

**AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN
THE CITY OF FOLEY, ALABAMA
AND
BURK-KLEINPETER, INC**

THIS **AGREEMENT** is made and entered into this ____ day of _____, 2017, by and between **THE CITY OF FOLEY, ALABAMA**, hereinafter referred to as the **CITY**, and **BURK-KLEINPETER, INC.**, hereinafter referred to as the **CONSULTANT**.

WITNESSETH

WHEREAS, the **CITY** desires to have professional engineering services performed for **VARIOUS CITYWIDE ROADWAY SAFETY EVALUATIONS** in FOLEY, Alabama, hereinafter referred to as the **PROJECT**; and,

WHEREAS, not having engaged any other consultants or engineers for the **PROJECT**, the **CITY** desires to retain the services of the **CONSULTANT** to perform the work herein described.

NOW THEREFORE, for and in consideration of their mutual benefit, the parties hereto agree as follows:

ARTICLE I - SCOPE OF SERVICES

There are three (3) citywide intersection or roadway segment locations the **CITY** would like the **CONSULTANT** to evaluate for potential safety improvements:

1. W Pride Drive at S Pine Street Intersection
2. W Pride Drive between S Pine Street and S McKenzie Street (SR-59) Roadway Segment
3. Foley Beach Express at CR-12 S Intersection

The **CONSULTANT** shall provide the **CITY** the following basic professional engineering services for each these locations.

1. The **CONSULTANT** will gather and review existing data at each of the locations to determine local site constraints and available site-specific data.
2. The **CONSULTANT** will coordinate with the **CITY** to develop conceptual designs of each location in the **PROJECT** and will create schematic drawings and opinions of probable costs of each of the developed conceptual designs. The schematic drawings will be detailed only

to the extent necessary to show the key features, safety concerns and proposed improvements and to develop the opinions of probable cost and will not be detailed to the extent required for construction of the PROJECT.

3. The CONSULTANT will coordinate with in-place utility companies to determine any impacts and costs related to each.
4. The CONSULTANT will coordinate with the Alabama Department of Transportation (ALDOT) Southwest Region Office and ALDOT's Office of Safety Operations to determine Project Application requirements and eligibility for safety funding at each location in the PROJECT.
5. The CONSULTANT will assist the CITY in preparing and submitting the Highway Safety Improvement Program (HSIP) Project Application Form and required items for each location in the PROJECT.

The CITY may request to change one or all of these site-specific locations to a different location without any adverse effect to the terms of this Agreement. However, the CITY may request the CONSULTANT to evaluate additional locations and the CONSULTANT agrees to perform the additional services at each location for additional Compensation on a fixed fee basis as described under Article III.

The following items are specifically excluded from this scope of work:

1. Traffic Counts

If traffic counts are needed, the CITY may request the CONSULTANT to perform such additional services at each location for additional Compensation on a fixed fee basis as described under Article III.

ARTICLE II - SCHEDULE

Services shall commence immediately upon authorization to proceed from the CITY.

ARTICLE III - PAYMENTS TO THE CONSULTANT

The CONSULTANT's compensation for the work described herein shall be as follows:

- A. CITY shall pay CONSULTANT for services rendered under Article I a lump sum amount of ***Six Thousand Dollars and No Cents (\$6,000.00)***.

Additional Services may be rendered on a fixed fee basis as follows:

<u>Additional Services</u>	<u>Fixed Fee</u>
Roadway Safety Evaluation (Per Location)	\$ 2,000.00
Road Segment Traffic Count (Per Location)	\$ 1,000.00
Intersection Traffic Count (Per Location)	\$ 2,000.00

- B. CONSULTANT will bill CITY monthly for percentage of work completed during the billing period. Payments undisputed to the CONSULTANT on account of the above fees are payable upon receipt in accordance with the CITY'S regular monthly payment schedule.

ARTICLE IV - MISCELLANEOUS PROVISIONS

- A. Estimates: Since the CONSULTANT has no control over the cost of labor and materials or over competitive bidding and market conditions, the estimates of construction cost provided for herein are to be made on the basis of his experience and qualifications, but the CONSULTANT does not guarantee the accuracy of such estimates as compared to the Contractor's bids or the actual PROJECT construction cost.
- B. Reuse of Documents: All documents, including drawings and specifications prepared by the CONSULTANT pursuant to this AGREEMENT, are the property of the CITY with respect to the PROJECT. They are not intended or represented to be suitable for reuse by CITY or others on extensions of the PROJECT or on any other PROJECT. Any reuse without written verification will be at CITY'S sole risk and with no liability or legal exposure to CONSULTANT. Notwithstanding these provisions the CITY shall be provided upon request a reproducible copy of any drawing produced under this AGREEMENT at the cost of reproduction, and will be permitted full use of such documents subject to the limitations set forth herein.
- C. Responsibility of the CONSULTANT:
1. The CONSULTANT shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports, and other services furnished by the CONSULTANT under this AGREEMENT.
 2. Approval by the CITY and other agencies of drawings, designs, specifications, reports, and incidental engineering work or materials furnished hereunder shall not in any way relieve the CONSULTANT of his responsibility for the technical adequacy of his work except as to matters involving peculiar conditions or uses of the property known to the CITY or other agencies but not to the CONSULTANT.
 3. The CONSULTANT shall not be responsible for any time delays in the PROJECT caused by the loss or destruction of any portion of the PROJECT including, but not limited to fire, theft, smoke, storm, vandalism, sudden or accidental damage from irregularities in electrical current, or any other circumstance beyond the

CONSULTANT's control.

4. The CONSULTANT shall be responsible for providing all services necessary for preparing the conceptual designs and opinions of probable cost of the PROJECT. The CITY reserves the right to reduce the size and scope of the PROJECT in its discretion.

D. Responsibility of CITY:

As a part to this AGREEMENT, the CITY shall:

1. Make available for the CONSULTANT's use all relevant site information, existing plans, reports, studies, record drawings, maps, and similar information that is readily available to the CITY.
2. Designate a representative to respond in a timely manner to submissions by the CONSULTANT so that work may continue at a normal pace.
3. Furnish such accounting, insurance and legal counseling services as CITY may require for this PROJECT. Obtain advice of an attorney, insurance counselor or other consultants as CITY deems appropriate for examination of the Contract Documents prepared by CONSULTANT.

E. Termination:

1. This AGREEMENT may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this AGREEMENT through no fault of the terminating party provided that no such termination may be affected unless the other party is given:
 - a. Not less than 10 calendar days written notice of intent to terminate; and,
 - b. An opportunity for consultation with the terminating party prior to termination.
2. This AGREEMENT may be terminated in whole or in part in writing by either party without cause on thirty (30) days written notice.
3. Upon receipt of a termination notice, the CONSULTANT shall promptly discontinue all services affected (unless the notice directs otherwise) and deliver or otherwise make available to the CITY all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the CONSULTANT in performing this AGREEMENT, whether completed or in process.

4. If this AGREEMENT is terminated by either party, the CONSULTANT shall be paid for services rendered pursuant to this AGREEMENT.

F. Audit: Access to Records

1. The CONSULTANT shall maintain books, records, documents, and other evidence directly pertinent to the work under this AGREEMENT in accordance with generally accepted accounting principles and practices. The CITY or any of its duly appointed representatives shall have access to any books, documents, papers, records, and other evidence for the purpose of examination, audit, excerpts, and transcriptions.
2. Records described above shall be maintained and made available during the performance under this AGREEMENT and for a period of three years after the CITY makes final payment and all other pending matters are closed.

G. Headings: The headings of the Exhibits, Sections, Schedules, and Attachments as contained in this AGREEMENT are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions in such Exhibits, Sections, Schedules, and Attachments.

H. Assignment: CONSULTANT acknowledges that its services are unique and personal and its rights under this AGREEMENT may not be assigned or its duties or obligations delegated without the express written consent of CITY.

I. Reimbursable Expenses: Reimbursable Expenses are in addition to compensation for Article I services and include expenses for fees of professional sub-consultants and out-of-pocket expenses incurred by CONSULTANT directly related to the PROJECT, the cost of which shall be charged at actual costs plus an administrative charge of ten percent (10%) and shall be itemized and included in the invoice. Reimbursable Expenses are as follows:

1. Renderings, models, and mock-ups requested by the CITY;
2. Expense of professional liability insurance dedicated exclusively to this PROJECT or the expense of additional insurance coverage or limits requested by the CITY in excess of that normally carried by the CONSULTANT and the CONSULTANT's sub-consultants;
3. Survey; and,
4. Other similar direct PROJECT-related expenditures.

J. Insurance & Indemnification: CONSULTANT shall furnish CITY with Certificate of Insurance confirming the following forms and minimum limits of insurance:

<u>Type of Coverage</u>	<u>Limits</u>
Workers Compensation And Employers' Liability	\$1,000,000 Each Accident \$1,000,000 Disease/Each Employee \$1,000,000 Disease/Policy Limit
Comprehensive or Commercial General Liability	\$1,000,000 Per Person Bodily Injury \$1,000,000 Per Occurrence Bodily Injury \$1,000,000 Property Damage \$2,000,000 Policy Aggregate
Automobile Liability	\$1,000,000 Combined Single Limit

At the request of the CITY, the CONSULTANT will have the CITY listed as additional insured where appropriate.

Indemnification: CONSULTANT shall indemnify and hold harmless the CITY, its officers, directors, employees, from and against those liabilities, damages and costs that CITY is legally obligated to pay as a result of the death or bodily injury to any person or the destruction or damage to any property, to the extent caused by the willful misconduct, negligent act, error or omission of the CONSULTANT or anyone for whom the CONSULTANT is legally responsible, subject to any limitations of liability contained in this Agreement. CONSULTANT will reimburse CITY for reasonable defense costs for claims arising out of CONSULTANT's professional negligence based on the percentage of CONSULTANT's liability.

The CITY will hold harmless and indemnify the CONSULTANT for any damages resulting from the use of information prepared by others and provided by the CITY.

The **CONSULTANT** shall not sub-contract with additional sub-consultants without consent of the **CITY**.

This **AGREEMENT**, together with the attached Exhibits constitutes the entire agreement between the **CITY** and the **CONSULTANT** and supersedes all prior written or oral understandings. This **AGREEMENT** and said Exhibits may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have made and executed this **AGREEMENT** as of the date first above written.

CITY OF FOLEY, ALABAMA

WITNESS: _____

BY: _____

TITLE: _____

WITNESS: _____

BURK-KLEINPETER, INC.

BY: _____

TITLE: _____