

Agenda Section	Regular Agenda
Section Number	VI.C
Subject	Consider, discuss, and act upon contracts for professional services regarding the Wastewater Treatment Plant Project funded by the Clean Water State Revolving Fund (CWSRF) Loan.
To	Mayor and Council Members
From	Ben White, City Manager
Date	June 27, 2017
Attachment(s)	<ol style="list-style-type: none"> 1. Contract for Brown & Hofmeister, L.L.P. 2. Hilltop Securities (First Southwest) 3. DBI Engineer's
Related Link(s)	http://www.farmersvilletx.com/government/agendas_and_minutes/city_council_meetings.php
Consideration and Discussion	City Council discussion as required.
Action	<ul style="list-style-type: none"> • Motion/second/vote <ul style="list-style-type: none"> <input type="checkbox"/> Approve <input type="checkbox"/> Approve with Updates <input type="checkbox"/> Disapprove • Motion/second/vote to continue to a later date. _____ <ul style="list-style-type: none"> <input type="checkbox"/> Approve <input type="checkbox"/> Disapprove • Move item to another agenda. _____ • No motion, no action

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June 13, 2017

Via Hand-Delivery
Mr. Benjamin L. White, P.E., CPM
City Manager
City of Farmersville
205 South Main Street
Farmersville, Texas 75442

Re: Agreement for Services Associated with Texas Water Development Board Project

Dear Ben:

This letter will confirm the engagement of Brown & Hofmeister, L.L.P. ("B&H" or the "Firm"), by you to provide legal services in representing the City of Farmersville, Texas ("City"), related to the above-captioned matter. This representation is in addition to the Firm's current representation of the City as its City Attorney. We appreciate your confidence in Brown & Hofmeister, L.L.P., and we will do our best to continue to merit it.

The purpose of this letter, together with the "Standard Terms of Engagement" and the "Client Costs Advanced Schedule" attachments, is to set forth our mutual understanding with respect to the specific terms of our professional relationship. Please carefully review the two attached documents and contact me promptly should you have any questions in this regard. This letter, together with the Standard Terms of Engagement and the Client Costs Advanced Schedule, constitutes our Agreement with you ("Agreement"), under which legal services will be provided by the Firm.

Identity of Client

The Firm will be representing the interests of the City of Farmersville, Texas.

Nature and Scope of Representation

We understand that while the Firm from time to time may be employed on other matters, our relationship outlined in this letter is limited to legal services provided in connection with the Texas Water Development Board Project being undertaken by the City of Farmersville, Texas.

Supervision and Delegation

I will be the attorney who will coordinate and supervise the services we perform on the City's behalf; however, we routinely delegate selected responsibilities to other persons in the Firm when, because of special expertise, time availability or other reasons, they are in a better position

to carry them out. In addition, we always attempt, where feasible and appropriate, to delegate tasks to persons who can properly perform them at the least cost to you.

Financial Arrangements/Billing Rates

The attached Standard Terms of Engagement and Client Costs Advanced Schedule, together with this letter, outline the financial terms of our engagement.

The hourly rate for my time on this matter will be billed at the rate of \$175.00 per hour. For other individuals in the Firm who might also work on this and other Texas Water Development Board Project-related matters, the hourly rates are as follows: Partners -- \$175.00; and Associates -- \$160.00. All billing will accrue in one-tenth (1/10th) of an hour increments.

If anything in this letter, or the Standard Terms of Engagement or the Client Costs Advanced Schedule, is unclear, or if you have any questions about them, please advise me promptly so that we may discuss it and reach a full understanding.

Acceptance of Terms

If this arrangement is acceptable to you, please sign the enclosed duplicate original of this letter and return it to me at your earliest convenience.

We appreciate the opportunity to be of service to you, and look forward to working with you in a mutually beneficial relationship.

Sincerely,



Alan D. Lathrom

ADL:ppk

AGREED TO AND ACCEPTED:

_____, in his capacity as _____

Date: _____

cc: Ms. Michelle Casey, Firm Billing Coordinator

BROWN & HOFMEISTER, L.L.P.
STANDARD TERMS OF ENGAGEMENT

This statement sets forth the standard terms of our engagement as your attorneys. Unless modified in writing by mutual agreement, these terms will be an integral part of our agreement with you. Therefore, we ask that you review this statement carefully and contact us promptly if you have any questions. We suggest that you retain this statement in your file.

1. The Scope of Our Work

You should have a clear understanding of the legal services we will provide. Any questions that you have should be dealt with promptly. We will provide services related only to matters as to which we have been specifically engaged.

We will at all times act on your behalf to the best of our ability. Any expressions on our part concerning the outcome of your legal matter are expressions of our best professional judgment, but are not guarantees. Such opinions are necessarily limited by our knowledge of the facts and are based on the state of the law at the time they are expressed. We cannot guarantee the success of any given matter, but we will strive to represent your interests professionally and efficiently.

2. Fees For Legal Services

Our charges for professional services are customarily based on the time devoted to the matter, the novelty and difficulty of the questions presented, the requisite experience, reputation and skill requested to deal with those questions, time limitations imposed by the circumstances, and the amount involved and the results obtained. Unless otherwise indicated in writing, our fees for legal services are determined on the basis of the hourly rates of the respective lawyers and paralegals who perform the services. These rates vary depending on the expertise and experience of the individual. We adjust these rates from time to time, increasing them as the individuals gain experience and expertise and to reflect current economic conditions. We will notify you in writing if this fee structure is modified.

3. Other Charges

All out-of-pocket expenses (such as long distance telephone charges, copying charges, travel expenses, messenger expenses and the like) incurred by us in connection with our representation of you will be billed to you as a separate item on your monthly statement. We have enclosed a schedule which indicates the rate at which most of these items will be charged.

4. Billing Procedures and Terms of Payment

Our billing period begins on the 1st of the month and ends on the last day of the month. We will render periodic statements to you for legal services and expenses. We usually mail these periodic statements on or about the 10th day of the month following the latest date covered in the

statement. Each statement is payable within 30 days of its stated date and must be paid in U.S. Dollars.

If you have any question or disagreement about any statement that we submit to you for payment, please contact me at your earliest convenience so that we can resolve any problems without delay. Typically, such questions or disagreements can be resolved to the satisfaction of both sides with little inconvenience or formality.

5. Termination of Services

You have the right at any time to terminate our employment upon written notice to us, and if you do we will immediately cease to render additional services. We reserve the right to discontinue work on this matter or terminate our attorney-client relationship with you at any time that payment of your account becomes delinquent. Additionally, in the event that you fail to follow our advice and counsel, or otherwise fail to cooperate reasonably with us, we reserve the right to withdraw from representing you upon written notice, regardless of the then status of your matter. No termination shall relieve you of the obligation to pay fees and expenses incurred prior to such termination.

6. Retention of Documents

Although historically we have attempted to retain for a reasonable time copies of most documents generated by this Firm, we cannot be held responsible in any way for failure to do so, and we hereby expressly disclaim any such responsibility or liability. You must ultimately retain all originals and copies you desire among your own files for future reference. You further agree to pay any copy costs for client files requested by you after termination of the attorney-client relationship in Paragraph 5.

7. Fee Estimates

We are often requested to estimate the amount of fees and costs likely to be incurred in connection with a particular matter. Our attorneys do their best to estimate fees and expenses for particular matters when asked to do so. However, an estimate is just that, and the fees and expenses required are ultimately a function of many conditions over which we have little or no control, especially in litigation or negotiation situations where the extent of necessary legal services may depend to a significant degree upon the tactics of the opposition. Unless otherwise agreed in writing with respect to a specific matter, all estimates made by us shall be subject to your agreement and understanding that such estimates do not constitute maximum or fixed fee quotations and that the ultimate cost is frequently more or less than the amount estimated.

8. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, United States of America. Venue of any case or controversy arising under or pursuant to this Agreement shall be in Dallas County, Texas, United States of America.

9. Questions

If you have any questions from time to time about any aspect of our arrangements, please feel entirely free to raise those questions. We want to proceed in our work for you with a clear and satisfactory understanding about every aspect of our billing and payment policies; and we encourage an open and frank discussion of any or all of the matters mentioned in this memorandum.

BROWN & HOFMEISTER, L.L.P.
CLIENT COSTS ADVANCED SCHEDULE

The Firm incurs expenses on behalf of clients only when required by the legal needs of the clients. Some cases or matters require extensive use of copy facilities, and other cases may not be so paper-intensive. Standard services such as secretarial and word processing time, file setup and file storage are not charged; however, other expenses such as long distance fees, copies, delivery fees and fax charges are billed to the client requiring those services. An explanation of the billing structure is as follows:

Delivery Services

Outside delivery fees are charged to the client at the rate charged to the Firm. Overnight delivery services also are charged at the rate charged to the Firm with no markup.

Telephone

Our long distance charges are based on the exact number of minutes per call as provided by our carriers. The rate applied to the call is \$0.20 per minute. Cell phone charges will be charged at invoice rate if the call is long distance; otherwise, local telephone and cell phone charges will not be charged to the client.

Postage

Our postal equipment calculates exact U.S. postage for all sizes and weights of posted material. The rate charged for postage is the same as the amount affixed to the material that is mailed. We will not charge clients for standard postage; however, the cost of certified mail or other additional mail services will be charged to the client with no markup.

Copies

Our standard rate for copies made by firm personnel is \$0.15 per copy. This charge covers paper, equipment costs and other supplies. If savings can be realized within the required time frame by sending copy jobs to subcontractors, the firm uses only qualified legal services copiers and the cost charged to the client is the same as the amount billed to the Firm with no markup.

Computerized Research

If a legal matter requires the use of computerized legal research, trained and skilled legal researchers are used to minimize on-line data charges. The cost charged to the client for computerized legal research is the same as the amount billed to the Firm.

Fax

Fax copies will be charged at the rate of \$.25 per page.

Travel

Attorney time spent traveling on behalf of a client will be billed to the client. The client will not be billed for mileage, gas or toll reimbursements. Hotel, meal, local transportation and similar expenses are charged based on receipts and travel expense forms submitted by the attorney. Documentation is available to the client if requested.

Other Expenses

Expenses incurred to outside providers in connection with the client's legal services should be paid by the client directly to the outside provider unless specifically arranged in advance. If the Firm agrees to pay outside providers, the cost charged to the client is the same as the amount billed to the Firm. Examples of such charges include: court reporter fees, filing fees, newspaper charges for publication notices, PUC download fees, expert witness fees, consultants and other similar expenses. Such expenses will not be incurred without approval from the client.

MUNICIPAL ADVISORY AGREEMENT

This Municipal Advisory Agreement (the "Agreement") is made and entered into by and between **City of Farmersville, Texas** (the "Issuer") and **Hilltop Securities Inc. ("HilltopSecurities")**, and is dated, and shall be effective as of, the date executed by the Issuer as set forth on the signature page hereof (the "Effective Date").

WITNESSETH:

WHEREAS, the Issuer will have under consideration from time to time the authorization and issuance of municipal securities, including but not limited to the issuance and sale of evidences of indebtedness or debt obligations that may currently or in the future be authorized and issued or otherwise created or assumed by the Issuer, in amounts and forms which cannot presently be determined; and

WHEREAS, in connection with the authorization, sale, issuance and delivery of such municipal securities, as well as in connection with any matters relating to municipal financial products of the Issuer, the Issuer desires to retain a municipal advisor; and

WHEREAS, the Issuer desires to obtain the professional services of HilltopSecurities as a municipal advisor to advise the Issuer regarding the issuance of municipal securities and any municipal financial products, all as more fully described herein, during the period in which this Agreement shall be effective; and

WHEREAS, HilltopSecurities is willing to provide its professional services and its facilities as a municipal advisor in connection with the Issuer's issuances of municipal securities and any municipal financial products, all as more fully described herein, during the period in which this Agreement shall be effective.

NOW, THEREFORE, the Issuer and HilltopSecurities, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, do hereby agree as follows:

SECTION I SCOPE OF SERVICES

A. Scope of Services and Discharge of Responsibilities.

1. *Scope of Services.*

(a) HilltopSecurities is engaged by the Issuer as its municipal advisor to provide the services set forth in Appendix A hereto (the "Municipal Advisory Services"). The Municipal Advisory Services, together with any services to be provided by HilltopSecurities as the Issuer's independent registered municipal advisor ("IRMA") pursuant to subparagraph B.1 of this Section I, are hereinafter collectively referred to as the "Scope of Services" hereunder. The Scope of Services to be provided by HilltopSecurities may be changed only as provided in paragraph D of this Section I.

(b) If the Issuer engages HilltopSecurities or any of its affiliates, in a capacity other than as municipal advisor, to provide additional services that are not municipal advisory activities ("Non-Municipal Advisor Services"), such engagement for Non-Municipal Advisor Services shall be evidenced by a separate agreement between the Issuer and such party. The parties hereto acknowledge that such Non-Municipal Advisor Services shall not be governed by this Agreement and are intended to consist of activities not requiring registration as a municipal advisor under the Securities Exchange Act.

(c) The Issuer shall provide written notice to HilltopSecurities of any other municipal advisor engaged by the Issuer, whether in regard to all or any portion of the Municipal Advisory Services or for any other aspects of the issuance of municipal securities or municipal financial products outside the scope of the Municipal Advisory Services, as described in clause (c) of subparagraph B.1 of this Section I.

2. *Inquiries and Information in Connection with HilltopSecurities' Duties.* If and to the extent provided in the Scope of Services, HilltopSecurities is called upon to make recommendations to the Issuer or to review recommendations made by others to the Issuer, and in connection therewith to determine whether such recommendations are suitable for the Issuer, in order to fulfill its duties with respect to such recommendations and any associated suitability determinations, HilltopSecurities is required under applicable regulations to make reasonable inquiries of the Issuer as to the relevant facts. Such facts include, at a minimum, information regarding the Issuer's financial situation and needs, objectives, tax status, risk tolerance, liquidity needs, experience with municipal securities transactions or municipal financial products generally or of the type and complexity being recommended, financial capacity to withstand changes in market conditions during the term of the municipal financial product or the period that municipal securities to be issued in the municipal securities transaction are reasonably expected to be outstanding, and any other material information known by HilltopSecurities about the Issuer and the municipal securities transaction or municipal financial product. In addition, HilltopSecurities is required under applicable regulations to use reasonable diligence to know the essential facts about the Issuer and the authority of each person acting on behalf of the Issuer so as to effectively service HilltopSecurities' municipal advisory relationship with the Issuer, to act in accordance with any special directions from the Issuer, to understand the authority of each person acting on behalf of the Issuer, and to comply with applicable laws, regulations and rules.

Accordingly, the Issuer hereby agrees to provide accurate and complete information reasonably designed to permit HilltopSecurities to fulfill its responsibilities in connection with any such recommendations and suitability determinations and to provide to HilltopSecurities reasonable access to relevant documents and personnel in connection with its required investigation to determine that any recommendations are not based on materially inaccurate or incomplete information. The Issuer acknowledges that HilltopSecurities may not be able to make requested recommendations or suitability determinations if it is not provided access to such information and that the Issuer shall be estopped from claiming a violation of HilltopSecurities' fiduciary duty to the Issuer in connection with a recommendation or suitability determination made by HilltopSecurities based on materially inaccurate or incomplete information provided by the Issuer.

3. *Actions Independent of or Contrary to Advice.* The parties hereto acknowledge that the Issuer shall not be required to act in accordance with any advice or recommendation provided by HilltopSecurities to the Issuer. Upon providing such advice or recommendation to the Issuer, together with the basis for such advice or recommendation, HilltopSecurities shall have discharged its duties with regard to such advice or recommendation and shall not be liable for any financial or other damages resulting from the Issuer's election not to act in accordance with such advice or recommendation. Furthermore, the Issuer shall be estopped from claiming a violation of HilltopSecurities' fiduciary duty to the Issuer as a result of its election not to act in accordance with any advice or recommendation by HilltopSecurities, including but not limited to any claim that HilltopSecurities should have taken steps, in addition to providing its advice or recommendation together with the basis therefor, to cause the Issuer to follow its advice or recommendation.

4. *Preparation of Official Statement in Connection with Issuance of Municipal Securities.* If and to the extent provided in the Scope of Services, HilltopSecurities is called upon to assist the Issuer in the preparation of its official statement in connection with the issuance of municipal securities, the Issuer

hereby agrees to provide accurate and complete information to HilltopSecurities reasonably designed to permit HilltopSecurities to fulfill its responsibility to have a reasonable basis for any information HilltopSecurities provides about the Issuer, its financial condition, its operational status and its municipal securities in connection with the preparation of the official statement. While HilltopSecurities may participate in the due diligence process in connection with the preparation of the official statement, if such participation is within the Scope of Services, HilltopSecurities shall not be obligated to undertake any inquiry or investigation in connection with such due diligence beyond any inquiries or investigations otherwise required by this Agreement. Furthermore, HilltopSecurities shall not be responsible for certifying the accuracy or completeness of the official statement, other than with respect to information about HilltopSecurities provided for inclusion in the official statement, if applicable. The Issuer agrees that HilltopSecurities may rely on any information provided to it by the Issuer for purposes of this paragraph.

5. *Representations and Certifications.* If and to the extent provided in the Scope of Services, HilltopSecurities is called upon to make representations and certifications with regard to certain aspects of matters pertaining to the Issuer, its municipal securities or municipal financial products arising as part of the Municipal Advisory Services to be provided pursuant to this Agreement, the Issuer hereby agrees to provide accurate and complete information to HilltopSecurities as may be reasonably necessary or otherwise helpful to HilltopSecurities in fulfilling its responsibility to have a reasonable basis for any representations, other than representations by HilltopSecurities regarding itself, made in a certificate signed by HilltopSecurities that may be relied upon by the Issuer, any other party involved in any matter arising as part of the Municipal Advisory Services, or investors in the Issuer's municipal securities. The Issuer agrees that HilltopSecurities may rely on any information provided to it by the Issuer for purposes of this paragraph.

B. Services as Independent Registered Municipal Advisor.

1. *Designation as IRMA and Scope of Designation.*

(a) Subject to clause (b) of this subparagraph B.1, if the Issuer elects to designate HilltopSecurities, and HilltopSecurities agrees to represent the Issuer, as the Issuer's IRMA for purposes of Securities Exchange Commission ("SEC") Rule 15Ba1-1(d)(3)(vi) (the "IRMA exemption") with respect to the Municipal Advisory Services, HilltopSecurities will treat such role as IRMA as within the scope of Municipal Advisory Services. Any reference to HilltopSecurities, its personnel and its role as IRMA in the written representation of the Issuer contemplated under SEC Rule 15Ba1-1(d)(3)(vi)(B) shall be subject to prior approval by HilltopSecurities.

If there are any other aspects of the issuance of municipal securities or municipal financial products outside the scope of the Municipal Advisory Services with respect to which the Issuer seeks to have HilltopSecurities serve as its IRMA, such aspects, which are separate and distinct from Municipal Advisory Services for purposes of this Agreement, shall be included in Appendix A hereto and may be changed only as provided in paragraph D of this Section 1. HilltopSecurities' duties as IRMA shall be strictly limited to the provision of advice to the Issuer with regard to third-party recommendations on any aspects of the issuance of municipal securities or municipal financial products outside the scope of the Municipal Advisory Services, subject to subparagraph B.3 of this Section I, and the provision of advice by HilltopSecurities to the Issuer with respect to such matters shall not result in a change in scope of the Municipal Advisory Services. By way of example, if HilltopSecurities serves as municipal advisor for an issuance of municipal securities within the scope of Municipal Advisory Services, but is asked to review a recommendation made by a third party with respect to a different issuance of municipal securities not within the scope of Municipal Advisory Services, any advice with respect to such review would not, by itself, cause such other issuance to come within the scope of Municipal Advisory Services, and

HilltopSecurities would not be obligated to undertake any of the services set forth in Appendix A with regard to such issuance unless the scope of Municipal Advisory Services hereunder is amended to include such issuance.

(b) If the Issuer elects not to designate HilltopSecurities to serve as an IRMA for purposes of the IRMA exemption with respect to the Municipal Advisory Services, or if the Issuer elects to designate HilltopSecurities to serve as IRMA for less than the full range of Municipal Advisory Services, such election shall be set forth in Appendix A.

(c) The Issuer shall provide written notice to HilltopSecurities of any other municipal advisor engaged by the Issuer, whether such other municipal advisor has been designated as an IRMA, and such notice shall include the scope of services of such municipal advisor. If the Issuer has engaged, or has caused HilltopSecurities to engage through subcontract, any other party to serve as municipal advisor to the Issuer with regard to all or any portion of the Municipal Advisory Services ("Joint Municipal Advisory Services"), whether engaged jointly with or separately from HilltopSecurities (a "Co-Municipal Advisor"), the Issuer agrees that such Co-Municipal Advisor shall not be entitled to treat HilltopSecurities as an IRMA with respect to the Joint Municipal Advisory Services. Notwithstanding the preceding sentence, the Issuer may seek to have HilltopSecurities provide advice on any recommendation made by a Co-Municipal Advisor with regard to matters within the scope of Joint Municipal Advisory Services on the same terms as set forth in subparagraph B.3 of this Section I, provided that any such advice provided by HilltopSecurities shall not serve to eliminate or reduce such Co-Municipal Advisor's fiduciary or other duties as municipal advisor to the Issuer.

2. *HilltopSecurities Not Responsible for Independence from Third Parties.* Notwithstanding HilltopSecurities' status as an IRMA, HilltopSecurities shall not be responsible for ensuring that it is independent, within the meaning of the IRMA exemption as interpreted by the SEC, from another party wishing to rely on the exemption from the definition of municipal advisor afforded under the IRMA exemption or for otherwise ensuring that any such party not be treated as a municipal advisor for purposes of Section 15B of the Securities Exchange Act or any SEC or Municipal Securities Rulemaking Board ("MSRB") rule thereunder. The Issuer expressly acknowledges that it is the responsibility of such other party to make its own determination of independence and that such other party shall not be entitled to cause HilltopSecurities to make any personnel changes to allow such party to qualify for the IRMA exemption.

3. *Recommendations Provided by Third Parties Relying on IRMA Exemption.* The Issuer agrees that, to the extent the Issuer seeks to have HilltopSecurities provide advice with regard to any recommendation made by a third party relying on the IRMA exemption, the Issuer shall provide to HilltopSecurities written direction to provide advice with regard to such third party recommendation as well as any information it has received from such third party. In connection therewith, HilltopSecurities shall be authorized to communicate with such third party as necessary or appropriate in order for HilltopSecurities to have the information it needs to provide informed advice to the Issuer with regard to such recommendation. HilltopSecurities shall provide to the Issuer recommendations it receives directly from any third party but shall not be required to provide advice to the Issuer with regard to any such recommendation unless the Issuer has provided to HilltopSecurities the written direction as described above in this subparagraph B.3.

Except as may be otherwise expressly provided in writing by HilltopSecurities, no recommendation by a third-party (including but not limited to a Co-Municipal Advisor) shall be deemed to be a recommendation by HilltopSecurities, and the failure by HilltopSecurities to specifically address any aspect of a third-party recommendation shall not be viewed as HilltopSecurities having implicitly accepted or approved such aspect of the recommendation or otherwise having adopted the

recommendation or any aspect thereof as its own recommendation. Furthermore, the Issuer agrees that, to the extent the Issuer does not seek to have HilltopSecurities provide advice with regard to any recommendation made by a third party relying on the IRMA exemption, HilltopSecurities shall not be required to provide any advice with regard to such recommendation notwithstanding any information it may have received from such third party. HilltopSecurities may rely on the absence of the Issuer's written direction to provide advice with regard to a third party recommendation as indicative that the Issuer does not seek to have HilltopSecurities provide such advice.

C. Limitations on Scope of Engagement.

1. *Express Limitations.* The Scope of Services with respect to HilltopSecurities' engagement as municipal advisor shall be solely as provided in paragraphs A and B of this Section I and Appendix A of this Agreement, subject to the express limitations set forth in this paragraph C. The failure of the parties hereto to set out any particular service or responsibility, or any particular type or aspect of the issuance of municipal securities or municipal financial products, within the express limitations in this paragraph C shall not, by its omission, cause such service, responsibility or product to be within the scope of this engagement if not contemplated by the mutual agreement of the parties hereto or if not reasonably viewed as encompassed by the description of the Municipal Advisory Services set forth in this Agreement.

2. *Limitation as to Matters Within Then-Current Scope of Engagement.* It is expressly understood that HilltopSecurities serves as municipal advisor to the Issuer only with respect to the matters, and with respect to specific aspects of matters, within the then-current Scope of Services. The Issuer acknowledges that HilltopSecurities is not a municipal advisor to the Issuer with respect to matters expressly excluded from such Scope of Services as set forth in this paragraph C or matters otherwise not within the Scope of Services as set forth in paragraphs A and B of this Section I and Appendix A hereto. Without limiting the generality of the preceding sentence, the parties hereto agree that HilltopSecurities' service as municipal advisor for one issuance of municipal securities would not result in HilltopSecurities being a municipal advisor to the Issuer for any other issuances of municipal securities if such other issuances are not within the Scope of Services. It is expressly understood that HilltopSecurities shall be municipal advisor with respect to a particular issuance of municipal securities or a particular municipal financial product beginning on the earlier of (a) the date on which HilltopSecurities is assigned to serve or is otherwise put on notice by the Issuer that it will serve as municipal advisor for such particular matter or (b) the date on which HilltopSecurities first provides advice to the Issuer with respect to such particular matter, and it is further understood that HilltopSecurities shall not be deemed to be a municipal advisor to the Issuer with respect to any such particular matter prior to such date merely due to the fact that the matter falls within the general description of the Scope of Services.

3. *Transactions and Services Outside Scope of Engagement.* To the extent that the Issuer engages in any transaction with HilltopSecurities, or any affiliate of HilltopSecurities, as principal relating to municipal securities (including but not limited to as underwriter for the issuance of municipal securities) or municipal financial products that are not within the Scope of Services and with respect to which HilltopSecurities does not in fact provide advice other than as permitted within the exceptions and exclusions of SEC Rule 15Ba1-1, the Issuer agrees that it would not view HilltopSecurities as serving as its municipal advisor with respect to such transaction or any related issuance of municipal securities or municipal financial product. In addition, as noted in clause (b) of subparagraph A.1 of this Section I, the Issuer understands that Non-Municipal Advisor Services are outside the scope of this engagement.

4. *Issuer Consent to Limitation in Scope.* The Issuer expressly consents to the limitations in scope of the engagement as described in this paragraph C.

D. Change in Scope of Services. The scope of services to be provided by HilltopSecurities, whether within or outside of the scope of the Municipal Advisory Services, may be changed only by written amendment to Appendix A, and the parties hereto agree to amend such appendix promptly to reflect any material changes or additions to the scope of such services, as applicable. Furthermore, the parties hereto agree to amend paragraph C of this Section I to reflect any material changes or additions to the limitations on the overall Scope of Services.

The parties hereto agree that if, on an infrequent or inadvertent basis, HilltopSecurities takes any actions for or on behalf of the Issuer that constitute municipal advisory activities within the meaning of MSRB Rule G-42(f)(iv) but which are not within the Scope of Services under this Agreement, such actions shall not, by themselves, serve to change the Scope of Services under this Agreement without a written amendment as provided in this paragraph. Furthermore, to the extent that any such activities not within the Scope of Services under this Agreement consists of inadvertent advice provided with respect to the issuance of municipal securities or municipal financial products that are not within the Scope of Services under this Agreement, HilltopSecurities may take such action, if any, as it deems appropriate pursuant to Supplementary Material .07 of MSRB Rule G-42 with respect to such inadvertent advice, to maintain the Scope of Services under this Agreement consistent with the intent of the parties hereto.

Amendments to Appendix A may be effected by replacement of the prior version of the appendix with a new version or by the addition of an addendum to such appendix, provided that any such amended appendix shall be dated as of its effective date and shall cause Appendix A, taken together with the provisions of this Section I, to clearly set forth the then-current scope of HilltopSecurities' engagement hereunder and any limitations to such scope.

E. Non-Municipal Advisory Activities Related to Scope of Services. The Scope of Services under this Agreement is intended to encompass activities subject to the provisions of Securities Exchange Act Section 15B and the rules of the SEC and MSRB thereunder relating to municipal advisory activities. However, the Issuer and HilltopSecurities acknowledge that in some cases the range of activities necessary or appropriate to provide the intended services hereunder in a fair, effective and efficient manner for the benefit of the Issuer may involve a combination of actions that consist of municipal advisory activities and actions that may not qualify as municipal advisory activities. Unless otherwise prohibited by Securities Exchange Act Section 15B or any rule of the SEC or MSRB thereunder, the fact that HilltopSecurities serves as municipal advisor to the Issuer in connection with a particular matter shall not prohibit HilltopSecurities from undertaking such necessary or appropriate non-municipal advisory activities in connection therewith, and the fact that HilltopSecurities undertakes such non-municipal advisory activities within the Scope of Services under this Agreement would not, by itself, cause such activities to become municipal advisory activities for purposes Securities Exchange Act Section 15B or any rule of the SEC or MSRB thereunder.

SECTION II TERM AND TERMINATION

A. Term of this Engagement. This Agreement shall become effective as of the date executed by the Issuer as set forth on the signature page hereof and, unless terminated by either party pursuant to Section IV of this Agreement, shall remain in effect thereafter for a period of five (5) years from such date. Unless HilltopSecurities or Issuer shall notify the other party in writing at least thirty (30) days in advance of the applicable anniversary date that this Agreement will not be renewed, this Agreement will be automatically renewed on the fifth anniversary of the date hereof for an additional one (1) year period and thereafter will be automatically renewed on each anniversary date for successive one (1) year periods.

B. **Termination of this Engagement.** This Agreement may be terminated with or without cause by the Issuer or HilltopSecurities upon the giving of at least thirty (30) days' prior written notice to the other party of its intention to terminate, specifying in such notice the effective date of such termination. In the event of such termination, it is understood and agreed that only the amounts due HilltopSecurities for services provided and expenses incurred to the date of termination will be due and payable. No penalty will be assessed for termination of this Agreement.

SECTION III COMPENSATION, EXPENSES, LIABILITY AND OTHER FINANCIAL MATTERS

A. **Compensation.** The fees due to HilltopSecurities for the Municipal Advisory Services and any other services set forth in Appendix A hereto shall be as provided in **Appendix B** hereto. The Issuer has agreed to the compensation arrangements set forth in Appendix B and believes that they are reasonable and not excessive.

B. **Expenses.** HilltopSecurities shall be entitled to reimbursement of expenses incurred in connection with any services provided hereunder as set forth in Appendix B.

C. **Third-Party Payments.** The Issuer agrees that any request it makes to HilltopSecurities to make payments to any third party on its behalf (other than with any underwriter), whether pursuant to a fee-splitting arrangement or otherwise, shall be in writing and shall set forth the name of the recipient, the amount of payment, and a brief statement of the purpose of such payment. The Issuer agrees that the counter signature by HilltopSecurities of any such written request shall be satisfactory disclosure of such third-party payment or fee-splitting arrangement for purposes of MSRB Rule G-42(e)(i)(D) and shall, in the case of any such arrangements made after the Effective Date, serve as satisfactory written disclosure of any conflict of interest arising from such third-party payment or fee-splitting arrangement for purposes of MSRB Rule G-42(b)(i)(D) and (c)(ii).

D. **No Custody of Issuer Funds.** This engagement does not contemplate that HilltopSecurities receive deposit of or maintain custody of the Issuer's funds unless otherwise provided in Appendix A hereto.

E. **Limitation on Liability.** In the absence of willful misconduct, bad faith, gross negligence or reckless disregard of obligations or duties hereunder on the part of HilltopSecurities or any of its associated persons, HilltopSecurities and its associated persons shall have no liability to the Issuer for any act or omission in the course of, or connected with, rendering services hereunder or for any error of judgment, mistake of law, or any loss arising out of any issuance of municipal securities, any municipal financial product or any other investment.

SECTION IV REQUIRED DISCLOSURES

A. **Disclosure of Conflicts of Interest and Information Regarding Legal or Disciplinary Events.** The Issuer hereby acknowledges receipt of, and has read and understands the content of, the Municipal Advisor Disclosure Statement, attached hereto as **Appendix C**, current as of the date of this Agreement, setting forth disclosures by HilltopSecurities of material conflicts of interest (the "Conflict Disclosures"), if any, and of any legal or disciplinary events required to be disclosed pursuant to MSRB Rule G-42(b) and (c)(ii). The Conflict Disclosures also describe how HilltopSecurities addresses or intends to manage or mitigate any disclosed conflicts of interest, as well as the specific type of information regarding, and the date of the last material change, if any, to the legal and disciplinary events required to be disclosed on Forms MA and MA-I filed by HilltopSecurities with the SEC.

B. **Waiver of Disclosed Conflicts of Interest.** By executing this Agreement, the Issuer hereby waives any conflicts of interest disclosed by HilltopSecurities in the Conflict Disclosures as of the date of this Agreement.

C. **Consent to Electronic Delivery of Disclosures.** By executing this Agreement, the Issuer consents, for the full term of this Agreement, to the electronic delivery of the Conflict Disclosures at no cost to the Issuer, in lieu of delivery of hard copy. The Conflict Disclosures may be delivered by email to the Issuer at d.hamlin@farmersvilletx.com, or at such other email address as the Issuer may hereafter provide in writing to HilltopSecurities.

SECTION V MISCELLANEOUS

A. **Choice of Law.** This Agreement shall be construed and given effect in accordance with the laws of the State of Texas.

B. **Binding Effect; Assignment.** This Agreement shall be binding upon and inure to the benefit of the Issuer and HilltopSecurities, their respective successors and assigns; provided however, neither party hereto may assign or transfer any of its rights or obligations hereunder without the prior written consent of the other party.

C. **Entire Agreement.** This instrument, including all appendices hereto, contains the entire agreement between the parties relating to the rights herein granted and obligations herein assumed. Any oral or written representations or modifications concerning this Agreement shall be of no force or effect except for a subsequent modification in writing signed by all parties hereto, subject to the provisions of paragraph D of Section I hereof.

Signature page follows

HILLTOP SECURITIES INC.

CITY OF FARMERSVILLE, TEXAS

By: 

Nick Bulaich
Managing Director

Title: _____

Date: _____

APPENDIX A MUNICIPAL ADVISORY SERVICES

This Appendix A sets out the scope of the Municipal Advisory Services to be performed by HilltopSecurities pursuant to the Agreement, subject to the limitations in scope set out in paragraph C of Section I of the Agreement, and with the understanding that:

(a) Individual actions taken within this scope shall be consistent with any request or direction provided by an authorized representative of the Issuer or as HilltopSecurities determines to be necessary or appropriate in furtherance of any matter for which it serves as municipal advisor. However, not all listed activities will be appropriate, necessary or applicable to any particular matter subject to this Agreement.

(b) For purposes of this Agreement, an issuance of municipal securities (an "issuance") shall encompass any and all stages in the life of an issuance, from the pre-issuance planning stage to the repayment stage.

I. New Issuances of Municipal Securities. At the direction of or upon the request of the Issuer, HilltopSecurities shall provide advice to the Issuer on any new issuances, including reofferings of outstanding issuances that are treated for purposes of the federal securities laws and/or federal tax laws as new issuances, throughout the term of this Agreement. The activities to be performed by HilltopSecurities may include, depending on the specific circumstances of an issuance and any request or direction of the Issuer, one or more of the following:

Planning for New Issuance

1. ***Survey and Analysis.*** Surveying the financial resources of the Issuer in connection with its capacity to authorize, issue and service the contemplated issuance. This survey would be expected to include an analysis of any existing debt structure as compared with the existing and projected sources of revenues which may be pledged to secure payment of debt service and, where appropriate, would include a study of the trend of the assessed valuation, taxing power and present and future taxing requirements of the Issuer. In the event revenues of existing or projected facilities operated by the Issuer are to be pledged to repayment of the contemplated issuance, the survey would be expected to take into account any outstanding indebtedness payable from such revenues, additional revenues to be available from any proposed rate increases, and additional revenues resulting from improvements to be financed by the contemplated issuance, as projected by consulting engineers engaged by the Issuer.

2. ***Future Financings.*** In connection with the contemplated issuance, considering and analyzing future financing needs as projected by the Issuer's staff and consulting engineers or other experts, if any, engaged by the Issuer.

3. ***Recommendations.*** Making recommendations to the Issuer on the contemplated issuance, including such elements as the date of issue, interest payment dates, schedule of principal maturities, options for prepayment, security provisions, and such other provisions as may be appropriate.

4. ***Market Information.*** Advising the Issuer of HilltopSecurities' view of current bond market conditions, other related forthcoming bond issues and general information (including applicable economic data) which might normally be expected to influence interest rates or bidding conditions relevant to setting an appropriate date and time for the sale of the issuance.

5. *Elections.* In the event it is necessary to hold an election to authorize the contemplated issuance, assisting in coordinating the assembly of such data as may be required for the preparation of necessary petitions, orders, resolutions, ordinances, notices and certificates in connection with the election, including assistance in the transmission of such data to the Issuer's bond counsel.

Debt Management and Financial Implementation for New Issuance

6. *Method of Sale.* Evaluating the particular financing being contemplated, giving consideration to the complexity, market acceptance, rating, size and structure in order to make a recommendation as to an appropriate method of sale, and:

a. If the issuance is to be sold by a competitive sale:

(1) Supervising the sale of the municipal securities;

(2) Disseminating information to prospective bidders, organizing such informational meetings as may be necessary, and facilitating prospective bidders' efforts in making timely submission of proper bids;

(3) Assisting the staff of the Issuer in coordinating the receipt of bids, the safekeeping of good faith checks and the tabulation and comparison of submitted bids;

(4) Advising the Issuer regarding the best bid and provide advice regarding acceptance or rejection of the bids; and

(5) Obtaining CUSIP numbers on behalf of the Issuer.

b. If the issuance is to be sold by negotiated sale:

(1) Recommending for the Issuer's final approval and acceptance one or more investment banking firms, as sole underwriter or as managers of an underwriting syndicate, for the purpose of negotiating the purchase of the municipal securities;

(2) Cooperating with and assisting any selected sole or managing underwriter and its counsel, as well as any disclosure counsel retained by the Issuer, in connection with the preparation of any preliminary or final official statement or offering memorandum. HilltopSecurities will cooperate with and assist the underwriters in the preparation of a bond purchase contract, an underwriters' agreement and other related documents;

(3) Assisting the staff of the Issuer in the safekeeping of any good faith checks and providing a cost comparison to the then-current market of expenses, interest rates and prices which are proposed by the underwriters;

(4) Advising the Issuer on the fairness of the price offered by the underwriters;

(5) Advising the Issuer in connection with any terms and conditions it may wish to establish with respect to order priorities and other similar matters relating to the underwriting of the new issuance;

(6) If the new issuance will have a retail order period, advising the Issuer on retail eligibility criteria and other features of the retail order period and reviewing information provided by the underwriters to the Issuer in connection with retail orders received; and

(7) At the request of the Issuer, reviewing required disclosures by underwriters to the Issuer relating to their role as underwriter, conflicts of interests, material terms and risks of the issuance, and any other matters, and providing any appropriate advice to the Issuer in connection with such disclosures.

7. *Offering Documents for Competitive Offerings.* Coordinating the preparation of the notice of sale and bidding instructions, preliminary official statement (including cooperating with and assisting any disclosure counsel retained by the Issuer), official bid form and such other documents as may be required and submitting all such documents to the Issuer for examination, approval and certification. After such examination, approval and certification, HilltopSecurities shall provide the Issuer with a supply of all such documents sufficient to its needs and distribute sets of the same to prospective bidders for the municipal securities. HilltopSecurities also shall provide copies of the final official statement to the winning bidder purchasing the municipal securities in the MSRB-designated electronic format and in accordance with the notice of sale and bidding instructions promptly after the Issuer approves the final official statement for distribution.

8. *Credit Ratings.* Making recommendations to the Issuer on the advisability of obtaining one or more credit ratings for the issuance and, when directed by the Issuer, coordinating the preparation of such information as may be appropriate for submission to any rating agency. In those cases where the advisability of personal presentation of information to a rating agency may be indicated, HilltopSecurities will arrange for such personal presentations, utilizing such composition of representatives from the Issuer as may be approved or directed by the Issuer.

9. *Trustee, Paying Agent, Registrar, Professionals and Other Transaction Participants.* Upon request, providing advice to the Issuer in the selection of a trustee and/or paying agent/registrar, legal, accounting or other professionals, and other transaction participants relating to any issuance, and assisting in the negotiation of agreements pertinent to these services and the fees incident thereto.

10. *Financial Publications.* When appropriate, advising financial publications of the forthcoming sale of the municipal securities and providing them with all pertinent information.

11. *Consultants.* After consulting with and receiving directions from the Issuer, arranging for such reports and opinions of recognized independent consultants as may be appropriate for the successful marketing of the issuance.

12. *Auditors.* In the event formal verification by an independent auditor of any calculations incident to the issuance is required, making arrangements for such services.

13. *Issuer Meetings.* Attending meetings of the governing body of the Issuer, its staff, representatives or committees as requested when HilltopSecurities may be of assistance or service and matters within the scope of this engagement are to be discussed.

14. *Printing.* To the extent authorized by the Issuer, coordinating all work incident to printing or final production, physical or electronic, of the offering documents.

15. *Bond Counsel.* Maintaining liaison with bond counsel in the preparation of all legal documents pertaining to the authorization, sale and issuance of the municipal securities.

16. *Changes in Laws.* Providing to the Issuer copies of proposed or enacted changes in federal and state laws, rules and regulations having, or expected to have, a significant effect on the municipal bond market of which HilltopSecurities becomes aware in the ordinary course of its

business, it being understood that HilltopSecurities does not and may not act as an attorney for, or provide legal advice or services to, the Issuer.

17. ***Delivery of the Municipal Securities.*** As soon as a bid for the purchase of a competitive issuance is accepted by the Issuer or the bond purchase contract for a negotiated issuance is signed by the Issuer, coordinating the efforts of all concerned to the end that the municipal securities may be delivered and paid for as expeditiously as possible and assisting the Issuer in the preparation or verification of final closing figures incident to the delivery of the municipal securities.

18. ***Debt Service Schedule; Authorizing Resolution.*** After the closing of the sale and delivery of the issuance, delivering to the Issuer a schedule of annual debt service requirements for the issuance and, in coordination with bond counsel, assuring that the paying agent/registrar and/or trustee has been provided with a copy of the authorizing ordinance, order or resolution.

19. ***Continuing Disclosure.*** Providing advice to the Issuer with regard to its continuing disclosure undertakings for its new issuances and its selection of a dissemination agent under its continuing disclosure undertakings; provided that, upon the mutual agreement of the Issuer and HilltopSecurities, HilltopSecurities may serve as dissemination agent under one or more of the Issuer's continuing disclosure undertakings upon such terms as the parties shall agree, with such service as dissemination agent being expressly excluded from the scope of this Agreement.

II. Baseline Advice on Outstanding Issuances of Municipal Securities. HilltopSecurities shall provide baseline on-going advice to the Issuer on any outstanding issuances throughout the term of this Agreement, which may include, depending on the specific circumstances of such issuance and any request or direction of the Issuer:

1. ***Exercising Calls.*** Providing advice and assistance to the Issuer with regard to exercising any calls of outstanding municipal securities unrelated to a refunding of such securities.

2. ***Refundings and Tender Offers.*** Providing advice to the Issuer with regard to opportunities for refundings of outstanding issuances or to make tender offers for outstanding issuances, whether by means of a new issuance, bank loans, or other funds of the Issuer, but not including serving as advisor in connection with the specific transaction through which such refunding or tender offer is effected. Transaction-based advice in connection with a specific new issuance of bonds to effectuate any such refunding or tender offer would be provided within the scope of Municipal Advisory Services for new issuances described in Section I above. Transaction-based advice in connection with a specific bank loan or other transaction to effectuate any such refunding or tender offer, other than by means of a new issuance of bonds would be provided pursuant to a separate agreement as described in Section IV below.

3. ***Continuing Disclosure.*** Providing advice to the Issuer with regard to continuing disclosure undertakings for outstanding issuances; processes, policies and procedures to comply with continuing disclosure undertakings; and coordination of continuing disclosure obligations arising from different continuing disclosure undertakings for its various issuances. However, the preparation of continuing disclosure documents, other than in the capacity of dissemination agent under a continuing disclosure undertaking, would be provided within the scope of other services described in Section V, below.

III. Particularized Services on Outstanding Issuances of Municipal Securities. HilltopSecurities may provide to the Issuer certain additional advisory or related services in connection with particular outstanding issuances or matters affecting multiple outstanding issuances throughout the term of this

Agreement, which may include, depending on the specific circumstances of such issuance and any request or direction of the Issuer:

1. *Other Post-Sale Services.* Reviewing the transaction features and documentation of outstanding issuances with legal counsel for the Issuer, bond counsel, auditors and other experts and consultants retained by the Issuer and assisting in developing appropriate responses to legal processes, audit procedures, inquiries, internal reviews and similar matters, or other services related to one or more outstanding issuances as may be agreed to by the Issuer and HilltopSecurities.
2. *Brokerage of Municipal Escrow Investments.* At the request of the Issuer, brokering the purchase of municipal escrow investments in connection with a refunding of an outstanding issuance, together with any recommendations by HilltopSecurities (but not by First Southwest Asset Management, LLC as an investment adviser) with respect to such brokerage.

IV. Services as Independent Registered Municipal Advisor ("IRMA"). At the written request of the Issuer, HilltopSecurities shall, as the Issuer's IRMA, review and provide advice to the Issuer in connection with any recommendations, proposals, ideas or matters suggested or otherwise communicated by a third party to the Issuer with respect to the same aspects of the issuance of municipal securities or municipal financial products that are within the scope of Municipal Advisory Services. There are no aspects of the issuance of municipal securities or municipal financial products that are outside the scope of Municipal Advisory Services set forth in this Appendix.

V. Other Services Relating to Municipal Securities. HilltopSecurities agrees to make available to the Issuer other services relating to municipal securities, when so requested by the Issuer and subject to the agreement by Issuer and HilltopSecurities regarding the specific requirements with respect to such services, which requirements shall be made part of the scope of Municipal Advisory Services and included in this Appendix as an amendment or addendum, which services may include, without limitation:

1. *Capital Improvement Programs.* Providing advice and assistance in the development of any capital improvement programs of the Issuer.
2. *Long-Range Planning.* Providing advice and assistance in the development of other long-range financing plans of the Issuer.
3. *Refundings and Tender Offers.* Providing advice and assistance in executing a refunding or tender offer of an outstanding issuance other than by means of refunding bonds, such as by means of a bank loan or other funds of the Issuer.
4. *Continuing Disclosure Documents.* Preparing and providing advice with regard to the content of continuing disclosure documents in compliance with the Issuer's continuing disclosure undertakings for its outstanding issuances, other than in the capacity of dissemination agent under a continuing disclosure undertaking.

* * * * *

As provided in paragraph D of Section I of the Agreement, amendments to this Appendix A may be effected by replacement of this Appendix A with a new version hereof or by the addition of an addendum to this Appendix A, and this Appendix A, as it may have been amended, shall be dated and effective as of the most recent of the date set forth in any such amendment or the date set forth in any addendum to this Appendix A.

APPENDIX B FORM AND BASIS OF COMPENSATION

This Appendix B sets out the form and basis of compensation to HilltopSecurities for the Municipal Advisory Services provided under this Agreement as set forth in Appendix A; provided that the compensation arrangements set forth in this Appendix B shall also apply to any additional services hereafter added to the scope of the Municipal Advisory Services, unless otherwise provided in the amendment to the Agreement relating to such change in scope of Municipal Advisory Services as provided in paragraph D of Section I of the Agreement.

I. New Issuances of Municipal Securities. The fees due HilltopSecurities in connection with the Municipal Advisory Services set forth in Section I of Appendix A hereto for each new issuance of municipal securities will not exceed those contained in our fee schedule as listed below:

Base Fee Per Issue		\$ 5,000
plus \$10.00 per \$1,000	for the next	\$ 250,000 of bonds issued
plus \$ 9.00 per \$1,000	for the next	\$ 250,000 of bonds issued
plus \$ 6.00 per \$1,000	for the next	\$ 500,000 of bonds issued
plus \$ 4.00 per \$1,000	for the next	\$1,500,000 of bonds issued
plus \$ 2.50 per \$1,000	for the next	\$2,500,000 of bonds issued
plus \$ 1.75 per \$1,000	for the next	\$5,000,000 of bonds issued
plus \$ 1.25 per \$1,000	thereafter	

The payment of charges as set forth in this Section I for new issuances shall be contingent upon the delivery of the new issuance and shall be due at the time that the municipal securities are delivered.

II. Baseline Advice on Outstanding Issuances of Municipal Securities. There shall be no additional fees due HilltopSecurities in connection with the Municipal Advisory Services set forth in Section II of Appendix A hereto, with the understanding that such services are integral to HilltopSecurities' engagement as municipal advisor to the Issuer and HilltopSecurities shall be compensated for such services through and as part of the fees paid for the other services provided by HilltopSecurities hereunder.

III. Third-Party Recommendations, Proposals, Ideas or Other Matters as IRMA. In connection with its review of and advice on third-party recommendations to Issuers as an IRMA as described in Section IV of Appendix A hereto, Hilltop Securities shall charge a fee based on an hourly rate for services rendered which is mutually agreeable between the Issuer and Hilltop Securities.

IV. Other Services Relating to Municipal Securities. In connection with any services described in Section V of Appendix A hereto requested by the Issuer and agreed to by HilltopSecurities, the fees due with respect to any such services shall be as agreed to by the parties hereto, which terms shall be made part of the compensation provided under this Agreement and shall be included in this Appendix as an amendment or addendum hereto.

V. Expenses. The Issuer shall be responsible for the following expenses in connection with the Municipal Advisory Services (including any additional services hereafter added to the scope of the Municipal Advisory Services), if and when applicable, whether they are charged to the Issuer directly as expenses or charged to the Issuer by HilltopSecurities as reimbursable expenses: bond counsel fees and expenses, bond printing costs, bond ratings fees and expenses, computer structuring costs, credit enhancement fees and expenses, accountant fees for verifications and related activities in connection with refundings, official statement preparation and printing, paying agent/registrar/trustee fees and expenses,

travel expenses, underwriter and underwriter's counsel fees and expenses, and other miscellaneous expenses incurred by HilltopSecurities in the furtherance of any matter for which it serves as municipal advisor, including copy, delivery, phone and other charges normally incurred in connection with engagements of this type.

The Issuer agrees that any expense that it requests that HilltopSecurities pay to any third party on the Issuer's behalf shall be made in writing and shall be in accordance with paragraph C of Section III of the Agreement.

The payment of reimbursable expenses that HilltopSecurities has assumed on behalf of the Issuer shall NOT be contingent upon the delivery of a new issuance of municipal securities or the completion of any other transactions for which such expenses have been assumed and shall be due at the time that services are rendered and payable upon receipt of an invoice therefor submitted by HilltopSecurities, unless otherwise provided for in any amendment or addendum hereto in connection with the compensation arrangements for any services provided under the Agreement for which such amendment or addendum is required.

APPENDIX C MUNICIPAL ADVISOR DISCLOSURE STATEMENT

This disclosure statement ("Conflict Disclosures") is provided by **Hilltop Securities Inc.** ("the Firm") to you (the "Client") in connection with our current municipal advisory agreement, ("the Agreement"). These Conflict Disclosures provide information regarding conflicts of interest and legal or disciplinary events of the Firm that are required to be disclosed to the Client pursuant to MSRB Rule G-42(b) and (c)(ii).

PART A – Disclosures of Conflicts of Interest

MSRB Rule G-42 requires that municipal advisors provide to their clients disclosures relating to any actual or potential material conflicts of interest, including certain categories of potential conflicts of interest identified in Rule G-42, if applicable.

Material Conflicts of Interest – The Firm makes the disclosures set forth below with respect to material conflicts of interest in connection with the Scope of Services under the Agreement with the Firm, together with explanations of how the Firm addresses or intends to manage or mitigate each conflict.

General Mitigations – As general mitigations of the Firm's conflicts, with respect to all of the conflicts disclosed below, the Firm mitigates such conflicts through its adherence to its fiduciary duty to Client, which includes a duty of loyalty to Client in performing all municipal advisory activities for Client. This duty of loyalty obligates the Firm to deal honestly and with the utmost good faith with Client and to act in Client's best interests without regard to the Firm's financial or other interests. In addition, because the Firm is a broker-dealer with significant capital due to the nature of its overall business, the success and profitability of the Firm is not dependent on maximizing short-term revenue generated from individualized recommendations to its clients but instead is dependent on long-term profitability built on a foundation of integrity, quality of service and strict adherence to its fiduciary duty. Furthermore, the Firm's municipal advisory supervisory structure, leveraging our long-standing and comprehensive broker-dealer supervisory processes and practices, provides strong safeguards against individual representatives of the Firm potentially departing from their regulatory duties due to personal interests. The disclosures below describe, as applicable, any additional mitigations that may be relevant with respect to any specific conflict disclosed below.

I. Affiliate Conflict. The Firm, directly and through affiliated companies, provides or may provide services/advice/products to or on behalf of clients that are related to the Firm's advisory activities within the Scope of Services outlined in the Agreement. First Southwest Asset Management (FSAM), a SEC-registered affiliate of the Firm, provides post issuance services including arbitrage rebate and treasury management. The Firm's arbitrage team verifies rebate and yield restrictions on the investments of bond proceeds on behalf of clients in order to meet IRS restrictions. The treasury management division performs portfolio management/advisor services on behalf of public sector clients. The Firm, through affiliate First Southwest Advisory, provides a multi-employer trust tailor-made for public entities which allows them to prefund Other Post-Employment Benefit liabilities. The Firm has a structured products desk that provides advice to help clients mitigate risk through investment management, debt management and commodity price risk management products. These products consist of but are not limited to swaps (interest rate, currency, commodity), options, repos, escrow structuring and other securities. Continuing Disclosure services provided by the Firm work with issuers to assist them in meeting disclosure requirements set forth in SEC rule 15c2-12. Services include but are not limited to ongoing maintenance of issuer compliance, automatic tracking of issuer's annual filings and public notification of material events. The Firm administers two government investment pools for Texas governments: the Short-Term Asset Reserve Fund (TexSTAR) and the Local Government Investment Cooperative (LOGIC). These

programs offer Texas government entities investment options for their cash management programs based on the entities specific needs. The Firm and the aforementioned affiliate's business with a client could create an incentive for the Firm to recommend to a client a course of action designed to increase the level of a client's business activities with the affiliates or to recommend against a course of action that would reduce or eliminate a client's business activities with the affiliates. Furthermore, this potential conflict is mitigated by the fact that the Firm and affiliates are subject to their own comprehensive regulatory regime as a member of multiple self-regulatory organizations in which compliance is verified by not only internal tests but annual external examinations.

II. Other Municipal Advisor or Underwriting Relationships. The Firm serves a wide variety of other clients that may from time to time have interests that could have a direct or indirect impact on the interests of Client. For example, the Firm serves as municipal advisor to other municipal advisory clients and, in such cases, owes a regulatory duty to such other clients just as it does to Client. These other clients may, from time to time and depending on the specific circumstances, have competing interests, such as accessing the new issue market with the most advantageous timing and with limited competition at the time of the offering. In acting in the interests of its various clients, the Firm could potentially face a conflict of interest arising from these competing client interests. In other cases, as a broker-dealer that engages in underwritings of new issuances of municipal securities by other municipal entities, the interests of the Firm to achieve a successful and profitable underwriting for its municipal entity underwriting clients could potentially constitute a conflict of interest if, as in the example above, the municipal entities that the Firm serves as underwriter or municipal advisor have competing interests in seeking to access the new issue market with the most advantageous timing and with limited competition at the time of the offering. None of these other engagements or relationships would impair the Firm's ability to fulfill its regulatory duties to Client.

III. Secondary Market Transactions in Client's Securities. The Firm, in connection with its sales and trading activities, may take a principal position in securities, including securities of Client, and therefore the Firm could have interests in conflict with those of Client with respect to the value of Client's securities while held in inventory and the levels of mark-up or mark-down that may be available in connection with purchases and sales thereof. In particular, the Firm or its affiliates may submit orders for and acquire Client's securities issued in an Issue under the Agreement from members of the underwriting syndicate, either for its own account or for the accounts of its customers. This activity may result in a conflict of interest with Client in that it could create the incentive for the Firm to make recommendations to Client that could result in more advantageous pricing of Client's bond in the marketplace. Any such conflict is mitigated by means of such activities being engaged in on customary terms through units of the Firm that operate independently from the Firm's municipal advisory business, thereby reducing the likelihood that such investment activities would have an impact on the services provided by the Firm to Client under this Agreement.

IV. Broker-Dealer and Investment Advisory Business. The Firm is dually registered as a broker-dealer and an investment advisor that engages in a broad range of securities-related activities to service its clients, in addition to serving as a municipal advisor or underwriter. Such securities-related activities, which may include but are not limited to the buying and selling of new issue and outstanding securities and investment advice in connection with such securities, including securities of Client, may be undertaken on behalf of, or as counterparty to, Client, personnel of Client, and current or potential investors in the securities of Client. These other clients may, from time to time and depending on the specific circumstances, have interests in conflict with those of Client, such as when their buying or selling of Client's securities may have an adverse effect on the market for Client's securities, and the interests of such other clients could create the incentive for the Firm to make recommendations to Client that could result in more advantageous pricing for the other clients. Furthermore, any potential conflict arising from the firm effecting or otherwise assisting such other clients in connection with such transactions is

mitigated by means of such activities being engaged in on customary terms through units of the Firm that operate independently from the Firm's municipal advisory business, thereby reducing the likelihood that the interests of such other clients would have an impact on the services provided by the Firm to Client.

V. Compensation-Based Conflicts. Fees that are based on the size of the issue are contingent upon the delivery of the Issue. While this form of compensation is customary in the municipal securities market, this may present a conflict because it could create an incentive for the Firm to recommend unnecessary financings or financings that are disadvantageous to Client, or to advise Client to increase the size of the issue. This conflict of interest is mitigated by the general mitigations described above.

Fees based on a fixed amount are usually based upon an analysis by Client and the Firm of, among other things, the expected duration and complexity of the transaction and the Scope of Services to be performed by the Firm. This form of compensation presents a potential conflict of interest because, if the transaction requires more work than originally contemplated, the Firm may suffer a loss. Thus, the Firm may recommend less time-consuming alternatives, or fail to do a thorough analysis of alternatives. This conflict of interest is mitigated by the general mitigations described above.

Hourly fees are calculated with, the aggregate amount equaling the number of hours worked by Firm personnel times an agreed-upon hourly billing rate. This form of compensation presents a potential conflict of interest if Client and the Firm do not agree on a reasonable maximum amount at the outset of the engagement, because the Firm does not have a financial incentive to recommend alternatives that would result in fewer hours worked. This conflict of interest is mitigated by the general mitigations described above.

PART B – Disclosures of Information Regarding Legal Events and Disciplinary History

MSRB Rule G-42 requires that municipal advisors provide to their clients certain disclosures of legal or disciplinary events material to its client's evaluation of the municipal advisor or the integrity of the municipal advisor's management or advisory personnel.

Accordingly, the Firm sets out below required disclosures and related information in connection with such disclosures.

I. Material Legal or Disciplinary Event. The Firm discloses the following legal or disciplinary events that may be material to Client's evaluation of the Firm or the integrity of the Firm's management or advisory personnel:

- For related disciplinary actions please refer to the Firm's BrokerCheck webpage.
- The Firm self-reported violations of SEC Rule 15c2-12: Continuing Disclosure. The Firm settled with the SEC on February 2, 2016. The firm agreed to retain independent consultant and adopt the consultant's finding. Firm paid a fine of \$360,000.
- The Firm settled with the SEC in matters related to violations of MSRB Rules G-23(c), G-17 and SEC rule 15B(c) (1). The Firm disgorged fees of \$120,000 received as financial advisor on the deal, paid prejudgment interest of \$22,400.00 and a penalty of \$50,000.00.
- The Firm entered into a Settlement Agreement with Rhode Island Commerce Corporation. Under the Settlement Agreement, the firm agreed to pay \$16.0 million to settle any and all claims in connection with The Rhode Island Economic Development Corporation Job Creation Guaranty Program Taxable Revenue Bond (38 Studios, LLC Project) Series 2010, including

the litigation thereto. The case, filed in 2012, arose out of a failed loan by Rhode Island Economic Development Corporation. The firm's predecessor company, First Southwest Company, LLC, was one of 14 defendants. FirstSouthwest's engagement was limited to advising on the structure, terms, and rating of the underlying bonds. Hilltop settled with no admission of liability or wrongdoing.

II. How to Access Form MA and Form MA-I Filings. The Firm's most recent Form MA and each most recent Form MA-I filed with the SEC are available on the SEC's EDGAR system at Forms MA and MA-I. The SEC permits certain items of information required on Form MA or MA-I to be provided by reference to such required information already filed by the Firms in its capacity as a broker-dealer on Form BD or Form U4 or as an investment adviser on Form ADV, as applicable. Information provided by the Firm on Form BD or Form U4 is publicly accessible through reports generated by BrokerCheck at <http://brokercheck.finra.org/>, and the Firm's most recent Form ADV is publicly accessible at the Investment Adviser Public Disclosure website at <http://www.adviserinfo.sec.gov/>. For purposes of accessing such BrokerCheck reports or Form ADV, click previous hyperlinks.

PART C – Future Supplemental Disclosures

As required by MSRB Rule G-42, this Municipal Advisor Disclosure Statement may be supplemented or amended, from time to time as needed, to reflect changed circumstances resulting in new conflicts of interest or changes in the conflicts of interest described above, or to provide updated information with regard to any legal or disciplinary events of the Firm. The Firm will provide Client with any such supplement or amendment as it becomes available throughout the term of the Agreement.

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

Prepared by



Issued and Published Jointly by



This Agreement has been prepared for use with EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition. Their provisions are interrelated, and a change in one may necessitate a change in the other. For guidance on the completion and use of this Agreement, see EJCDC® E-001, Commentary on the EJCDC Engineering Services Agreements, 2013 Edition.

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**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of _____ (“Effective Date”) between
_____ (“Owner”) and
The City of Farmersville, Texas _____ (“Engineer”).
Daniel & Brown Inc _____

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

Wastewater System Improvements "Project").

Other terms used in this Agreement are defined in Article 7.

Engineer's services under this Agreement are generally identified as follows:
Study and Reporting, Planning, Designing, Construction Engineering and Resident Inspection.

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 Scope

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER'S RESPONSIBILITIES

2.01 General

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Article 4 and Exhibit C.
- C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.
- D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:
 - 1. any development that affects the scope or time of performance of Engineer's services;
 - 2. the presence at the Site of any Constituent of Concern; or

3. any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 Commencement

- A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 Time for Completion

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 Invoices

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 Payments

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
 1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and

- 2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraph 4.01.
- D. *Sales or Use Taxes:* If after the Effective Date any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

5.02 *Designing to Construction Cost Limit*

- A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F to this Agreement.

5.03 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar

circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.

- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
 - 1. Engineer and Owner shall comply with applicable Laws and Regulations.
 - 2. Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
 - 3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
 - a. changes after the Effective Date to Laws and Regulations;
 - b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures;
 - c. changes after the Effective Date to Owner-provided written policies or procedures.
- F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.
- G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 "Standard General Conditions of the Construction Contract" (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise in Exhibit J or elsewhere in this Agreement.

- H. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's, failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.
- K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- L. Engineer's services do not include providing legal advice or representation.
- M. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- N. While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design Without Construction Phase Services*

- A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, Paragraph A1.05. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction, and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in Exhibit A.

6.03 *Use of Documents*

- A. All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed.
- B. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- C. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- D. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Electronic Transmittals*

- A. Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
- B. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

6.05 Insurance

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall procure and maintain insurance as set forth in Exhibit G. Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies carried by Owner, which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project.
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Project. Owner and Engineer shall take appropriate measures in other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.
- G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.06 *Suspension and Termination*

A. *Suspension:*

1. *By Owner:* Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.
2. *By Engineer:* Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraph 4.02.B, or in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.D.

B. *Termination:* The obligation to provide further services under this Agreement may be terminated:

1. For cause,
 - a. by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
 - b. by Engineer:
 - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.D.
 - 3) Engineer shall have no liability to Owner on account of such termination.
 - c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.06.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
 2. For convenience, by Owner effective upon Engineer's receipt of notice from Owner.
- C. *Effective Date of Termination:* The terminating party under Paragraph 6.06.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks

whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

D. *Payments Upon Termination:*

1. In the event of any termination under Paragraph 6.06, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.
2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.D.1, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.07 *Controlling Law*

- A. This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located.

6.08 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.
 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

3. Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in the Construction Contract Documents.

6.09 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights at law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.09.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.

6.10 *Environmental Condition of Site*

- A. Owner represents to Engineer that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
- B. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- C. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
- D. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until such portion of the Project is no longer affected.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on seven days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.11 Indemnification and Mutual Waiver

- A. *Indemnification by Engineer:* To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."
- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations and to the extent (if any) required in Exhibit I, "Limitations of Liability."
- C. *Environmental Indemnification:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorney's fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- E. *Percentage Share of Negligence:* To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- F. *Mutual Waiver:* To the fullest extent permitted by Laws and Regulations, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes.

6.12 *Records Retention*

- A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

6.13 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims:* To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:
 - 1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
 - 2. *Additional Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.

3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
4. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
6. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
7. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
9. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
10. *Construction Contract Documents*—Those items designated as "Contract Documents" in the Construction Contract, and which together comprise the Construction Contract.
11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
12. *Construction Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.

13. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner's costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.
16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
20. *Engineer*—The individual or entity named as such in this Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
22. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
23. *Owner*—The individual or entity named as such in this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.

24. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.
25. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer as an Additional Service and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
26. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.
27. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
28. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
29. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
30. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
31. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
32. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
33. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

- 34. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
- 35. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner's costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.
- 36. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.
- 37. *Work Change Directive*—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

B. *Day*:

- 1. The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits Included*:

- A. Exhibit A, Engineer's Services.
- B. Exhibit B, Owner's Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.
- E. Exhibit E, Notice of Acceptability of Work.
- F. Exhibit F, Construction Cost Limit – not used.
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution – not used.

- I. Exhibit I, Limitations of Liability.
- J. Exhibit J, Special Provisions – not used.
- K. Exhibit K, Amendment to Owner-Engineer Agreement.

8.02 *Total Agreement*

- A. This Agreement, (together with the exhibits included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Amendments should be based whenever possible on the format of Exhibit K to this Agreement.

8.03 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party whom the individual represents.

8.04 *Engineer's Certifications*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
 - 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

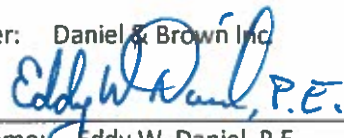
IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner: City of Farmersville

By: _____
Print name: Diane C. Piwko
Title: Mayor
Date Signed: _____

Address for Owner's receipt of notices:
205 S Main Street
Farmersville, TX 75442
972-782-6151
Designated Representative (Paragraph 8.03.A):
Benjamin L. White, P.E., CPM
Title: City Manager
Phone Number: 972-782-6151
E-Mail Address: B.White@farmersvilletx.com

Engineer: Daniel & Brown Inc

By:  _____
Print name: Eddy W. Daniel, P.E.
Title: President
Date Signed: _____

Engineer License or Firm's Certificate No. (if required):
F-002225
State of: Texas

Address for Engineer's receipt of notices:
PO Box 606
Farmersville, TX 75442
972-784-777
Designated Representative (Paragraph 8.03.A):
Charles Massey
Title: Project Manager
Phone Number: 972-784-7777
E-Mail Address: Charles@DBIConsultants.com

This is **EXHIBIT A**, consisting of **sixteen (16)** pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated _____.

Engineer's Services

Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic and Additional Services as set forth below.

PART 1 – BASIC SERVICES

A1.01 Study and Report Phase

A. Engineer shall:

1. Consult with Owner to define and clarify Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations, and identify available data, information, reports, facilities plans, and site evaluations.
2. Identify potential solution(s) to meet Owner's Project requirements, as needed.
3. Study and evaluate the potential solution(s) to meet Owner's Project requirements.
4. Visit the Site, or potential Project sites, to review existing conditions and facilities, unless such visits are not necessary or applicable to meeting the objectives of the Study and Report Phase.
5. Advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Engineer additional Project-related data and information, for Engineer's use in the study and evaluation of potential solution(s) to Owner's Project requirements, and preparation of a related report.
6. After consultation with Owner, recommend to Owner the solution(s) which in Engineer's judgment meet Owner's requirements for the Project.
7. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project to be designed or specified by Engineer, including but not limited to mitigating measures identified in an environmental assessment for the Project.
8. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and Engineer's recommended solution(s). For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of

information furnished by Owner, a tabulation of other items and services included within the definition of Total Project Costs.

9. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B, for use in Project design, or in preparation for Contractor selection and construction.
 10. When mutually agreed, assist Owner in evaluating the possible use of building information modeling; civil integrated management; geotechnical baselining of subsurface site conditions; innovative design, contracting, or procurement strategies; or other strategies, technologies, or techniques for assisting in the design, construction, and operation of Owner's facilities. The subject matter of this paragraph shall be referred to in Exhibit A and B as "Project Strategies, Technologies, and Techniques."
 11. If requested to do so by Owner, assist Owner in identifying opportunities for enhancing the sustainability of the Project, and pursuant to Owner's instructions plan for the inclusion of sustainable features in the design.
 12. Use ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data" as a means to advise the Owner on a recommended scope of work and procedure for the identification and mapping of existing utilities.
 13. Develop a scope of work and survey limits for any topographic and other surveys necessary for design.
 14. Perform or provide the following other Study and Report Phase tasks or deliverables:
Engineering Feasibility Report & Environmental Report
 15. Furnish zero (0) review copies of the Report and any other Study and Report Phase deliverables to Owner within [] days of the Effective Date and review it with Owner. Within [] days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.
 16. Revise the Report and any other Study and Report Phase deliverables in response to Owner's comments, as appropriate, and furnish zero (0) copies of the revised Report and any other Study and Report Phase deliverables to the Owner within [] days of receipt of Owner's comments.
- B. Engineer's services under the Study and Report Phase will be considered complete on the date when Engineer has delivered to Owner the revised Report and any other Study and Report Phase deliverables.

A1.02 Preliminary Design Phase

- A. After acceptance by Owner of the Report and any other Study and Report Phase deliverables; selection by Owner of a recommended solution; issuance by Owner of any instructions of for use of Project Strategies, Technologies, and Techniques, or for inclusion of sustainable features in the design; and indication by Owner of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, (1) Engineer and Owner shall discuss and resolve any necessary revisions to Engineer's

compensation (through application of the provisions regarding Additional Services, or otherwise), or the time for completion of Engineer's services, resulting from the selected solution, related Project Strategies, Technologies, or Techniques, sustainable design instructions, or specific modifications to the Project, and (2) upon written authorization from Owner, Engineer shall:

1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.
2. In preparing the Preliminary Design Phase documents, use any specific applicable Project Strategies, Technologies, and Techniques authorized by Owner during or following the Study and Report Phase, and include sustainable features, as appropriate, pursuant to Owner's instructions.
3. Provide necessary field surveys and topographic and utility mapping for Engineer's design purposes. Comply with the scope of work and procedure for the identification and mapping of existing utilities selected and authorized by Owner pursuant to advice from Engineer based on ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," as set forth in Paragraph A1.01.A.12 above. If no such scope of work and procedure for utility mapping has been selected and authorized, then at a minimum the utility mapping will include Engineer contacting utility owners and obtaining available information.
4. Visit the Site as needed to prepare the Preliminary Design Phase documents.
5. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.
6. Continue to assist Owner with Project Strategies, Technologies, and Techniques that Owner has chosen to implement.
7. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in tabulating the various cost categories which comprise Total Project Costs.
8. Obtain and review Owner's instructions regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Also obtain and review copies of Owner's design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents or content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and in the draft Construction Contract Documents, when applicable.

9. Perform or provide the following other Preliminary Design Phase tasks or deliverables:
None
 10. Furnish zero (0) review copies of the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables to Owner within [] days of authorization to proceed with this phase, and review them with Owner. Within [] days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.
 11. Revise the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables in response to Owner's comments, as appropriate, and furnish to Owner zero (0) copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within [] days after receipt of Owner's comments.
- B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when Engineer has delivered to Owner the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables.

A1.03 *Final Design Phase*

- A. After acceptance by Owner of the Preliminary Design Phase documents, revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, and any other Preliminary Design Phase deliverables, subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall:
1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.
 2. Visit the Site as needed to assist in preparing the final Drawings and Specifications.
 3. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities, as appropriate.
 4. Advise Owner of any recommended adjustments to the opinion of probable Construction Cost.
 5. After consultation with Owner, include in the Construction Contract Documents any specific protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website. Any such protocols shall be applicable to transmittals between and among Owner, Engineer, and Contractor during the Construction Phase and Post-Construction Phase, and unless agreed otherwise shall supersede any conflicting protocols previously established for transmittals between Owner and Engineer.

6. Assist Owner in assembling known reports and drawings of Site conditions, and in identifying the technical data contained in such reports and drawings upon which bidders or other prospective contractors may rely.
 7. In addition to preparing the final Drawings and Specifications, assemble drafts of other Construction Contract Documents based on specific instructions and contract forms, text, or content received from Owner.
 8. Prepare or assemble draft bidding-related documents (or requests for proposals or other construction procurement documents), based on the specific bidding or procurement-related instructions and forms, text, or content received from Owner.
 9. Perform or provide the following other Final Design Phase tasks or deliverables:
None
 10. Furnish for review by Owner, its legal counsel, and other advisors, three (3) copies of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, within ninety (90) days of authorization to proceed with the Final Design Phase, and review them with Owner. Within fifteen (15) days of receipt, Owner shall submit to Engineer any comments regarding the furnished items, and any instructions for revisions.
 11. Revise the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables in accordance with comments and instructions from the Owner, as appropriate, and submit three (3) final copies of such documents to Owner within thirty (30) days after receipt of Owner's comments and instructions.
- B. Engineer's services under the Final Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables.
- C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.
- D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is two (2). If more

prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

A1.04 Bidding or Negotiating Phase

- A. After acceptance by Owner of the final Drawings and Specifications, other Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:
1. Assist Owner in advertising for and obtaining bids or proposals for the Work, assist Owner in issuing assembled design, contract, and bidding-related documents (or requests for proposals or other construction procurement documents) to prospective contractors, and, where applicable, maintain a record of prospective contractors to which documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the issued documents.
 2. Prepare and issue Addenda as appropriate to clarify, correct, or change the issued documents.
 3. Provide information or assistance needed by Owner in the course of any review of proposals or negotiations with prospective contractors.
 4. Consult with Owner as to the qualifications of prospective contractors.
 5. Consult with Owner as to the qualifications of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.
 6. If the issued documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors, provided that such proposals are allowed by the bidding-related documents (or requests for proposals or other construction procurement documents) prior to award of contracts for the Work. Services under this paragraph are subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.
 7. Attend the bid opening, prepare bid tabulation sheets to meet Owner's schedule, and assist Owner in evaluating bids or proposals, assembling final contracts for the Work for execution by Owner and Contractor, and in issuing notices of award of such contracts.
 8. If Owner engages in negotiations with bidders or proposers, assist Owner with respect to technical and engineering issues that arise during the negotiations.
 9. Perform or provide the following other Bidding or Negotiating Phase tasks or deliverables: None
- B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (except as may be required if Exhibit F is a part of this Agreement).

A1.05 Construction Phase

- A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:
1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer shall be as assigned in EJCDC® C-700, Standard General Conditions of the Construction Contract (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, or other construction general conditions specified in this Agreement. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services. Engineer shall not be required to furnish or perform services contrary to Engineer's responsibilities as a licensed professional. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.
 2. *Resident Project Representative (RPR):* Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D.
 3. *Selection of Independent Testing Laboratory:* Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, Paragraph B2.01.
 4. *Pre-Construction Conference:* Participate in a pre-construction conference prior to commencement of Work at the Site.
 5. *Electronic Transmittal Protocols:* If the Construction Contract Documents do not specify protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, then together with Owner and Contractor jointly develop such protocols for transmittals between and among Owner, Contractor, and Engineer during the Construction Phase and Post-Construction Phase.
 6. *Original Documents:* If requested by Owner to do so, maintain and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.

7. *Schedules:* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
8. *Baselines and Benchmarks:* As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
9. *Visits to Site and Observation of Construction:* In connection with observations of Contractor's Work while it is in progress:
 - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.
 - b. The purpose of Engineer's visits to the Site, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents. Engineer shall not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.
10. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work is defective under the terms and standards set forth in the Construction Contract Documents. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or

whether Owner should consider accepting such Work as provided in the Construction Contract Documents.

11. *Compatibility with Design Concept:* If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.
12. *Clarifications and Interpretations:* Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.
13. *Non-reviewable Matters:* If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (1) the performance or acceptability of the Work under the Construction Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.
14. *Field Orders:* Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.
15. *Change Orders and Work Change Directives:* Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
16. *Differing Site Conditions:* Respond to any notice from Contractor of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews and prepare findings, conclusions, and recommendations for Owner's use.
17. *Shop Drawings, Samples, and Other Submittals:* Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.
18. *Substitutes and "Or-equal":* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.

19. *Inspections and Tests:*

- a. Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.
- b. As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.
- c. Pursuant to the terms of the Construction Contract, require special inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.

20. *Change Proposals and Claims:* (a) Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change Proposal. (b) Provide information or data to Owner regarding engineering or technical matters pertaining to Claims.

21. *Applications for Payment:* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:

- a. Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price Work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).
- b. By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of

Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.

22. *Contractor's Completion Documents:* Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved as provided under Paragraph A1.05.A.17. Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of Engineer's review of record documents shall be to check that Contractor has submitted all pages.
23. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.
24. *Other Tasks:* Perform or provide the following other Construction Phase tasks or deliverables: **Detailed Staking by the surveyor**
25. *Final Notice of Acceptability of the Work:* Conduct a final visit to the Project to determine if the Work is complete and acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice to Owner and Contractor in the form attached hereto as Exhibit E ("Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of the Notice and Paragraph A1.05.A.21.b) to the best of Engineer's knowledge, information, and belief, and based on the extent of the services provided by Engineer under this Agreement.
26. *Standards for Certain Construction-Phase Decisions:* Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the

acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

- B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in Paragraph A1.03.D, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.

A1.06 *Post-Construction Phase*

- A. Upon written authorization from Owner during the Post-Construction Phase, Engineer shall:
1. Together with Owner, visit the Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair of any damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.
 2. Together with Owner, visit the Project within one month before the end of the Construction Contract's correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.
 3. Perform or provide the following other Post-Construction Phase tasks or deliverables:
Twenty-three (23) month inspection
- B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.

PART 2 – ADDITIONAL SERVICES

A2.01 *Additional Services Requiring Owner's Written Authorization*

- A. If authorized in writing by Owner, Engineer shall provide Additional Services of the types listed below. These services are not included as part of Basic Services and will be paid for by Owner as indicated in Exhibit C.
1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and

impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

2. Services to make measured drawings of existing conditions or facilities, to conduct tests or investigations of existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer, or the Project's design requirements, including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.
4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those agreed to in Paragraph A1.01.A.1 and 2.
5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
6. Providing renderings or models for Owner's use, including services in support of building information modeling or civil integrated management.
7. Undertaking investigations and studies including, but not limited to:
 - a. detailed consideration of operations, maintenance, and overhead expenses;
 - b. the preparation of feasibility studies (such as those that include projections of output capacity, utility project rates, project market demand, or project revenues) and cash flow analyses, provided that such services are based on the engineering and technical aspects of the Project, and do not include rendering advice regarding municipal financial products or the issuance of municipal securities;
 - c. preparation of appraisals;
 - d. evaluating processes available for licensing, and assisting Owner in obtaining process licensing;
 - e. detailed quantity surveys of materials, equipment, and labor; and
 - f. audits or inventories required in connection with construction performed or furnished by Owner.
8. Furnishing services of Consultants for other than Basic Services.
9. Providing data or services of the types described in Exhibit B, when Owner retains Engineer to provide such data or services instead of Owner furnishing the same.

Exhibit A – Engineer's Services

EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.

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10. Providing the following services:

- a. Services attributable to more prime construction contracts than specified in Paragraph A1.03.D.
 - b. Services to arrange for performance of construction services for Owner by contractors other than the principal prime Contractor, and administering Owner's contract for such services.
11. Services during out-of-town travel required of Engineer, other than for visits to the Site or Owner's office as required in Basic Services (Part 1 of Exhibit A).
 12. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructability review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other documents as a result of such review processes.
 13. Preparing additional bidding-related documents (or requests for proposals or other construction procurement documents) or Construction Contract Documents for alternate bids or cost estimates requested by Owner for the Work or a portion thereof.
 14. Assistance in connection with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required to complete services required by Paragraph 5.02.A and Exhibit F.
 15. Preparing conformed Construction Contract Documents that incorporate and integrate the content of all Addenda and any amendments negotiated by Owner and Contractor.
 16. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor, but only if such services increase the total quantity of services to be performed in the Construction Phase, rather than merely shifting performance of such services to a later date.
 17. Preparing Record Drawings, and furnishing such Record Drawings to Owner.
 18. Supplementing Record Drawings with information regarding the completed Project, Site, and immediately adjacent areas obtained from field observations, Owner, utility companies, and other reliable sources.
 19. Conducting surveys, investigations, and field measurements to verify the accuracy of Record Drawing content obtained from Contractor, Owner, utility companies, and other sources; revise and supplement Record Drawings as needed.
 20. Preparation of operation, maintenance, and staffing manuals.
 21. Protracted or extensive assistance in refining and adjusting of Project equipment and systems (such as initial startup, testing, and balancing).

22. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.
23. Assistance to Owner in developing systems and procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related recordkeeping.
24. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, lien or bond claim, or other legal or administrative proceeding involving the Project.
25. Overtime work requiring higher than regular rates.
26. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.8; any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
27. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
28. Extensive services required during any correction period, or with respect to monitoring Contractor's compliance with warranties and guarantees called for in the Construction Contract (except as agreed to under Basic Services).
29. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.

A2.02 Additional Services Not Requiring Owner's Written Authorization

- A. Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice to cease from Owner.
 1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner.
 2. 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.
 3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.

4. Additional or extended services arising from (a) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (b) emergencies or acts of God endangering the Work, (c) damage to the Work by fire or other causes during construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.
5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.
6. Evaluating unreasonable or frivolous requests for interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or an excessive number of RFIs, Change Proposals, or demands.
7. Reviewing a Shop Drawing or other Contractor submittal more than three times, as a result of repeated inadequate submissions by Contractor.
8. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, State, or local safety authorities for similar construction sites.

This is EXHIBIT B, consisting of three (3) pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated _____.

Owner's Responsibilities

Article 2 of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations.
- B. Give instructions to Engineer regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Furnish copies (or give specific directions requesting Engineer to use copies already in Engineer's possession) of all design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents and content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and draft Construction Contract Documents, when applicable. Owner shall have responsibility for the final content of (1) such bidding-related documents (or requests for proposals or other construction procurement documents), and (2) those portions of any Construction Contract other than the design (as set forth in the Drawings, Specifications, or otherwise), and other engineering or technical matters; and Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.
- C. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.
- D. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, obtain, furnish, or otherwise make available (if necessary through title searches, or retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 - 1. Property descriptions.
 - 2. Zoning, deed, and other land use restrictions.

3. Utility and topographic mapping and surveys.
 4. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 5. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.
 6. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site, and adjacent areas.
 7. Data or consultations as required for the Project but not otherwise identified in this Agreement.
- E. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- F. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
1. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
 2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
 3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the money paid.
- G. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.

- I. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.
- J. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- K. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, then designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.
- L. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- M. Examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- N. Inform Engineer regarding any need for assistance in evaluating the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.
- O. Advise Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
- P. Place and pay for advertisement for Bids in appropriate publications.
- Q. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- R. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.
- S. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement, as required.
- T. Perform or provide the following: Provide easements for the required locations.

This is EXHIBIT C, consisting of five (5) pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated _____.

Payments to Engineer for Services and Reimbursable Expenses
COMPENSATION PACKET BC-1: Basic Services – Lump Sum

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER’S RESPONSIBILITIES

C2.01 Compensation for Basic Services (other than Resident Project Representative) – Lump Sum Method of Payment

- A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows:
1. A Lump Sum amount of \$567,400.00 based on the following estimated distribution of compensation:

a. Study and Report Phase	\$35,000.00
b. Preliminary Design Phase	\$175,000.00
c. Final Design Phase	\$246,600.00
d. Bidding and Negotiating Phase	\$27,700.00
e. Construction Phase	\$83,100.00
f. Post-Construction Phase	\$0.00
 2. Engineer may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the Owner.
 3. The Lump Sum includes compensation for Engineer’s services and services of Engineer’s Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor costs, overhead, profit, expenses (other than any expressly allowed Reimbursable Expenses), and Consultant charges.
 4. In addition to the Lump Sum, Engineer is also entitled to reimbursement from Owner for the following Reimbursable Expenses (see Appendix 1 for rates or charges): **None**
 5. The portion of the Lump Sum amount billed for Engineer’s services will be based upon Engineer’s estimate of the percentage of the total services actually completed during the billing period. If any Reimbursable Expenses are expressly allowed, Engineer may also bill for any such Reimbursable Expenses incurred during the billing period.

- B. *Period of Service:* The compensation amount stipulated in Compensation Packet BC-1 is conditioned on a period of service not exceeding **twelve (12)** months. If such period of service is extended, the compensation amount for Engineer's services shall be appropriately adjusted.

COMPENSATION PACKET RPR-1:
Resident Project Representative – Lump Sum

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

C2.04 Compensation for Resident Project Representative Basic Services – Lump Sum Method of Payment

A. Owner shall pay Engineer for Resident Project Representative Basic Services as follows:

1. *Resident Project Representative Services:* For services of Engineer's Resident Project Representative, if any, under Paragraph A1.05 of Exhibit A, the Lump Sum amount of **\$72,900.00**. The Lump Sum includes compensation for the Resident Project Representative's services. Appropriate amounts have been incorporated in the Lump Sum to account for labor costs, overhead, profit, and expenses (other than any expressly allowed Reimbursable Expenses) related to the Resident Project Representative's Services.
2. *Reimbursable Expenses:* In addition to the Lump Sum, Engineer is also entitled to reimbursement from Owner for the following RPR Reimbursable Expenses (see Appendix 1 for rates or charges): **Mileage**.
3. *Resident Project Representative Schedule:* The Lump Sum amount set forth in Paragraph C2.04.A.1 above is based on full-time RPR services on an as needed basis throughout the construction schedule. Modifications to the schedule shall entitle Engineer to an equitable adjustment of compensation for RPR services.

COMPENSATION PACKET AS-1:
Additional Services – Standard Hourly Rates

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

C2.05 Compensation for Additional Services – Standard Hourly Rates Method of Payment

- A. Owner shall pay Engineer for Additional Services, if any, as follows:
1. *General:* For services of Engineer's personnel engaged directly on the Project pursuant to Paragraph A2.01 or A2.02 of Exhibit A, except for services as a consultant or witness under Paragraph A2.01.A.20, (which if needed shall be separately negotiated based on the nature of the required consultation or testimony) an amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all Additional Services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any.
- B. *Compensation For Reimbursable Expenses:*
1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under Paragraph C2.01 and are directly related to the provision of Additional Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.
 2. Reimbursable Expenses include the expenses identified in Appendix 1 and the following categories: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items; and Consultants' charges. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
 3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be the Additional Services-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such Additional Services, the latter multiplied by a factor of 1.15
 4. The Reimbursable Expenses Schedule will be adjusted annually (as of January) to reflect equitable changes in the compensation payable to Engineer.
- C. *Other Provisions Concerning Payment for Additional Services:*
1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.15

2. *Factors:* The external Reimbursable Expenses and Engineer's Consultant's Factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

This is Appendix 1 to EXHIBIT C, consisting of one (1) pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated _____.

Reimbursable Expenses Schedule

Reimbursable Expenses are subject to review and adjustment per Exhibit C. Rates and charges for Reimbursable Expenses as of the date of the Agreement are:

8"x11" Copies/Impressions	\$ 0.10/page
Copies of Drawings	\$ at cost /sq. ft.
Mileage (auto)	IRS approved
Air Transportation	at cost
CAD Charge	\$ 85.00/hour
Laboratory Testing	at cost
Health and Safety Level D	at cost
Health and Safety Level C	at cost
Meals and Lodging	at cost

This is Appendix 2 to EXHIBIT C, consisting of one (1) page, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated _____.

Standard Hourly Rates Schedule

A. Standard Hourly Rates:

1. Standard Hourly Rates are set forth in this Appendix 2 to this Exhibit C and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Article C2.

B. Schedule:

Hourly rates for services performed on or after the date of the Agreement are:

Principal	\$200.00/hour
Project Engineer	\$175.00/hour
Project Manager	\$150.00/hour
E.I.T. (Engineer in Training)	\$125.00/hour
Sr. Engineering Technician	\$85.00/hour
CAD Technician	\$85.00/hour
Administrative Clerk	\$65.00/hour
Resident Project Representative	\$65.00/hour

This is **EXHIBIT D**, consisting of five (5) pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____.

Duties, Responsibilities, and Limitations of Authority of Resident Project Representative

Article 1 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 1 - SERVICES OF ENGINEER

D1.01 Resident Project Representative

- A. Engineer shall furnish a Resident Project Representative ("RPR") to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree. RPR is Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions.
- B. Through RPR's observations of the Work, including field checks of materials and installed equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, as a result of such RPR observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to the Work or any Constructor's work in progress, for the coordination of the Constructors' work or schedules, or for any failure of any Constructor to comply with Laws and Regulations applicable to the performing and furnishing of its work. The Engineer (including RPR) neither guarantees the performances of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents. In addition, the specific terms set forth in Exhibit A, Paragraph A1.05, of this Agreement are applicable.
- C. The duties and responsibilities of the RPR are as follows:
 - 1. *General:* RPR's dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
 - 2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values, and other schedules prepared by Contractor and consult with Engineer concerning acceptability of such schedules.
 - 3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.

4. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.
5. *Liaison:*
 - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Construction Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's On-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
6. *Clarifications and Interpretations:* Receive from Contractor submittal of any matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. Report to Engineer regarding such RFIs. Report to Engineer when clarifications and interpretations of the Construction Contract Documents are needed, whether as the result of a Contractor RFI or otherwise. Transmit Engineer's clarifications, interpretations, and decisions to Contractor. ,
7. *Shop Drawings and Samples:*
 - a. Record date of receipt of Samples and Contractor-approved Shop Drawings.
 - b. Receive Samples that are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
 - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal, if RPR believes that the submittal has not been received from Contractor, or has not been approved by Contractor or Engineer.
8. *Proposed Modifications:* Consider and evaluate Contractor's suggestions for modifications to the Drawings or Specifications, and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit Engineer's response (if any) to such suggestions to Contractor.
9. *Review of Work; Defective Work:*
 - a. Report to Engineer whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, and provide recommendations as to whether such Work should be corrected, removed and replaced, or accepted as provided in the Construction Contract Documents.

- b. Inform Engineer of any Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless not compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to Engineer for addressing such Work.
- c. Advise Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.

10. *Inspections, Tests, and System Start-ups:*

- a. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.
- b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
- d. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public or other agencies having jurisdiction over the Work.
- e. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work, record the results of these inspections, and report to Engineer.

11. *Records:*

- a. Maintain at the Site orderly files for correspondence, reports of job conferences, copies of Construction Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Construction Contract, RFIs, Engineer's clarifications and interpretations of the Construction Contract Documents, progress reports, approved Shop Drawing and Sample submittals, and other Project-related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
- c. Upon request from Owner to Engineer, photograph or video Work in progress or Site conditions.
- d. Record and maintain accurate, up-to-date lists of the names, addresses, fax numbers, e-mail addresses, websites, and telephone numbers (including mobile

numbers) of all Contractors, Subcontractors, and major Suppliers of materials and equipment.

- e. Maintain records for use in preparing Project documentation.
- f. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.

12. *Reports:*

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
- d. Immediately inform Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, possible force majeure or delay events, damage to property by fire or other causes, or the discovery of any potential differing site condition or Constituent of Concern.

13. *Payment Requests:* Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

14. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

15. *Completion:*

- a. Participate in Engineer's visits to the Site regarding Substantial Completion, assist in the determination of Substantial Completion, and prior to the issuance of a Certificate of Substantial Completion submit a punch list of observed items requiring completion or correction.
- b. Participate in Engineer's visit to the Site in the company of Owner and Contractor, to determine completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.

- c. Observe whether all items on the final punch list have been completed or corrected, and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work (Exhibit E).

D. Resident Project Representative shall not:

1. Authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including "or-equal" items).
2. Exceed limitations of Engineer's authority as set forth in this Agreement.
3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers, or any Constructor.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Work, by Contractor or any other Constructor.
5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy the Project in whole or in part.



ENGINEERS JOINT CONTRACT
DOCUMENTS COMMITTEE

NOTICE OF ACCEPTABILITY OF WORK

PROJECT: Wastewater System Improvements

OWNER: City of Farmersville

CONTRACTOR:

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:

EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:

ENGINEER: Daniel & Brown Inc.

NOTICE DATE:

To: City of Farmersville, Texas
Owner

And To: _____
Contractor

From: Daniel & Brown Inc.
Engineer

The Engineer hereby gives notice to the above Owner and Contractor that Engineer has recommended final payment of Contractor, and that the Work furnished and performed by Contractor under the above Construction Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services dated _____, and the following terms and conditions of this Notice:

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work ("Notice") is expressly made subject to the following terms and conditions to which all those who receive said Notice and rely thereon agree:

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.

Exhibit E – Notice of Acceptability of Work.

EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.
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and American Society of Civil Engineers. All rights reserved.

Page 1

2. This Notice reflects and is an expression of the Engineer's professional opinion.
3. This Notice is given as to the best of Engineer's knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor's work) under Engineer's Agreement with Owner, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement.
5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract, an acceptance of Work that is not in accordance with the related Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Construction Contract Documents, or to otherwise comply with the Construction Contract Documents or the terms of any special guarantees specified therein.
6. This Notice does not relieve Contractor of any surviving obligations under the Construction Contract, and is subject to Owner's reservations of rights with respect to completion and final payment.

By: _____

Title: _____ President

Dated: _____

This is **EXHIBIT G**, consisting of two (2) pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____.

Insurance

Paragraph 6.05 of the Agreement is supplemented to include the following agreement of the parties:

G6.05 Insurance

A. The limits of liability for the insurance required by Paragraph 6.05.A and 6.05.B of the Agreement are as follows:

1. By Engineer:

- a. Workers' Compensation: Statutory
- b. Employer's Liability --
 - 1) Bodily injury, each accident: N/A
 - 2) Bodily injury by disease, each employee: N/A
 - 3) Bodily injury/disease, aggregate: N/a
- c. General Liability --
 - 1) Each Occurrence (Bodily Injury and Property Damage): \$1,000,000.00
 - 2) General Aggregate: \$2,000,000.00
- d. Excess or Umbrella Liability --
 - 1) Per Occurrence: \$1,000,000.00
 - 2) General Aggregate: \$1,000,000.00
- e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage):
\$1,000,000.00
- f. Professional Liability --
 - 1) Each Claim Made \$1,000,000.00
 - 2) Annual Aggregate \$1,000,000.00
- g. Other (specify): \$0.00

2. By Owner:

- a. Workers' Compensation: Statutory

Exhibit G – Insurance.

b. Employer's Liability --

- | | |
|--|---------------------------|
| 1) Bodily injury, Each Accident | Current coverage adequate |
| 2) Bodily injury by Disease, Each Employee | Current coverage adequate |
| 3) Bodily injury/Disease, Aggregate | Current coverage adequate |

c. General Liability --

- | | |
|---|---------------------------|
| 1) General Aggregate: | Current coverage adequate |
| a) Each Occurrence (Bodily Injury and Property Damage): | Current coverage adequate |

d. Excess Umbrella Liability

- | | |
|-----------------------|---------------------------|
| 1) Per Occurrence: | Current coverage adequate |
| 2) General Aggregate: | Current coverage adequate |

e. Automobile Liability – Combined Single Limit (Bodily Injury and Property Damage):

Current coverage adequate

f. Other (specify):

Current coverage adequate

B. *Additional Insureds:*

1. The following individuals or entities are to be listed on Owner's general liability policies of insurance as additional insureds:

- a. Daniel & Brown, Inc.
Engineer

2. During the term of this Agreement the Engineer shall notify Owner of any other Consultant to be listed as an additional insured on Owner's general liability policies of insurance.
3. The Owner shall be listed on Engineer's general liability policy as provided in Paragraph 6.05.A.

This is **EXHIBIT I**, consisting of **two (2)** pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____.

Limitations of Liability

Paragraph 6.11 of the Agreement is supplemented to include the following agreement of the parties:

A. *Limitation of Engineer's Liability*

1. ***Engineer's Liability Limited to Amount of Insurance Proceeds:*** Engineer shall procure and maintain insurance as required by and set forth in Exhibit G to this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by Laws and Regulations, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied, of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Engineer by Engineer's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Engineer's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal), up to the amount of insurance required under this Agreement. If no such insurance coverage is provided with respect to Owner's Claims, then the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants to Owner and anyone claiming by, through, or under Owner for any and all such uninsured Owner's Claims shall not exceed **\$500,000.00**
2. ***Exclusion of Special, Incidental, Indirect, and Consequential Damages:*** To the fullest extent permitted by Laws and Regulations, and notwithstanding any other provision in the Agreement, consistent with the terms of Paragraph 6.11, the Engineer and Engineer's officers, directors, members, partners, agents, Consultants, and employees shall not be liable to Owner or anyone claiming by, through, or under Owner for any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes, including but not limited to: **loss of revenue, scheduling, regulatory fines, etc.**

- B. *Indemnification by Owner:*** To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against 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, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim,

cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, members, partners, agents, employees, consultants, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.

This is **EXHIBIT K**, consisting of two (2) pages,
referred to in and part of the **Agreement**
between **Owner and Engineer for Professional**
Services dated _____.

AMENDMENT TO OWNER-ENGINEER AGREEMENT

Amendment No. 1

The Effective Date of this Amendment is: _____.

Background Data

Effective Date of Owner-Engineer Agreement: _____

Owner: City of Farmersville, Texas

Engineer: Daniel & Brown, Inc.

Project: Wastewater System Improvements

Nature of Amendment: [Check those that are applicable and delete those that are inapplicable.]

☐ Additional Services to be performed by Engineer

☐ Modifications to services of Engineer

☒ Modifications to responsibilities of Owner

☐ Modifications of payment to Engineer

☐ Modifications to time(s) for rendering services

☒ Modifications to other terms and conditions of the Agreement

Description of Modifications:

As described in the attached Addendum to the Agreement Between Owner and Engineer for Professional Services EJCDC Document E-500, 2013 Edition, as prepared by Brown & Hofmeister, L.L.P.

Agreement Summary:

Original agreement amount:	\$ <u>567,000.00</u>
Net change for prior amendments:	\$ <u>0.00</u>
This amendment amount:	\$ <u>0.00</u>
Adjusted Agreement amount:	\$ <u>567,400.00</u>

Change in time for services (days or date, as applicable): 0 (zero)

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect.

OWNER:

City of Farmersville, Texas

By:

Print
name:

Title:

Date Signed:

ENGINEER:

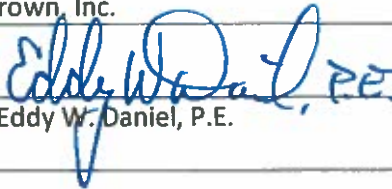
Daniel & Brown, Inc.

By:

Print
name:

Title:

Date Signed:

 Eddy W. Daniel, P.E.

President

ADDENDUM to the Agreement
Between Owner and Engineer for Professional Services
EJCDC Document E-500, 2013 Edition

This Addendum to the *Agreement Between Owner and Engineer for Professional Services*, EJCDC Document E-500, 2013 Edition ("Addendum"), is entered into this ____ day of _____, 2017, by and between Daniel & Brown, Inc ("Engineer") and the City of Farmersville, Texas, (the "Owner"). This Addendum is entered into to delete from, amend, replace, modify, add to, and/or supplement the *Agreement Between Owner and Engineer for Professional Services*, EJCDC Document E-500, 2013 Edition (the "Agreement"), as set forth herein below.

WITNESSETH:

WHEREAS, the Owner and Engineer desire to enter into the Agreement for the design and construction of the **WASTEWATER SYSTEM IMPROVEMENTS ("Project")** in the City of Farmersville, Texas; and

WHEREAS, the Owner and Engineer desire to clarify and revise certain of the terms and provisions contained in the Agreement; and

WHEREAS, the Owner and Engineer would not enter into the Agreement save and except for the clarifications and revisions contained herein; NOW
THEREFORE,

FOR AND IN CONSIDERATION of the covenants, duties and obligations herein contained together with the covenants, duties and obligations contained in the Agreement, the parties do mutually agree that except as provided for below, all other terms and conditions of the Agreement shall remain unchanged and in full force and effect. In the event of any conflict or inconsistency between the provisions set forth in this Addendum and the Agreement, this Addendum shall govern and control. In consideration of the foregoing, and for other good and valuable consideration, the parties agree to modify the Agreement as follows:

I.

The following amendments, modifications, replacements, additions, and/or deletions are hereby made to those Sections and Articles of the Agreement identified herein below as follows:

1. On page 1 of the Agreement the name of the Owner's Project, of which the Engineer's services are a part is hereby amended by replacing the phrase "Wastewater System Improvements "Project")" with the phrase "Wastewater System Improvements "Project")."

2. Section 4.02.D, entitled "Sales or Use Taxes," is hereby amended by deleting said provision in its entirety.

3. Section 6.03.A. is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

- A. All materials and documents prepared or assembled by Engineer under this Agreement shall become the sole property of Owner and shall be delivered to Owner without restriction on future use. Engineer may retain in its files copies of all drawings, specifications and all other pertinent information for the work. Engineer shall have no liability for changes made to any materials or other documents by others subsequent to the completion of the Agreement.

4. Section 6.03.C. is hereby amended to delete the phrase "(3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer" so that Section 6.03.C. will hereafter be and read as follows:

- C. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; and, (3) such limited license to Owner shall not create any rights in third parties.

5. Section 6.05, entitled "Insurance," is hereby amended by deleting Subsection B in its entirety.

6. Section 6.05, entitled "Insurance," is hereby amended by deleting Subsection C. in its entirety and replacing said Subsection with the following provision:

- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's interests in the Project.

7. Section 6.05, entitled "Insurance," is hereby amended by deleting Subsection D. in its entirety and replacing said Subsection with the following provision:

- D. Engineer shall deliver to Owner certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.

8. Section 6.05, entitled "Insurance," is hereby amended by deleting Subsection E. in its entirety and replacing said Subsection with the following provision:

- E. All policies of property insurance relating to the Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder.

9. Section 6.05, entitled "Insurance," is hereby amended by deleting Subsection F. in its entirety and replacing said Subsection with the following provisions:

- F. All insurance policies shall be endorsed to the effect that City of Farmersville will receive at least thirty (30) days' notice in advance of the cancellation effective date of any policy of insurance that is cancelled by the insurance company for any reason other than nonpayment of premium. All insurance policies shall also be endorsed to the effect that City of Farmersville will receive at least ten (10) days' notice in advance of the cancellation effective date of any policy of insurance that is cancelled by the insurance company for nonpayment of premium or by Engineer for any reason.

In addition, the Engineer shall notify Owner in writing at least thirty (30) days prior to Engineer cancelling or

making any material change to any coverage(s) provided in, or through, the insurance policies required under this Section 6.05 and Exhibit G. Failure by Engineer to provide Owner the notice required hereunder may, in the sole discretion of Owner, be deemed a material breach of this Agreement.

10. Section 6.06, entitled "Suspension and Termination," is hereby amended by amending Subsection B by deleting subparagraph b.3), which subparagraph reads "b.3) Engineer shall have no liability to Owner on account of such termination" in its entirety.

11. Section 6.06, entitled "Suspension and Termination," is hereby amended by amending Subsection D, entitled "Payments Upon Termination:," by deleting subparagraph 2. thereof in its entirety.

12. Section 6.11, entitled "Indemnification and Mutual Waiver," is hereby amended by deleting Subsections A through F in their entirety and replacing such Subsections with a new Subsection A to read as follows:

A. *Indemnification by Engineer:* ENGINEER DOES HEREBY COVENANT AND CONTRACT TO WAIVE ANY AND ALL CLAIMS, RELEASE, INDEMNIFY, AND HOLD HARMLESS THE OWNER, ITS CITY COUNCIL, OFFICERS, EMPLOYEES, AND AGENTS, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST ALL LIABILITY, CAUSES OF ACTION, CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LOSSES, PENALTIES OR SUITS, WHICH IN ANY WAY ARISE OUT OF, RELATE TO, OR RESULT FROM ENGINEER'S PERFORMANCE UNDER THIS AGREEMENT AND WHICH ARE CAUSED BY THE INTENTIONAL WRONGFUL ACTS OR NEGLIGENT ACTS OR OMISSIONS OF ENGINEER OR ENGINEER'S SUBCONTRACTORS AND THE OFFICERS, AGENTS OR EMPLOYEES OF EITHER ENGINEER OR ENGINEER'S SUBCONTRACTORS (THE "INDEMNIFIED ITEMS") SUBJECT TO THE LIMITATIONS IN TEXAS LOCAL GOVERNMENT CODE § 271.904 AND TEXAS CIVIL PRACTICE AND REMEDIES CODE, § 130.002(B).

BY WAY OF EXAMPLE, THE INDEMNIFIED ITEMS MAY INCLUDE PERSONAL INJURY AND DEATH CLAIMS AND PROPERTY DAMAGE CLAIMS, INCLUDING THOSE FOR LOSS OF USE OF

PROPERTY, AS WELL AS INTELLECTUAL PROPERTY INFRINGEMENT OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER.

INDEMNIFIED ITEMS SHALL INCLUDE REASONABLE ATTORNEYS' FEES IN PROPORTION TO THE ENGINEER'S LIABILITY AND COSTS, COURT COSTS, AND SETTLEMENT COSTS. INDEMNIFIED ITEMS SHALL ALSO INCLUDE ANY EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES, INCURRED BY AN INDEMNIFIED INDIVIDUAL OR ENTITY IN ATTEMPTING TO ENFORCE THIS INDEMNITY.

13. "Exhibit A – Engineer's Services" to the Agreement is hereby amended by amending "Part 2 – Additional Services" by amending Section A2.02, entitled "Additional Services Not Requiring Owner's Written Authorization" by deleting the word "Not" from such title and deleting Subsection A thereof in its entirety and replacing said Subsection with a new Subsection A to read as follows:

A2.02 Additional Services Requiring Owner's Written Authorization

- A. If authorized in writing by Owner, Engineer shall provide Additional Services of the types listed below. These services are not included as part of Basic Services and will be paid for by Owner as indicated in Exhibit C.

14. "Exhibit B – Owners' Responsibilities" to the Agreement is hereby amended by amending Section B2.01 by deleting Subsection B thereof in its entirety and replacing said Subsection with a new Subsection B to read as follows:

- B. Give instructions to Engineer regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Furnish copies (or give specific directions

requesting Engineer to use copies already in Engineer's possession) of all design and construction standards, Owner's standard forms, general conditions (if other than EJCDC" C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents and content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and draft Construction Contract Documents, when applicable. Owner shall have responsibility for the final content of (1) such bidding-related documents (or requests for proposals or other construction procurement documents), and (2) those portions of any Construction Contract other than the design (as set forth in the Drawings, Specifications, or otherwise), and other engineering or technical matters save and except to the extent that Engineer provides standardized contracts prepared by any entity other than Owner or Owner's legal counsel including, but not limited to contract documents prepared by Engineers Joint Contract Documents Committee (the "EJCDC"); and Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.

15. "Exhibit C – Compensation Packet AS-1: Additional Services" to the Agreement is hereby amended by amending Section C2.05 by adding the following provision to the end of Paragraph No. 1 of Subsection A to read as follows:

All such charges, costs and expenses related to Additional Services shall be approved in advance in writing by Owner. Payment therefore shall be made in accordance with the applicable provisions of Article 4 of the Agreement.

16. "Exhibit C – Compensation Packet AS-1: Additional Services" to the Agreement is hereby amended by amending Section C2.05 by adding the following provision to the end of Paragraph Nos. 1 and 3 of Subsection B, entitled "Compensation For Reimbursable Expenses:," to read as follows:

All such charges, costs and expenses for Reimbursable Expenses related to Additional Services shall be approved in advance in writing by Owner. Payment therefore shall be made in accordance with the applicable provisions of Article 4 of the Agreement.

17. "Exhibit G – Insurance" to the Agreement is hereby amended by deleting Section G6.05 in its entirety and replacing said Section with a new Section G6.05 to read as follows:

G6.05 Insurance

- A. The limits of liability for the insurance Engineer is required to obtain by Paragraph 6.05.A and 6.05.B of the Agreement are as follows:
 - 1. Commercial General Liability insurance, including, but not limited to Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors and Contractual Liability, with minimum combined single limits of \$1,000,000 per-occurrence, \$1,000,000 Products/Completed Operations Aggregate and \$1,000,000 general aggregate. Coverage must be written on an occurrence form. The General Aggregate shall apply on a per project basis.
 - 2. Workers' Compensation insurance with statutory limits; and Employers' Liability coverage with minimum limits for bodily injury: a) by accident, \$100,000 each accident, b) by disease, \$100,000 per employee with a per policy aggregate of \$500,000.
 - 3. Business Automobile Liability insurance covering owned, hired and non-owned vehicles, with a minimum combined bodily injury and property damage limit of \$1,000,000 per occurrence.
 - 4. Professional Liability Insurance to provide coverage against any claim which the consultant and all consultants engaged or employed by the consultant become legally obligated to pay as damages arising out of the performance of professional services caused by error, omission or negligent act with minimum limits of \$1,000,000 per claim, \$1,000,000 annual aggregate.

NOTE: If the insurance is written on a claims-made form, coverage shall be continuous (by renewal or

extended reporting period) for not less than thirty-six (36) months following completion of the contract and acceptance by Owner.

B. With reference to the foregoing required insurance, the consultant shall endorse applicable insurance policies as follows:

1. A waiver of subrogation in favor of the Owner, its officials, employees, and officers shall be contained in the Workers' Compensation insurance policy.
2. The Owner, its officials, employees and officers shall be named as additional insureds on the Commercial General Liability policy, by using endorsement CG2026 or broader; and, the Owner shall be provided a defense to any and all claims and causes of action arising out of or related to this Agreement as may be provided pursuant to Engineer's general liability insurance policies. In this regard, Engineer shall assist Owner to obtain any defense provided by the Engineer's general liability insurance policies.

Nothing contained in Section 6.11 of the Agreement shall be interpreted or applied as limiting, reducing, or eliminating any obligation or duty that Engineer's insurance carrier may owe to Owner as an additional insured, pursuant to endorsement CG2026 or broader under the Engineer's general liability insurance policies required by this Agreement, to provide the Owner with a defense and/or indemnify the Owner for any claim or cause of action, whether one or more, regardless of the proportionate responsibility or liability of the Engineer or the Owner. Neither shall anything contained in this Section VIII be interpreted or applied as providing or otherwise entitling either Engineer, Engineer's insurance carrier or any other party any right or ability to recover over against Owner any amounts of money attributable to damages, costs, expenses and/or attorneys' fees based on or arising out of a finding of comparative or proportionate responsibility or liability as against the Owner it

being understood and agreed that Owner in no way intends by this Agreement to waive its sovereign immunity regarding any claim, suit or cause of action.

- C. All insurance shall be purchased from an insurance company that meets a financial rating of B+VI or better as assigned by A.M. Best Company or equivalent.

18. "Exhibit I – Limitations on Liability" to the Agreement is hereby amended by amending Paragraph 6.11 by deleting Subparagraph 1 of Subparagraph A, "Limitation of Engineer's Liability," in its entirety.

19. "Exhibit I – Limitations on Liability" to the Agreement is hereby amended by amending Paragraph 6.11 by deleting Subparagraph B, "Indemnification by Owner," in its entirety.

II.

In the event of conflict in the language of the Agreement and this Addendum, the terms of this Addendum shall be final, controlling and binding upon the parties. Where a portion of the Agreement is not amended, replaced, modified and/or supplemented by this Addendum, the unaltered portions of the Agreement shall remain in full force and effect.

III.

This Addendum, when combined with the Agreement and the Contract Documents contains the entire agreement between Owner and Engineer with respect to the subject matter hereof, and except as otherwise provided herein cannot be modified without written agreement of the parties. Said Agreement shall be fully effective as written except that it shall be read as if the foregoing deletions, modifications and additions are incorporated therein word for word.

IV.

This Addendum and the Agreement are entered into subject to the ordinances of the City of Farmersville, as same may be amended from time to time, and is subject to and is to be construed, governed and enforced under all applicable State of Texas and federal laws. Engineer will make any and all reports required pursuant to federal, state or local law including, but not limited to, proper reporting to the Internal Revenue Service, as required in accordance with Engineer's income. Situs of this Contract is agreed to be Collin County, Texas, for all purposes, including performance and execution.

V.

If any of the terms, provisions, covenants, conditions or any other part of this Addendum are for any reason held to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants, conditions or any other part of this Addendum shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

VI.

No right or remedy granted herein or reserved to the parties is exclusive of any other right or remedy herein by law or equity provided or permitted; but each right or remedy shall be cumulative of every other right or remedy given hereunder. No covenant or condition of this Addendum may be waived without written consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Addendum.

VII.

For purposes of this Addendum, including its intended operation and effect, the parties (Owner and Engineer) specifically agree and contract that: (1) the Addendum only affects matters/disputes between the parties to this Addendum, and is in no way intended by the parties to benefit or otherwise affect any third person or entity notwithstanding the fact that such third person or entity may be in contractual relationship with Owner or Engineer or both; and (2) the terms of this Addendum are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either Owner or Engineer.

IN WITNESS WHEREOF, the parties hereto have set their hands by their representatives duly authorized on the day and year first written above.

OWNER:
CITY OF FARMERSVILLE

By: _____
Diane C. Piwko
Mayor

Date Signed: _____

ATTEST:

SANDRA GREEN
City Secretary

ENGINEER:
DANIEL & BROWN, INC.

By: Eddy W. Daniel, P.E.
Eddy W. Daniel, P.E.
President

Date Signed: 6/22/2017

THE STATE OF TEXAS,
COUNTY OF COLLIN

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared Diane C. Piwko, Mayor of the **CITY OF FARMERSVILLE**, a Texas Municipal Corporation, known to me to be the person who's name is subscribed to the foregoing instrument, and acknowledged to me that she has executed the same on the City's behalf.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE _____
DAY OF _____, 20____.

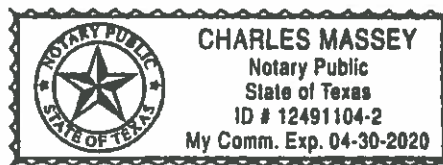
Notary Public Collin County, Texas
My commission expires _____

THE STATE OF TEXAS,
COUNTY OF COLLIN

This instrument was acknowledged before me on the 22 day of June, 2017,
by Eddy W. Daniel, P.E., in his capacity as President of **DANIEL & BROWN INC**,
known to me to be the person whose name is subscribed to the foregoing instrument,
and acknowledged that he executed the same on behalf of and as the act of said
corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 22
DAY OF June, 2017.

Charles Massey
Notary Public Collin County, Texas
My commission expires 4-30-2020



PREPARED IN THE OFFICES OF:
BROWN & HOFMEISTER, L.L.P.
740 E. Campbell Road, Suite 800
Richardson, Texas 75081
214/747-6100
214/747-6111 Fax