to be performed hereunder. Such changes, including any increase or decrease in the amount of GMC's compensation, which are mutually agreed upon by and between Client and GMC shall be incorporated into this Agreement by written amendment. Any changes made to the construction documents by Client, or Client's representatives, are strictly prohibited without the knowledge and written consent of GMC. GMC shall be released from any liability resulting from damages, injuries, and or death resulting from the unauthorized alteration of construction documents. Changes requested by Client shall be considered Additional Services and billed in accordance with GMC's Standard hourly rates:

11.0 Additional Services Not Requiring Owner's Written Authorization

When necessary GMC will immediately commence to perform or furnish the Additional Services of the types listed below. For such Additional Services, GMC need not request or obtain specific advance written authorization from Owner. GMC shall cease performing or furnishing such Additional Services upon receipt of written notice from Owner. Additional services shall be compensated in accordance with the hourly rates presented in attached Exhibit, or by a lump sum fee if requested by the Owner.

- A. Services in connection with work change directives and change orders to reflect changes requested by Owner.
- B. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.
- C. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
- D. Additional or extended services during construction made necessary by (1) emergencies, governmental actions, or acts of God endangering or altering the Work (advance notice not required), (2) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (3) Work damaged by fire or other cause during construction, (4) a significant amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, (6) default by Contractor or (7) widespread infectious disease outbreaks (including but not limited to epidemics or pandemics).
- E. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of any part of the Work by Owner prior to Substantial Completion.
- F. Evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the Work.
- G. Services during the Construction Phase rendered after the original date for completion of the Work.

- H. Reviewing a Shop Drawing more than three times, as a result of repeated inadequate submissions by Contractor.
- I. While at the Site, compliance by GMC and its staff with those terms of Owner's or Contractor's safety program provided to GMC subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, state, or local safety authorities for similar construction sites.

12.0 Billings and Payments

GMC shall invoice for services either upon completion of such services or on a monthly basis. Invoices shall be payable within 30 days after the invoice date. Should GMC's compensation be based on a percentage of total construction cost, no deductions shall be made from GMC's compensation on the account of penalty, liquidated damages, or other sums withheld from payment to Contractors. Accounts unpaid after the 31st day of the invoice date may be subject to a monthly service charge of 1.5% on the then unpaid balance, at the sole election of GMC. Client shall pay all costs of collection, including reasonable attorney's fees, in the event any or all of an account remains unpaid 90 days after billing. If an invoice remains unpaid ninety days (90) after the date of the invoice, Goodwyn Mills Cawood, LLC may, upon giving seven (7) days written notice of its intent to do so, suspend all Services on the Client's project. This suspension shall remain in effect until all unpaid invoices are paid in full. If an invoice remains unpaid one hundred and twenty days (120) after the date of the invoice, Goodwyn Mills Cawood, LLC may, upon giving seven (7) days written notice of its intent to do so, terminate this Agreement and pursue its remedies for collection.

13.0 Termination of Services

This Agreement may be terminated by Client or GMC should the other fail to perform its obligation hereunder. In the event of termination, the Client shall pay GMC for all services rendered to the date of termination, all reimbursable expenses, and reimbursable termination expenses. Client shall have the right to terminate this Agreement by giving written notice to GMC of such termination and specifying the effective date thereof, at least seven days before the effective date of such termination.

14.0 Insurance

GMC shall secure and maintain such insurance as will protect it from claims of bodily injury, death or property damage which may arise from the performance of services under this Agreement.

15.0 Limitation of Liability

Limitations on liability and indemnities in this Agreement are business understandings between the parties voluntarily and knowingly entered into and shall apply to all theories of recovery including, but not limited to, breach of contract, warranty, tort (including negligence) strict or statutory liability, or any other cause of action, except for willful misconduct or gross negligence. The parties also agree that Client will not seek damages in excess of the limitations indirectly through suits with other parties who may join GMC as a third party defendant. Parties mean Client and GMC and their officers, employees, agents, affiliates, and subcontractors. Both Client and GMC agree that they will not be liable to each other, under any circumstances, for special, indirect, consequential, or punitive damages arising out of or related to this Agreement. For each Project, the liability of GMC, its employees, agents, and subcontractors, for claims of loss, injury, death, damage or expense, including third party claims, shall not exceed the total sum of \$50,000.00 or the fee set forth in the Contract, whichever is greater, for any claims arising out of GMC's negligence.

16.0 Allocation of Risks – Indemnification

To the fullest extent permitted by law, GMC shall indemnify and hold harmless OWNER, OWNER's officers, director, partners, employees and agents from and against any and all claims, costs, losses and damage (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of GMC or GMC's officers, directors, partners, employees, agents and GMC's services under this Agreement, the indemnification provision of the preceding sentence is subject to and limited by the provisions agreed to by OWNER and GMC in "Allocation of Risks", if any. To the fullest extent permitted by law, OWNER shall indemnify and hold harmless GMC, GMC's officers, directors, partners, employees, agents and GMC's Consultants from any and all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) caused by OWNER, OWNER's officers, directors, partners, employees, agents and OWNER's consultants with respect to this Agreement or the Project. If the OWNER requests drawings furnished by electronic media, the OWNER shall sign an agreement specifically excluding GMC's liability from any use of such electronic data.

17.0 Standard of Care

The standard of care for all professional engineering and related services performed or furnished by GMC under this Agreement will be the care and skill ordinarily used by members of GMC's professional practicing under similar conditions at the same time and in the same locality. GMC makes no warranties, express or implied, under this Agreement or otherwise, in connection with GMC's service. This Agreement is based on applicable, standards, and requirements as of its Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to OWNER's responsibilities or to GMC's scope of services, times or performance, and compensation.

18.0 Dispute Resolution

OWNER and GMC agree that they shall first submit any and all unsettled claims, counterclaims, disputes and other matters in question between them arising out of or relating to this Agreement or breach thereof to mediation unless the parties mutually agree otherwise. Within fifteen (15) days of receipt by one party of notice of a dispute and demand for mediation from the other party, the parties shall jointly select a mediator and shall conduct mediation within (30) days of receipt by one party of notice of a dispute and demand for mediation from the other party. The cost of mediation shall be paid equally by both parties. In the event a mediator is not selected within the fifteen (15) days period or if mediation has not occurred within said thirty (30) day period (or at such time as agreed to in writing by the parties), then the parties shall mediate such dispute in accordance with the Commercial Arbitration Rules and Mediation of the American Arbitration Association. The OWNER and the GMC further agree to require a similar mediation provision in all agreements with independent contractors and consultants, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

19.0 Ownership of Documents

All documents including, but not limited to, drawings, specifications, laboratory test data, reports, field notes, calculations, and estimates prepared by our firm as instruments of service pursuant to this Agreement shall be the sole property of GMC. Client agrees that all documents of any nature furnished to Client or Client's agents or designees, if not paid for, will be returned upon demand and will not be used by the Client for any purpose whatsoever. Client further agrees that under no circumstances shall any document produced by GMC, pursuant to this Agreement, be used at any location for any Project not expressly provided for in this Agreement without written permission from GMC. At the request and expense of Client, GMC will provide Client with copies of documents created in the performance of this work for a period not exceeding five years following submission of the documents contemplated by this Agreement.

20.0 Governing Law

The validity, interpretation, and performance of this Agreement shall be governed by the law of the State in which the GMC office, identified on the Proposal for this Project, is located. In addition, GMC and Client agree to submit to the personal and exclusive jurisdiction and venue of said State with respect to any claims which may arise under this Agreement. If any of the provisions contained in this Agreement are held illegal, invalid, or unenforceable, the enforceability of the remaining provisions will not be impaired. Limitations of liability and indemnities will survive termination of this Agreement for any cause.

21.0 Replacement of Consultant

If GMC for any reason is not allowed to complete all the services called for by this Agreement, GMC shall not be held responsible for the accuracy, completeness or constructability of the project documents prepared by GMC if used, changed or completed by the Client or by another party. Accordingly, the Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless GMC, its officers, directors, employees and subconsultants from any damages, liabilities or costs, including reasonable attorney's fees arising from such use, change or completion by any other party of any project documents prepared by GMC.

22.0 Expert Witness Services

It is understood and agreed that Goodwyn Mills Cawood, LLC services under this Agreement do not include participation, whatsoever, in any litigation. Should such services be required, a Professional Services Agreement Addendum may be negotiated between the Client and Goodwyn Mills Cawood, LLC describing the services desired and providing a basis for compensation to Goodwyn Mills Cawood, LLC

23.0 Cost Estimates

GMC's opinions of probable construction or operating costs are to be made on the basis of GMC's experience and qualifications and represent GMC's best judgment as an experienced and qualified professional generally familiar with the construction industry. However, since GMC has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, GMC cannot and does not guarantee that proposals, bids, actual construction cost, or operating costs will not vary from opinions of probable construction cost prepared by GMC. If OWNER wishes greater assurance as to probable construction cost, OWNER shall employ an independent cost estimator.

24.0 Hold Harmless

The Client will hold harmless and indemnify Goodwyn Mills Cawood, LLC for any design changes, construction changes, delays, or damages resulting from the use of a topographic survey or other information prepared by others and provided by the Client.

25.0 Certification Letter

GMC will not provide a certification letter(s) for Site Plans designed by GMC without verifying, at a minimum and not limited to the following: finished floor elevations, storm sewer pipe sizes and invert elevations, sanitary sewer pipe sizes and invert elevations, water line pipe sizes, detention and outfall structure dimensions and elevations, curb and asphalt elevations. Unless specifically detailed in the Scope of Work for this contract, the fees for these services are considered separate from and in addition to all other services and will be paid for by Client as a negotiated lump sum fee or hourly per GMC's Standard Rate Schedule.

26.0 Assignment

Neither the Client nor Goodwyn Mills Cawood, LLC will assign or transfer its interest in this Agreement without the written consent of the other. Goodwyn Mills Cawood, LLC however, does reserve the right to subcontract any portion of the Services.

27.0 Entirety of Agreement

This Agreement embodies the entire Agreement and understanding between the parties, their successors and assigns hereto, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby. No alteration, change or modification of the terms of this Agreement shall be valid unless made in writing and signed by both parties hereto. The laws of the State of Alabama shall govern this Agreement unless specifically stated otherwise. This Agreement includes this document.

ATTACHMENT A
SCOPE OF SERVICES & FEES

Goodwyn, Mills & Cawood, LLC (GMC) shall perform the following professional services for the CE&I for the Juniper St Extension Project

Construction Engineering and Inspection

Hourly N.T.E \$249,000

GMC will provide construction engineering and inspection services for the duration of the project. These services will include the ADEM monitoring, daily site visits when construction activities are occurring, submittal review, weekly reports to the owner during the construction phase of the project, keep a record of material quantities used on the project, processing of monthly pay estimates, and represent the Owner in helping to resolve disputes with the Contractor.

At the end of the job GMC will provide a punch list to the Contractor, coordinate completion of this punch list with the Contractor and provide the owner with a set of record drawings and CAD files for their use.

Billing will be monthly based on actual hours worked by GMC and its Traffic Signal Consultant Kimley Horn.

Construction Materials Testing

Estimated \$12,250

See Attachment B for full Geotechnical Scope. Billing for CMT services will be monthly based on services rendered by GeoCon.

ATTACHMENT B



April 7, 2022

Mr. Jeremy Sasser, P.E.
GMC
2039 Main Street
Daphne, Alabama 36526

Re: **Proposed Scope and Cost for Construction Materials Testing**
Juniper Street Extension
Foley, Alabama

Dear Mr. Sasser:

GeoCon Engineering & Materials Testing, Inc. appreciates the opportunity to provide Construction Materials Testing for the above referenced project. Below is a general outline of our recommended scope of testing and our associated costs.

Scope of Testing

- Compaction testing of utility trench backfill – 95% Standard Proctor Density
- Compaction testing on final subgrade – every 500 LF 100% Standard Proctor Density
- Proctor test on subgrade – every 1,000 LF or change in material
- Proof roll subgrade prior to curb placement – proof roll to be performed by the contractor with a loaded tandem axle dump truck and proof roll to be observed and documented by GeoCon personnel
- Concrete test cylinders – at least 1 set for each type of structure (i.e. curb, drainage structures) or every 50 yards of concrete for each structure
- Compaction testing on granular base – every 500 LF 95% Modified Proctor Density
- Proctor test and Classification Test on base material – every 1,000 LF or change in material
- During asphalt placement – GeoCon will have a certified asphalt technician at the asphalt plant to perform asphalt gradation, A/C content, Air Voids and Rice Gravity (one test per day or per mix)
- Asphalt coring with core thickness and bulk density – every 500 LF required density 92% +/- 2%
- Field visits at the request of the project Civil Engineer
- All reports will be signed by the project Geotechnical Engineer (P.E.)
- A final letter will be provided indicating testing performed and results of the tests for the project

Note: The above list of tests and intervals are a general guideline for the schedule of testing. Additional testing may be done based on soil conditions, weather conditions following testing, etc.

Fee Estimate

We recommend that you budget **\$12,250** for the above described testing.

Scheduling

We anticipate that part-time monitoring on an on-call basis would be expected for this project. The contractor is responsible for scheduling the required tests with GeoCon. We ask that a 24 hour notice be provided.

Test Reporting

The client, contractor and project Civil Engineer will be notified of the test results after the test results have been reviewed and confirmed by GeoCon's engineer. After testing is completed, all test reports will be provided with a letter summarizing the tests results. Test reports will be signed by the project Geotechnical Engineer for GeoCon.

Testing Standards

Our work on this project would be completed in general accordance with applicable ASTM standards and with generally accepted current standards of geotechnical engineering practices. We maintain general and professional liability insurance in amounts typically acceptable for similar projects. A copy of our insurance certificate can be obtained at your request.

Sincerely,

GeoCon, Inc.



David A. Rachel
Vice President

Proposal Authorization Form

Please Print

Accepted By: _____

Entity: _____

Signature: _____

Mailing Address: _____

Report will be addressed to: _____

Provide email address of all entities that should receive a copy of the report:

Invoicing Address: _____

Email Address: _____

Contact Number: _____

Location: Juniper Street Extension in Foley, Alabama

Proposed Amount: \$12,250

Date: _____

Proposed amount is only valid for 60 days unless executed.

TERMS AND CONDITIONS

SERVICES TO BE PROVIDED. GeoCon Engineering & Material Testing, Inc. (hereinafter GeoCon) is an independent consultant and agrees to provide Client, for its sole benefit and exclusive use, consulting services set forth in our proposal.

PAYMENT TERMS. Client agrees to pay our invoice upon receipt. If payment is not received within 30 days from the invoice date, Client agrees to pay a service charge on the past due amount at a rate of 1.5% per month, and GeoCon reserves the right to suspend all work until payment is received. No deduction shall be made from our invoice on account of liquidated damages or other sums withheld from payments to contractors or others.

TERMINATION. Either party may terminate this Agreement without cause upon 20 days advance notice in writing. In the event Client requests termination prior to completion of the proposed services, Client agrees to pay GeoCon for all costs incurred plus reasonable charges associated with termination of the work.

PROFESSIONAL LIABILITY. Notwithstanding any other provision of this Agreement, the Engineer's and GeoCon's total liability to the Owner for any loss or damages from claims arising out of or in connection with this Agreement from any cause including the Engineer's strict liability, breach of contract, or professional negligence, errors and omissions (whether claimed in tort, contract, strict liability, nuisance, by statute or otherwise) shall not exceed the lesser of the total contract price of this Agreement or the proceeds paid under Engineer's liability insurance in effect at the time such claims are made. The Owner hereby releases the Engineer from any liability exceeding such amount. In no event shall either party to this Agreement be liable to the other for special, indirect, incidental or consequential damages, whether or not such damages were foreseeable at the time of the commencement of the work under this Agreement.

SITE OPERATIONS. Client will arrange for right-of-entry to all applicable properties for the purpose of performing studies, tests and evaluations pursuant to the agreed services. Client represents that it possesses necessary permits and licenses required for its activities at the site.

OWNERSHIP AND USE OF PROJECT DOCUMENTS. All documents are instruments of service in respect to the Services, and Engineer shall retain an ownership and proprietary property interest therein (including the right of reuse at the discretion of the Engineer) whether or not the Services are completed. Client may make and retain copies of documents for information and reference in connection with the services by Client. Such documents are not intended or represented to be suitable for reuse by Client or others on extensions of the services or on any other project. Any such reuse or modification without written verification or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Client's sole risk and without liability or legal exposure to Engineer or to Engineer's consultants. Client shall indemnify and hold harmless Engineer and Engineer's consultants from all claims. Damages, and expenses including attorneys' fees arising out of or resulting therefrom.

ADDITIONAL SERVICES OF CONSULTANT. If authorized in writing by the Client, GeoCon shall furnish additional services that are not considered as an integral part of the Scope of Services outlined in the Proposal Acceptance Sheet. Under this Agreement, all costs for additional services will be negotiated as to activities and compensation. In addition, it is possible that unforeseen conditions may be encountered that could substantially alter the original scope of services. If this occurs, GeoCon will promptly notify and consult with Client and any additional services will be negotiated.

ASSIGNABILITY. GeoCon shall not assign any interest on this Agreement, and shall not transfer any interest in the same (whether by assignment or novation) without the prior written consent of the Client; provided, however, that claims for money by GeoCon against Client under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be promptly furnished to the Client.

SERVICES TO BE CONFIDENTIAL. All services, including opinions, designs, drawings, plans, specifications, reports and other services and information, to be furnished by GeoCon under this Agreement are confidential and shall not be divulged, in whole or in part, to any person, other than to duly authorized representatives of the Client, without prior written approval of the Client, except by testimony under oath in a judicial proceeding or as otherwise required by law. GeoCon shall take all necessary steps to ensure that no member of its organization divulges any such information except as may be required by law.

CLAIMS. The parties agree to attempt to resolve any dispute without resort to litigation. However, in the event a claim is made that results in litigation, and the claimant does not prevail at trial, then the claimant shall pay all costs incurred in defending the claim, including reasonable attorney's fees. The claim will be considered proven if the judgment obtained and retained through any applicable appeal is at least ten percent greater than the sum offered to resolve the matter prior to the commencement of trial.

SEVERABILITY. It is understood and agreed by the parties hereto, that if any part, term or provisions of this Agreement is held by any court of competent jurisdiction to be illegal or in conflict with any applicable law, the validity of the remaining portion or portions of this Agreement shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.

SURVIVAL. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between Client and GEOCON shall survive the completion of the services and the termination of this Agreement.

INTEGRATION. This Agreement, the attached documents and those incorporated herein constitute the entire Agreement between the parties and cannot be changed except by a written instrument signed by both parties.

GOVERNING LAW. This Agreement shall be governed in all respects by the laws of the State of Alabama and venue shall be in Baldwin County, Alabama