

**RESOLUTION NO. 2026-1931**

**BE IT RESOLVED** by the City Council of the City of Boaz, Alabama, that the Mayor be, and is hereby authorized, to enter into a non-exclusive Agreement between the City of Boaz, Alabama and Volkert, Inc., for one year of Civil Engineering Services, on behalf of the City of Boaz, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that document attached here to and identified as “Agreement for Professional Services Between Owner and Consultant Engineer” consisting of a total of thirty-five (35) pages and the date of January 12, 2026, and executed copy of said document being permanently kept on file in the office of the City Clerk of the City of Boaz, Alabama.

**ADOPTED AND APPROVED THIS 12<sup>TH</sup> DAY OF JANUARY 2026.**

---

Tim Walker

Mayor

ATTEST:

---

Beth Stephens

City Clerk/Treasurer

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

This Agreement made and entered into this 12<sup>th</sup> day of January, 2026 (“Agreement”), by and between the City of Boaz, having its principal place of business at 112 North Broad St, Boaz, AL 35957, hereafter referred to as the OWNER, and Volkert, Inc., having its principal place of business at 11 N. Water Street, Mobile, AL, hereinafter referred to as the CONSULTANT, which entities may also be referred to herein individually as “Party” and/or collectively as “Parties” as circumstances dictate;

WITNESSETH THAT:

WHEREAS, the OWNER desires to retain the CONSULTANT to perform certain professional planning, programming, engineering, and/or inspection services as outlined in the Scope of Services;

WHEREAS, the CONSULTANT desires to perform said professional services for the OWNER;

And WHEREAS, the SUBCONSULTANT shall abide by the provisions of USDOT 1050.2A- Appendix A and Appendix E, with said provisions to apply to all contracted services including procurements of materials and leases of equipment, if any.

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter stipulated to be kept and performed, the Parties hereto agree as follows:

**ARTICLE 1  
DEFINITIONS**

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.

**1.1 PROJECT or PROJECTS.** The total undertaking to be accomplished for Owner by the Consultant, other 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 Consultant under this Agreement are a part.

**1.2 AGREEMENT.** This written contract for professional services between OWNER and CONSULTANT including any and all attachments, exhibits, amendments, addenda, or Work Authorizations, and any other agreements or other documents that are incorporated herein by reference.

**1.3 WORK AUTHORIZATION.** A written order authorizing CONSULTANT to perform Services in accordance with the terms of this Agreement. This term shall also include any task order issued by OWNER defining the particular scope of services, cost, and schedule for an assigned task and setting forth any additional obligations of the Parties pursuant thereto. When utilized, such task orders shall be issued in the form set forth in Exhibit C (“Sample Task Order”).

**1.4 BASIC SERVICES.** The professional services to be performed by CONSULTANT under this Agreement, as set out in Article 3 and which may be described in Exhibit A and/or any Work Authorization as “Basic Services”, “Scope of Work”, or similar. Referred to herein as “Services”.

**1.5 ADDITIONAL SERVICES.** Any services beyond Basic Services as described in Article 3, and as may be more fully set forth in any duly issued Work Authorization, as mutually agreed to in writing between OWNER and CONSULTANT. Where requested by OWNER or made necessary to complete CONSULTANT’s Services under the Project, all items set forth in Section 3.3 of this Agreement are specifically designated as Additional Services for purposes of this Agreement. Additional Services also referred to herein as “Services” as circumstances dictate.

**1.6 EXCLUDED SERVICES.** Without attempting to be a complete list or description of all services or potential services that are excluded from this Agreement and which will not be performed by CONSULTANT, the Parties specifically acknowledge that the CONSULTANT does not undertake responsibility in any way for discovering, handling, identifying, removing, or disposing of any hazardous materials, pollutants, contaminants, or wastes.

**1.7 EFFECTIVE DATE.** The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which the Agreement is signed and delivered by the last of the two Parties to sign and deliver.

**1.8 CONTRACTOR.** A Contractor is any person or entity which enters into an agreement with OWNER to perform the construction of or any construction on any project, including, without limitation, the providing of labor, materials, and equipment incorporated or to be incorporated into the Project. The term “Contractor” means the Contractor or its authorized representative but excludes the CONSULTANT and its subconsultants.

**1.9 CONSTRUCTION CONTRACT.** To the extent that such may be relevant to the terms of the Agreement, or may be included in the Scope of Services, this term refers to the entire and integrated written agreement, or agreements, between OWNER and Contractor concerning the Contractor’s Work.

**1.10 CONSTRUCTION CONTRACT DOCUMENTS.** To the extent that such may be relevant to the terms of the Agreement, or may be included in the Scope of Services, this term refers to those items so designated in the Construction Contract, including the Drawings, Specifications, Construction Contract, and general and supplementary conditions. Where the OWNER shall authorize the use of digital files for the submission and conveyance of official Construction Contract Documents, such digital files shall be deemed acceptable and reliable to the same extent as if the same had been provided in a print format. Reviewed Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

**1.11 DRAWINGS.** To the extent that such may be relevant to the terms of the Agreement, or may be included in the Scope of Services, this term refers to that part of the Contract Documents which graphically shows the scope, extent, and character of the Contractor's Work. Shop Drawings are not Drawings as so defined.

**1.12 SPECIFICATIONS.** To the extent that such may be relevant to the terms of the Agreement, or may be included in the Scope of Services, this term refers to that part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Contractor's Work and certain administrative details applicable thereto.

**1.13 SHOP DRAWINGS.** To the extent that such may be relevant to the terms of the Agreement, or may be included in the Scope of Services, this term refers to all drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor by someone other than CONSULTANT and submitted by Contractor to illustrate some portion of the Contractor's Work.

**1.14 RECORD DRAWINGS.** To the extent that such may be relevant to the terms of the Agreement, or may be included in the Scope of Services, the term Record Drawings, also referred to as "as-builts" and "as-built plans," shall mean drawings depicting the completed Project, which may be prepared by CONSULTANT as an Additional Service or by others in accordance with the terms of this Agreement, and based solely 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 CONSULTANT or such other entity as may be charged with preparation under the terms of this Agreement and which shall be annotated by Contractor to show changes made during construction.

**1.15 CONSTRUCTION OBSERVER.** Where this role is included in the Consultant's Services per the Scope of Services, the authorized representative of CONSULTANT assigned to assist CONSULTANT at the site during construction. As used herein, the term CONSTRUCTION OBSERVER includes any assistants or field staff of CONSTRUCTION OBSERVER agreed to by

OWNER. The duties and responsibilities of the CONSTRUCTION OBSERVER, if any, are as set forth in Exhibit A. Parties acknowledge that CONSULTANT's provision of a CONSTRUCTION OBSERVER shall not constitute approval of any construction work nor shall it be construed to relieve any Contractor of its obligations and/or responsibilities.

**1.16 APPLICABLE LAWS/LAWS AND REGULATIONS.** The terms Applicable Laws and Laws and Regulations, as used herein, shall mean the law of the state set forth in Section 8.11 ("Governing Law/Jurisdiction/Venue") as well as applicable regulations, codes, and licenses promulgated or issued by any board, commission, or agency having authority and jurisdiction over this Agreement. (May also be referred to herein as "Governing Law").

**1.17 CONSULTANT'S SERVICES.** The jobs, services, goods, deliverables, duties, and activities to be performed or provided by or on behalf of Consultant under this Agreement inclusive of all Basic Services and any duly authorized Additional Services, including professional services more specifically defined as engineering review of subdivision plans, structural and roadway design services, creation and preparation of construction documents in relation to a construction project, as well as provision of all necessary ancillary equipment, personnel, and tools of trade in accordance with the terms of this Agreement.

**1.18 CONTRACTOR'S WORK.** To the extent that such may be relevant to the terms of the Agreement, this term refers to any and all jobs, goods, deliverables, duties, activities, and services to be performed or provided by a Contractor for Owner pursuant to the terms of a Construction Contract.

## **ARTICLE 2 RELATIONSHIP OF THE PARTIES**

**2.1** CONSULTANT is providing professional engineering services pursuant to this Agreement. Nothing in this Agreement shall be construed to mean that CONSULTANT assumes any responsibility or duties of any Contractor(s) or can be held liable for such Contractor's (or its employees, agents, officers, suppliers, or others as may be under Contractor's control and direction) failure to perform their obligations and duties to OWNER.

**2.2** The Contractor(s) will be solely responsible for means, methods, techniques, sequences, and procedures used in the construction of the Project and for the safety of its personnel, property, and its operations, and for performing in accordance with its contract(s) with OWNER, as well as for any damages for construction defects caused, in whole or in part, by the Contractor's Work. CONSULTANT shall be able to rely upon the Contractor for the proper performance of its obligations to OWNER. CONSULTANT neither guarantees the performance of the Contractor nor assumes responsibility for the Contractor's failure to furnish and perform the

Contractor's Work in accordance with the Construction Contract Documents.

**2.3** Where CONSULTANT does not have a contractual relationship with the Contractor regarding the Project, OWNER acknowledges and takes into account the fact that CONSULTANT does not have a contract with Contractor(s) and, as such, cannot direct its respective means and methods, its forces, its personnel, its subcontractors, suppliers, and/or subconsultants. CONSULTANT cannot require those parties with which it has no contract to refrain from or perform any acts. Requiring action or conduct out of Contractor is the responsibility of the OWNER.

### **ARTICLE 3 SCOPE OF SERVICES**

**3.1** Generally. CONSULTANT shall perform the Basic Services as set forth in this Article 3, in Exhibit A, and/or in any Work Authorizations that may be issued, as well as any Additional Services duly authorized in accordance with the terms and conditions herein. Such items, taken together, shall be referred to herein as the "Scope of Services".

CONSULTANT's Scope of Services as set out hereunder is finite, and CONSULTANT is not being compensated by OWNER to provide or perform services which are not specifically set out herein. Anything not expressly stated in this provision, or in Exhibit A, or in any subsequent Work Authorizations agreed upon between OWNER and CONSULTANT, is expressly not a part of CONSULTANT's Scope of Services.

**3.1.1** Safety. Consistent with and pursuant to Section 3.2.6, CONSULTANT shall not be responsible for site safety, or for the safety of Contractor or its employees or subcontractors. CONSULTANT is not being retained to, and shall not be expected or required to, research or review the safety record or history of OSHA violations of any potential bidding contractor, and shall not be expected, required, or retained to undertake vetting, pre-screening, researching, or approving any potential bidding contractor based on its safety record.

**3.1.2** Permits. CONSULTANT shall, as part of its performance of the Basic Services, assist OWNER in meeting OWNER's duty to obtain those permits and approvals which are typical of and necessary to the performance of CONSULTANT's Services on this contract. Any assistance beyond that inherent in the Basic Services shall be considered as Additional Services, as defined herein. The Parties acknowledge that many factors which impact permitting and approval are outside the realm of control of CONSULTANT and its agents, and CONSULTANT bears no responsibility for the OWNER's obligation to obtain such permitting and approval items as may be necessary for the completion of the Project.

## **3.2 Standards of Performance.**

**3.2.1 Standard of Care.** CONSULTANT shall at all times endeavor to perform its Services in conformance with the generally accepted care and skill ordinarily exercised by professionals of the same type practicing under similar circumstances at the same time and in the same locality. CONSULTANT makes no warranties, express or implied, under this Agreement or otherwise, in connection with CONSULTANT's Services, and guarantees no particular result. CONSULTANT neither guarantees the performance of any Contractor(s), nor assumes the responsibility of the Contractor(s) to furnish or perform its obligations to OWNER, whether arising from the Construction Contracts, the Contract Documents, or otherwise.

**3.2.2 SUBCONSULTANTS.** CONSULTANT may retain such subconsultants as CONSULTANT deems necessary to assist in the performance or furnishing of the Services, subject to timely approval by OWNER, which shall not be unreasonably withheld.

**3.2.3 Reliance on Others.** Subject to the Standard of Care set forth in Paragraph 3.2.1, CONSULTANT and its subconsultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, OWNER, Contractor, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

**3.2.4** The CONSULTANT shall not be required to sign any documents, no matter by whom requested, that would result in the CONSULTANT having to certify, guarantee, or warrant the existence of conditions whose existence CONSULTANT cannot reasonably ascertain. OWNER, therefore, agrees not to make any resolution of any dispute with CONSULTANT or payment of any amount due to CONSULTANT in any way contingent upon CONSULTANT signing any such documents.

**3.2.5** The Parties acknowledge that, where the Scope of Services may include such, any opinions issued by CONSULTANT regarding probable construction cost are made on the basis of CONSULTANT's experience and qualifications and represent CONSULTANT's judgement as a professional generally familiar with the industry. However, Parties further acknowledge that because CONSULTANT has no control over the costs of labor, materials, equipment, or services furnished by others, or over any Contractor's methods of determining prices, or over competitive bidding or market conditions, CONSULTANT cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from any opinion of probable construction cost that may be prepared by CONSULTANT.

### **3.2.6 CONSULTANT and Contractor.**

**3.2.6.1** CONSULTANT shall not at any time supervise, direct, control, or have authority over any Contractor Work, nor shall CONSULTANT have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by

the Contractor, or the safety precautions and programs incident thereto, for security or safety at any Project site, nor for any failure of the Contractor to comply with Applicable Law and Contract Documents as it pertains to the Contractor's furnishing and performing of the Contractor's Work.

**3.2.6.2** Parties agree that where, in the course of performance of its Services hereunder, CONSULTANT may have the authority to reject any Contractor Work which, in the professional opinion of the CONSULTANT does not generally conform to any Construction Contract Documents, that authority shall in no way be construed as a duty to reject such work. Neither such authority, nor the decision to exercise or not exercise such authority, nor any action or inaction of CONSULTANT, shall give rise to a duty or responsibility of CONSULTANT for site safety or construction means, methods, or techniques; or create any express or implied duty or responsibility to any Contractor, subcontractor, other consultants or subconsultants, materials and/or equipment suppliers, or the employees of any of them.

**3.2.6.3** CONSULTANT shall not be responsible for the acts or omissions of the Contractor, or of any subcontractor, supplier, or any of their agents or employees, or of any other persons (except CONSULTANT's own agents, employees, and subconsultant(s) at the Project site or where otherwise furnishing or performing any Services; or for any decision made regarding the Contract Documents, or any application, interpretation, or clarification, of the Contract Documents, other than those made by CONSULTANT, pursuant to its Scope of Services as defined herein.

**3.2.6.4** While at the Project site, CONSULTANT's employees and representatives shall comply with the specific applicable requirements of Contractor's and OWNER's safety programs of which CONSULTANT has been informed in writing.

### **3.3** Additional Services

It is mutually understood and agreed that the OWNER will compensate the CONSULTANT for services resulting from changes in the scope of the Project or its design, including but not necessarily limited to, change in size, complexity, project schedules, or character of construction; revisions to previously accepted studies, reports, design documents, or contract documents; and preparation of documents for separate bids, when such revisions are due to causes beyond the CONSULTANT's control and when requested or authorized by the OWNER.

When requested by OWNER, or when circumstances otherwise reasonably require, CONSULTANT shall furnish or obtain from others Additional Services of the types listed below.

- (a) Preparation of applications and supporting documents (in addition to those furnished under Basic Services, if any) 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.

- (b) Services (in addition to those furnished under Basic Services, if any) to assist OWNER in obtaining bids from contractors.
- (c) Services (in addition to those furnished under Basic Services, if any) to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by OWNER or others.
- (d) Services resulting from significant changes in the scope, extent, or character of the portions of the Project applicable to CONSULTANT's Services 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 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 CONSULTANT's control.
- (e) Services required as a result of OWNER's providing incomplete or incorrect Project information to CONSULTANT.
- (f) Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of financial feasibility and cash flow studies, rate schedules, and appraisals; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by OWNER.
- (g) Furnishing services of CONSULTANTS for other than Basic Services.
- (h) Services during out-of-town travel required of CONSULTANT other than for visits to the site or OWNER's office as required in Basic Services.
- (i) Preparing additional bidding documents or Contract Documents for alternate bids or prices requested by OWNER for the Contractor's Work or a portion thereof.
- (j) Assistance in connection with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services.
- (k) Providing construction surveys and staking (in addition to those furnished under Basic Services, if any) to enable Contractor to perform its work and any type of property surveys or related engineering services; and providing other special field surveys.

- (l) Providing Basic Services beyond the original date for completion and readiness for final payment of Contractor, unless the nature of SUBCONSULTANT's Services would typically dictate performance of the Services at such time, and the performance of the Services at such time was clearly contemplated in the original Scope of Services with such timeline set forth specifically therein.
- (m) Preparing Record Drawings (in addition to those furnished under Basic Services, if any) showing appropriate record information based on Project annotated record documents received from Contractor and furnishing such Record Drawings to OWNER.
- (n) 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.
- (o) Conducting surveys, investigations, and field measurements to verify the accuracy of Record Drawing content obtained from Contractor, OWNER, utility companies, and other sources; revising and supplementing Record Drawings as needed.
- (p) Preparing to serve or serving as an advisor, consultant, or witness for OWNER in any litigation, arbitration, or other dispute resolution process related to the Project.
- (q) Preparation of operation and maintenance manuals; assistance to OWNER in training OWNER's staff to operate and maintain Project equipment and systems; assistance to OWNER in developing procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related record-keeping.
- (r) Overtime work requiring higher-than-regular rates.
- (s) Providing more extensive services required to enable CONSULTANT to issue notices or certifications requested by OWNER.
- (t) 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).
- (u) Other services performed or furnished by CONSULTANT not otherwise provided for in this Agreement.
- (v) Services in connection with work change directives and change orders to reflect changes requested by OWNER.

- (w) Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
- (x) Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Project work (advance notice not required), (2) the presence at the site of any items of historical or cultural significance, (3) Project work damaged by fire or other cause during construction, (4) a significant amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, or (6) default by Contractor.
- (y) Evaluating an unreasonable claim or an excessive number of claims or requests for information submitted by Contractor or others in connection with the Project work.

**3.4 Changed Conditions.** Parties acknowledge that it is possible that unforeseen or changed conditions may be encountered which could substantially alter the necessary services or the risk involved in completing CONSULTANT's Services. Where such changed conditions may require the renegotiation of the Scope of Services or termination of Services, Owner shall rely on CONSULTANT's judgement as to the continued adequacy of this Agreement in light of the discovery of conditions that were not anticipated or known. If renegotiation is necessary, CONSULTANT and OWNER shall in good faith enter into renegotiation of this Agreement to permit CONSULTANT to continue to meet OWNER's needs. If the Parties cannot reach an agreement as to renegotiated terms, OWNER agrees that CONSULTANT shall have the right to terminate this Agreement and be paid in accordance with the Agreement for all Services conducted and all Expenses incurred up to the date of termination, plus any reasonable termination costs.

#### **ARTICLE 4 COMPENSATION OF CONSULTANT**

- 4.1** CONSULTANT shall be compensated by OWNER in accordance with Exhibit B hereto.
  - 4.1.1** OWNER shall pay all costs associated with Additional Services authorized by the OWNER.
  - 4.1.2** For any project utilizing a task order in accordance with terms of this Agreement, the scope of services, schedule, and amount of compensation to be paid shall be included therein.

**4.1.3** The OWNER will pay the CONSULTANT for services performed by subconsultants at the actual invoice amount times a factor of 1.10 for assisting and coordinating the subconsultants' services.

**4.1.4** Reimbursable expenses are defined as follows: travel and subsistence cost, printing and reproduction, computer services, advertising costs, mail distribution costs, permit fees, application fees or deposits, and all other costs incidental to performing the assignment ("Expenses").

**4.1.5** The OWNER as purchaser of the Services described herein shall pay any applicable sales tax in the manner and in the amount as required by law.

**4.2** Invoices. CONSULTANT shall prepare invoices in accordance with its standard invoicing practices. CONSULTANT shall submit its invoices to OWNER on a monthly basis. Invoices are due and payable within 30 days of receipt.

**4.3** Payments. Application to Interest and Principal: Payment will be credited first to any interest owed to CONSULTANT and then to principal.

**4.3.1** Payment shall be made payable to Volkert, Inc. and submitted to the following address:

Department #2042, Volkert, Inc.  
P. O. Box 11407  
Birmingham, AL 35246-2042

**4.3.2** Failure to Pay. If OWNER fails to make any payment due CONSULTANT for Services and Expenses within 30 days after receipt of CONSULTANT's invoice, then:

- (a) amounts due CONSULTANT 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
- (b) CONSULTANT 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 CONSULTANT for any such suspension.
- (c) OWNER shall reimburse CONSULTANT for any expenses, including legal costs, incurred in collection of outstanding amounts due from OWNER.

**4.4** Disputed Invoices. If OWNER contests an invoice, OWNER shall promptly advise CONSULTANT of the specific basis for doing so, may withhold only that portion so contested, and must pay the undisputed portion, in accordance with the terms of this Agreement.

**4.5 Redesign Fees.** Where circumstances arise due to any cause, other than the negligence of CONSULTANT in the performance of its Services hereunder, which circumstances require or lead OWNER to request the redesign of all or a part of the Project by CONSULTANT, Parties hereby agree that both Parties will negotiate in good faith the terms of payment for such, which shall be considered Additional Services, and CONSULTANT shall be compensated fairly for any such redesign work.

## **ARTICLE 5 RESPONSIBILITIES OF THE OWNER**

In addition to other responsibilities of OWNER as set forth in this Agreement, where the responsibility for providing such Project-related information and/or data as set forth below in this Article 5 is not specifically allocated to Consultant as a part of the Basic Services in the Scope of Services, OWNER shall, at its expense:

**5.1** Provide CONSULTANT with all criteria and full information regarding OWNER's requirements for the Project, including, as appropriate, any design objectives and constraints; space, capacity, and performance requirements; flexibility and expandability requirements; and any budgetary limitations.

**5.2** Where applicable to the Project or Consultant's Services, give instructions to CONSULTANT 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.

**5.3** Furnish copies (or give specific directions requesting CONSULTANT to use copies already in CONSULTANT's possession) of all design and construction standards, OWNER's standard forms, general conditions, supplementary conditions, text, and related documents and content for CONSULTANT to include in draft bidding-related documents (or requests for proposals or other construction procurement documents), where appropriate in accordance with the Scope of Services, 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) where such may be appropriate to the Scope of Services, and (2) those portions of any Construction Contract other than, where applicable, 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.

**5.4** Furnish to CONSULTANT any other available information pertinent to the Project, including reports and data relative to previous designs, investigation, site conditions, or work performed at or adjacent to the Project site(s).

**5.5** Advise CONSULTANT of and provide CONSULTANT with all information and data in its possession concerning the type and location of all underground utilities, both public and private, where such may be relevant to CONSULTANT's Services. CONSULTANT shall be entitled to rely on such information provided by OWNER as complete and accurate.

**5.6** Furnish or otherwise make available to CONSULTANT such Project-related information and data as are reasonably required to enable CONSULTANT to complete its Basic and Additional Services hereunder (where the responsibility for providing such Project-related information and/or data is not specifically allocated to Consultant as a part of the Basic Services). As related to the Scope of Services, such information and data may be expected to include, but not necessarily be limited to, the following:

**5.6.1** Property descriptions;

**5.6.2** Zoning, deed, and other land use restrictions;

**5.6.3** Utility and topographic mapping and surveys;

**5.6.4** Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points;

**5.6.5** Explorations and tests of subsurface conditions at or contiguous to the Project site, drawings of physical conditions relating to existing surface or subsurface structures at the Project site, or hydrographic surveys, with appropriate professional interpretation thereof; and

**5.6.6** Environmental assessments, audits, investigations, impact statements, and other relevant environmental or cultural studies as to the Project, the Project site, and adjacent areas.

**5.7** Arrange for safe access to, and make all provisions for, CONSULTANT to enter upon public and private property as may be required for CONSULTANT to perform Services hereunder. CONSULTANT shall take reasonable precautions to minimize damage to the property during the course of its Services. OWNER acknowledges that a certain amount of damage, wear and tear, and depreciation is likely to result from CONSULTANT's operations on the property in furtherance of CONSULTANT's Services under this Agreement. The cost for restoration or remediation of damaged property which may result from CONSULTANT's operations is not included in CONSULTANT's compensation hereunder unless explicitly stated otherwise in this Agreement. If the property is damaged during CONSULTANT's operations and if OWNER desires CONSULTANT to restore or remediate the property to its former condition, CONSULTANT will do so for additional compensation.

**5.8** Examine all alternate solutions (“value engineering”), studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by CONSULTANT (including obtaining the advice of an attorney, insurance counselor, and other advisors or consultants as OWNER deems appropriate with respect to such examination and render timely written decisions pertaining thereto.

**5.9** Obtain and provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project as designed or specified by CONSULTANT, and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.

**5.10** Provide the following services in recognition and acknowledgement that CONSULTANT’s Services do not include them:

**5.10.1** Accounting, bond, and financial advisory; independent cost estimating; and insurance counseling services, and

**5.10.2** Legal services and advice with regard to issues pertaining to the Project as OWNER requires, as Contractor raises, and/or as CONSULTANT reasonably requests.

**5.11** Inform CONSULTANT in writing of any specific safety or security plans or requirements to which CONSULTANT will be required to adhere while on the Project site.

**5.12** Designate and identify to CONSULTANT a person to act with authority on OWNER’s behalf.

**5.13** Communicate to CONSULTANT in writing with regard to any issues that impact project safety or the project schedule or cost.

**5.14** Provide prompt review of all CONSULTANT submittals.

## **ARTICLE 6 INSURANCE AND INDEMNIFICATION**

**6.1** Insurance. CONSULTANT shall procure and maintain the types and amounts of insurance as are set forth below , to be provided by an insurer with an AM Best rating of A- or higher and in the most recent form edition. CONSULTANT shall cause OWNER to be an additional insured on CONSULTANT’s policy of commercial general liability and automobile liability insurance and shall provide endorsement evidencing same, specifically to include CG 20.10 and 20.37 endorsements.

### **6.1.1** Commercial General Liability

(a)	Each Occurrence:	\$1,000,000
(b)	General Aggregate:	\$2,000,000

**6.1.2 Automobile Liability (Combined Single Limit BI/PD)**

(a) Each Accident: \$1,000,000

**6.1.3 Worker Compensation: Statutory**

**6.1.4 Employers' Liability**

(a) Each Accident: \$1,000,000

(b) Disease, Each Employee: \$1,000,000

(c) Disease, Policy Limit: \$1,000,000

**6.1.5 Professional Liability**

(a) Each Claim: \$2,000,000

(b) Annual Aggregate: \$2,000,000

**6.1.6** OWNER shall require Contractor to purchase and maintain policies of insurance covering worker compensation, general liability, property damages (other than to the Work itself), motor vehicle damage and injuries, builder's risk, and other insurance necessary to protect OWNER's and CONSULTANT's interests in the Project. OWNER shall require Contractor to be fully licensed and bonded. OWNER shall require Contractor to cause OWNER and CONSULTANT, their officers, directors, employees, agents, representatives, assigns and subconsultants to be named, listed, or otherwise made additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project and provide CONSULTANT with appropriate endorsements indicating CONSULTANT's designation as an additional insured on each policy that allows the addition of additional insureds.

**6.2** OWNER and CONSULTANT hereby mutually waive all rights of subrogation, as well as all claims and other rights they may have against each other for loss of and/or damage to (a) the Work and any Project therein, (b) all materials, machinery, equipment and other items used in the Project and/or to be incorporated into the Project, while the same are in transit, at Project sites, during erection and otherwise, and (c) all property owned by or in the custody of OWNER and its affiliates, however such loss or damage shall occur, except such rights as they may have to the proceeds of such insurance held by the OWNER as trustee. If OWNER is not the sole Owner of the Project sites and all property at and adjacent thereto, OWNER shall obtain an undertaking from the other owners thereof sufficient to provide CONSULTANT the same protection from liability for loss or damage as would be afforded to CONSULTANT under this Agreement if OWNER were the sole owner. OWNER shall cause all policies of property insurance relating to the Project to contain a provision or endorsement to the effect that in the event of payment of any loss or damage, the insurers will have no rights of recovery against CONSULTANT or its subconsultants, or any insureds, additional insureds, or loss payees thereunder.

### **6.3 INDEMNIFICATION.**

**6.3.1 INDEMNIFICATION BY CONSULTANT.** TO THE FULLEST EXTENT PERMITTED BY LAW, **AND UP TO THE LIMITS OF THE EXCLUSIVITY OF REMEDIES PROVISION CONTAINED HEREIN**, CONSULTANT SHALL INDEMNIFY OWNER AND OWNER'S OFFICERS, DIRECTORS AND EMPLOYEES FOR COSTS, LOSSES, JUDGMENTS, DAMAGES AND EXPENSES (INCLUDING ANY REASONABLE ATTORNEYS' FEES) ACTUALLY INCURRED AND PAID, TO THE EXTENT CAUSED BY THE NEGLIGENT ACTS, ERRORS AND OMISSIONS OF CONSULTANT IN THE PERFORMANCE OF ITS PROFESSIONAL SERVICES HEREUNDER. IN ANY MATTERS INVOLVING ALLEGATIONS OF NEGLIGENT PERFORMANCE OF PROFESSIONAL SERVICES BY CONSULTANT, CONSULTANT'S DEFENSE DUTIES UNDER THIS INDEMNIFICATION PROVISION (WHICH ARE EXPRESSLY DISCLAIMED) SHALL INCLUDE ONLY REIMBURSEMENT OF REASONABLE DEFENSE COSTS TO THE EXTENT INCURRED AS A PROXIMATE RESULT OF CONSULTANT'S ACTUAL NEGLIGENT PERFORMANCE.

**6.3.2 INDEMNIFICATION BY OWNER.** TO THE FULLEST EXTENT PERMITTED BY LAW, OWNER SHALL INDEMNIFY AND HOLD HARMLESS CONSULTANT AND ITS OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS, EMPLOYEES, AND SUBCONSULTANTS 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, INCLUDING THE LOSS OF USE RESULTING THEREFROM, BUT ONLY TO THE EXTENT CAUSED BY ANY NEGLIGENT ACT, OMISSION, OR WILLFUL MISCONDUCT OF OWNER OR OWNER 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.

**6.3.3 ENVIRONMENTAL INDEMNIFICATION.** TO THE FULLEST EXTENT PERMITTED BY LAW, OWNER SHALL INDEMNIFY AND HOLD HARMLESS CONSULTANT AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AND SUBCONSULTANTS 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) CAUSED BY, ARISING OUT OF, RELATING TO, OR RESULTING FROM ANY SUBSTANCE, PRODUCT, WASTE, OR OTHER MATERIAL OF ANY NATURE WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, ASBESTOS, PETROLEUM, RADIOACTIVE MATERIAL, AND PCBs) WHICH 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. §§1801 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.; AND (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 AT, ON, OR UNDER THE PROJECT SITE, PROVIDED THAT (1) 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, 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.

**6.3.4 PERCENTAGE SHARE OF LIABILITY.**

OWNER AND CONSULTANT HEREBY EXPRESSLY AGREE THAT EACH PARTY'S TOTAL LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED THE PARTY'S PERCENTAGE SHARE OF THE TOTAL LIABILITY OF A CLAIM OR DISPUTE ARISING UNDER THIS AGREEMENT **UP TO THE LIMITS OF THE EXCLUSIVITY OF REMEDIES PROVISION CONTAINED HEREIN.**

**ARTICLE 7  
TERMINATION AND SUSPENSION**

**7.1 Suspension.**

**7.1.1 By OWNER.** OWNER may suspend the Project for up to 90 days upon seven days written notice to CONSULTANT.

**7.1.2 By CONSULTANT.** CONSULTANT may, after giving seven days written notice to OWNER, suspend services under this Agreement if CONSULTANT's performance has been substantially delayed through no fault of CONSULTANT, or due to OWNER's failure to pay CONSULTANT as set forth in Section 4.3.2 above.

**7.2 Termination.** The obligation to provide further Services under this Agreement may be terminated:

**7.2.1 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 CONSULTANT:

(1) upon seven days written notice if OWNER demands that CONSULTANT furnish or perform services contrary to CONSULTANT's responsibilities as a licensed professional;  
or

(2) upon seven days written notice if the CONSULTANT's Services for the Project are delayed or suspended for more than 90 days for reasons beyond CONSULTANT's control.

(c) In the event of termination for cause, CONSULTANT shall have no liability to OWNER on account of such termination.

(d) Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 7.2.1(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.

**7.2.2** For convenience,

(a) By OWNER effective upon CONSULTANT's receipt of notice from OWNER.

**7.3** Effective Date of Termination. The terminating Party under Paragraph 7.2 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow CONSULTANT to demobilize personnel and equipment from the Project 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.

**7.4.** Payments Upon Termination

**7.4.1** In the event of any termination under Paragraph 7.2, CONSULTANT 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 8.2 ("Ownership and Reuse of Documents").

**7.4.2** In the event of termination by OWNER for convenience, or by CONSULTANT for cause, CONSULTANT shall be entitled, in addition to invoicing for those items identified in Paragraph 7.4.1, to invoice OWNER for and obtain 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 CONSULTANT's subconsultants, and other related close-out costs, using methods and rates for Additional Services as set forth herein.

**ARTICLE 8**  
**MISCELLANEOUS PROVISIONS**

**8.1** Contract Period. All contracts, agreements, provisions, and stipulations of this Agreement shall remain in full force for a period of one (1) year from the date of the Agreement, and for such periods as the contract time may be extended by mutual written agreement between the OWNER and the CONSULTANT.

**8.2** Ownership and Reuse of Documents. All Project documents, including but not necessarily limited to reports, Drawings, studies, findings, correspondence, specifications, survey notes, estimates, maps, computations, calculations, computer files, computer assisted design and drafting (CADD) files (electronic and hard copy), and other data, as well as any and all other documents and other materials prepared, generated, or furnished by or for CONSULTANT and/or its subconsultant(s) for the Project pursuant to this Agreement (hereinafter referred to in this Paragraph 8.2 as “Documents”) are instruments of service with respect to the Project, and CONSULTANT shall retain an ownership and intellectual property interest therein regardless of whether the Project is completed. OWNER may make and retain copies thereof for information and reference in connection with the use and/or occupancy of the Project by OWNER and others. However, such Documents are not intended for reuse or future use by OWNER or others for any purpose whatsoever or on any other project. No representation is made that such Documents are or will be suitable for reuse or future use by OWNER or others for any purpose whatsoever or on any other project. Any use of such Documents by OWNER or others on any project other than the Project which is the subject of this Agreement is not advised and shall be done without warranty, representation, or liability to any extent whatsoever on the part of CONSULTANT. OWNER shall defend, indemnify, save, and hold harmless CONSULTANT, its officers, directors, employees, agents, successors, and assigns against any and all liability for any and all claims, demands, fines, fees, damages, actions, causes of action, lawsuits, expenses (including attorneys’ fees), mediations, and arbitrations arising out of, resulting from, or relating in any way to the OWNER’s or others’ use of such Documents. It shall be deemed acceptable for CONSULTANT to deliver to OWNER the original record version of such Documents in a digital format, signed and sealed according to applicable Laws and Regulations. Provided, however, that where another acceptable format for the original record version is required under Applicable Laws and Regulations, SUBCONSULTANT shall provide the original record version in such approved format.

**8.3** Electronic Transmittals.

**8.3.1** OWNER and CONSULTANT 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.

**8.3.2** If this Agreement does not establish protocols for electronic or digital transmittals, then OWNER and CONSULTANT shall jointly develop such protocols.

**8.3.3** 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.

#### **8.4** Municipal Advisor Disclosure and Disclaimer

CONSULTANT is not acting or being retained to act as a "municipal advisor," as that term is defined by Section 15B(e)(4)(A)(i) and (ii) of the Securities and Exchange Act of 1934, as amended, and does not owe a fiduciary duty to OWNER or an "obligated person," as that term is defined by Section 15B(e)(10) of the Securities and Exchange Act of 1934, as amended. CONSULTANT shall not provide advice or recommendations to or on behalf of OWNER or an obligated person regarding municipal financial products or the issuance of municipal securities. CONSULTANT is not recommending an action to OWNER or an obligated person; CONSULTANT is not acting as an advisor to OWNER or an obligated person and does not owe a fiduciary duty pursuant to Section 15B of the Securities and Exchange Act to OWNER or an obligated person with respect to the information and material communicated pursuant to this Agreement or the Project; CONSULTANT is acting for its own interests; and OWNER and any obligated persons should discuss any information and material contained in any communications with any and all internal or external advisors and experts that OWNER or obligated person deems appropriate before acting on any information or material. CONSULTANT will not be providing advice or recommendations that are particularized to the specific needs, objectives, or circumstances of OWNER or an obligated person with respect to municipal financial products or the issuance of municipal securities, including with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues. CONSULTANT will not be asked or expected to provide anything other than general information that does not involve a recommendation regarding municipal financial products or the issuance of municipal securities; nor will CONSULTANT be asked or expected to provide anything other than information of a factual nature without subjective assumptions, opinions, or views, and information that is not particularized to OWNER.

#### **8.5** Force Majeure/Delays and Extensions of Time.

**8.5.1** CONSULTANT and OWNER agree that no Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligation to make previously owned payments to the other Party due hereunder) to the extent that an act beyond the impacted Party's reasonable control, including without limitation, acts of God, flood, fire, earthquake, explosion, war, invasion, hostilities, terrorist threats, riots, civil unrest, government order or law or action or inaction of governmental authority, embargo or blockade, strikes, labor stoppages, industrial disturbances, encountering hazardous materials and/or concealed/unknown conditions, shipping delays, national or regional emergency, pandemic, epidemic, or other widespread medical or natural disasters or similar events, ("Force Majeure

Events”) may impact, interfere with, delay, or frustrate a Party’s ability to so perform under the Agreement.

**8.5.2** If CONSULTANT is delayed, impacted, or frustrated from commencing or progressing the Services at any time by a Force Majeure Event or any cause deemed to be beyond the reasonable control of CONSULTANT, the schedule will be automatically extended and compensation will be equitably adjusted to the extent reasonably necessary to compensate CONSULTANT for any increases in the cost of the Services caused by such delay.

**8.6** Exclusivity of Remedies. To the fullest extent permitted by law, the total liability, in the aggregate, of CONSULTANT and CONSULTANT’s officers, directors, employees, agents and subconsultants, and of any of them, to OWNER and anyone claiming by, through, or under OWNER, for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to CONSULTANT’s Services, the Project, or this Agreement from any cause or causes whatsoever, including but not limited to the negligence, errors, omissions, strict liability, or breach of contract by CONSULTANT or CONSULTANT’s officers, directors, employees, agents, or subconsultants, or any of them, shall be limited to and shall not exceed the total compensation received by CONSULTANT under this Agreement, but in no event shall exceed the amount of insurance required under this Agreement.

**8.7** Successors and Assigns

**8.7.1** OWNER and CONSULTANT are each hereby bound and the partners, successors, executors, administrators, and legal representatives of OWNER and CONSULTANT (and to the extent permitted by Paragraph 8.7.2, the assigns of OWNER and CONSULTANT) are hereby bound to the other Party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other Party, in respect of all covenants, agreements, and obligations of this Agreement.

**8.7.2** Neither OWNER nor CONSULTANT shall assign, sublet, or transfer any rights under or interest in (including, but without limitation, monies that may become due or monies that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated by law or the effect of this limitation may be restricted 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. Nothing contained in this paragraph shall prevent CONSULTANT from employing such independent professional associates and consultants as CONSULTANT may deem appropriate to assist in performance of Services hereunder.

**8.7.3** Nothing under this section or the within the other terms of this Agreement shall be construed to give any right or benefits in this Agreement to anyone other than OWNER and CONSULTANT, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and CONSULTANT and not for the benefit of any other Party. OWNER agrees that that the substance of the provisions of this Paragraph 8.7.3 shall appear in any Construction Contract Documents.

**8.8 Dispute Resolution.** If a dispute arises out of or relates to this Agreement or its alleged breach, the OWNER and CONSULTANT shall direct their representatives to endeavor to settle the dispute first through direct discussions. If the dispute cannot be resolved through direct discussions, the OWNER and CONSULTANT shall participate in mediation before recourse to litigation. The OWNER's and CONSULTANT's representatives shall attend all mediation sessions. Engaging in mediation is a condition precedent to litigation. Only after the Parties have exhausted direct discussions AND mediation in accordance with the foregoing shall either of them be entitled to initiate litigation. The Prevailing Party shall be entitled to recover its reasonable and necessary attorneys' fees, costs, and expenses. "Prevailing Party" shall be defined as a party which receives a final judgement in an amount greater than 75% of said Party's initial claim. Should neither Party attain the status of Prevailing Party as defined herein, each Party shall bear its own costs in respect to the claim. ANY PROVISIONS HEREIN TO THE CONTRARY NOTWITHSTANDING, OWNER AND CONSULTANT HEREBY AGREE THAT ANY DISPUTES BETWEEN THEM WILL BE TRIED TO THE BENCH AND NOT TO A JURY, AND EACH OF THEM WILLFULLY AND VOLUNTARILY WAIVES ITS RIGHT TO TRIAL BY JURY FOR ANY DISPUTE ARISING OUT OF THIS AGREEMENT.

**8.9 Disclaimer of Third-Party Benefits.** OWNER and CONSULTANT expressly disclaim third-party beneficiaries hereunder and no one not a Party to the Agreement shall be entitled to seek enforcement against OWNER and/or CONSULTANT of any provision herein, or to otherwise seek damages from either Party for the alleged breach of any provision contained herein or purported duty or standard created or conferred hereunder. It is specifically agreed between the Parties executing this Agreement that it is not intended by any of the provisions of any part of the Agreement to create in the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a Party to the Agreement to maintain a claim, cause of action, lien, or any other damages or any relief of any kind pursuant to the terms and provisions of this Agreement.

**8.10 Waiver of Consequential Damages.** Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither OWNER nor CONSULTANT, their respective officers, directors, agents, partners, employees, contractors, or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect, or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation, or any other consequential damages that either Party may have incurred from any cause of action including negligence, strict liability, breach of contract, and breach of strict or implied warranty. Both OWNER and CONSULTANT shall require similar waivers of consequential damages protecting all the entities and persons named herein in all contracts and subcontracts with others involved in the Project.

**8.11 Governing Law/Jurisdiction/Venue.** It is expressly agreed and stipulated between the Parties that this Agreement shall be deemed to have been executed in the state that is the situs of the Services to be performed herein. This Agreement shall be governed by the laws of that State, and any disputes related to or arising out of this Agreement or its alleged breach, shall be

brought in Marshall County, exclusive of that state's choice of law provisions. In any such litigation, both Parties hereby waive their rights to jury trial and mutually agree that any disputes between them arising out of this Agreement that are subject to litigation shall be tried to the bench only.

**8.12 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 of the Services.

**8.13 Severability.** Any provision or part hereof which is held to be void or unenforceable under Applicable Laws shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONSULTANT, which hereby agree that, in such instance, the Agreement shall be reformed to replace such stricken provision or part hereof with a valid and enforceable provision that comes as close as possible to expressing the intent of the stricken provision.

**8.14 Total Agreement.** This Agreement (together with the exhibits referenced herein) constitutes the entire agreement between OWNER and CONSULTANT 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.

**8.15 Confidentiality.** CONSULTANT shall maintain the confidentiality of all information specifically designated as confidential by OWNER, unless withholding such information would violate the law, create a risk of significant harm to the public, or prevent CONSULTANT from establishing a claim or defense in an adjudicatory proceeding. Parties, however, acknowledge that CONSULTANT shall have the right to include photographic or artistic representations of the Project and descriptions of both the Project and CONSULTANT's Services to OWNER on the Project in the preparation CONSULTANT's marketing materials, such as proposals, presentations, etc. Parties agree that such usage by CONSULTANT shall not include OWNER's confidential information, where the OWNER has previously notified CONSULTANT in writing of the confidential nature of such information. It is understood and agreed that CONSULTANT may retain electronic copies of confidential information created by automatic computer generated backup systems in the ordinary course of business, but such copies shall be deleted in the ordinary course of Subconsultant's file maintenance, shall not be accessed by CONSULTANT, and shall nevertheless remain subject to this Agreement.

**8.16 Construction.** The Parties acknowledge that this Agreement is the result of careful negotiation and that both Parties have had the opportunity to carefully review the terms of the Agreement. CONSULTANT and OWNER therefore agree that this Agreement will be considered to have been drafted jointly by the Parties to it and shall not be construed or interpreted against any particular Party, regardless from which Party the base document may have originated or who may have originally drafted any particular portion of the Agreement. Any principal of construction or rule of law that provides for any latent ambiguities within an Agreement to be construed against the drafter are, therefore, agreed by both Parties to be inapplicable to the terms of this Agreement.

**8.17 Designated Representative.** With the execution of this Agreement, CONSULTANT and OWNER shall designate specific individuals to act as CONSULTANT's and OWNER's representatives with respect to the services to be performed or furnished by CONSULTANT 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.

Address for OWNER's receipt of notices:  
112 N. Broad St.  
Boaz, AL 35957

---

Address for CONSULTANT's receipt of notices:  
200 Clinton Ave. W., Ste. 250  
Huntsville, AL 35801

---

Designated Representative (Paragraph 8.17):

Name: Tim Walker

---

Title: Mayor

---

Phone Number: 256-593-8105

---

E-Mail Address: Tim.Walker@CityofBoaz.org

---

Designated Representative (Paragraph 8.17):

Name: Katie Warren

---

Title: Project Engineer

---

Phone Number: 256-777-8885

---

E-Mail Address: Katie.warren@volkert.com

---

**8.18 Notice of Security Event.** OWNER hereby agrees to notify CONSULTANT by email to [itsecurity@volkert.com](mailto:itsecurity@volkert.com) with copy to the CONSULTANT's Designated Representative, as soon as reasonably possible (but in no case later than twenty-four (24) hours) after it becomes aware of any Security Event. (Security Event to be defined herein as any compromise by unauthorized access, unauthorized use, or inadvertent disclosure that impacts the confidentiality, integrity, or availability of CONSULTANT's data or information, including but not limited to a data breach as defined under the Applicable Laws and Regulations.) All notices of the Security Event shall summarize such event in reasonable detail, including but not limited to (i) the effect on CONSULTANT, if known, and (ii) the date and time identified.

OWNER will designate a representative to serve as the point of contact during the Security Event, if different from the OWNER's Designated Representative identified in this Agreement. OWNER shall cooperate fully with CONSULTANT and fully remediate all the effects of such Security Event, develop and execute a plan that reduces the likelihood of the same or similar Security Event from occurring in the future, and provide CONSULTANT with such assurances as CONSULTANT shall request that such Security Event is not likely to recur. The content of any filing, communication, notice, press release, or report related to any Security Event with inference to or identification of CONSULTANT must be approved by CONSULTANT prior to any publication or communication.

Upon determining that a Security Event has been resolved, or otherwise upon request by CONSULTANT after a reasonable time has elapsed since the Security Event was reported, OWNER shall within ten (10) business days provide to CONSULTANT a written executive summary or other similar document detailing the (i) suspected or confirmed cause of the Security Event; (ii) CONSULTANT data, including Confidential Information affected; (iii) steps taken to address the Security Event and steps to be implemented by OWNER's management to prevent reoccurrences of Security Events of a similar nature; (iv) a list of communications made to third parties, including

data subjects and law enforcement agencies, as a result of the Security Event; and (v) a statement certifying that the underlying cause of the Security Event has been mitigated.

**8.19** Headings for Reference Only. Where used, titles and headings within this Agreement are for reference only, are intended solely to provide convenience and organization, and will not be used to modify, interpret, construe, expand, or explain any of the provisions of this Agreement or the intentions of the Parties.

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

OWNER: City of Boaz

CONSULTANT: VOLKERT, INC.

By: \_\_\_\_\_

By:  \_\_\_\_\_

Print name: Tim Walker

Print name: Jonathan D. Grammer, PE, CCM

Title: Mayor

Title: Regional Vice President

Date Signed: \_\_\_\_\_

Date Signed: January 12, 2026

# EXHIBIT A

## SCOPE OF SERVICES

The scope of work for the engineering services agreed to hereunder shall be in accordance with each individual task order issued pursuant to this agreement.

# EXHIBIT B

## TERMS OF COMPENSATION

The terms of compensation for the engineering services agreed to hereunder shall be in accordance with each individual task order issued pursuant to this agreement.

# EXHIBIT C

## SCHEDULE

The schedule for each individual task assigned under this Agreement will be included in full in the related task order to be executed for that task. The Parties acknowledge that all reasonable efforts will be made to complete each task within any schedule which may have been set by the Prime Agreement.

# EXHIBIT D

## SAMPLE TASK ORDER



**SAMPLE**  
**TASK ORDER FORM**

**Task Order Number:**

**Subcontract Number:**

**Project Title:**

**Project Number:**

**Project Manager:**

**Client Information:**

---

This Task Order No. [XX] is entered into this [XX] day of [MONTH], 20[XX] by and between Volkert, Inc. (“CONSULTANT”) and the City of Boaz (“OWNER”) (individually a “Party” and together the “Parties”) pursuant to the existing Owner-Consultant Agreement executed by the Parties on [MONTH] [XX], 20[XX] (“Agreement”). The Task Order is attached to and intended to be governed by the terms and conditions of the Agreement, and all terms used but not otherwise defined herein shall have the same meanings given to them in the Agreement.

WITNESSETH:

WHEREAS, the Parties previously entered into the Agreement referenced above under which CONSULTANT agreed to perform certain professional services in accordance with the instruction of the Agreement;

WHEREAS, the Agreement provides that the Parties may enter into a Task Order to authorize certain work as set forth in the Scope of Services (as defined in the Agreement);

WHEREAS, the OWNER wishes CONSULTANT to perform certain tasks pursuant to the project referenced herein;

WHEREAS, the CONSULTANT wishes to perform said services for OWNER;

WHEREAS, the purpose of this Task Order is to authorize work in accordance with the Agreement and the scope of services, schedule, and fee set forth herein; and

WHEREAS, all of the terms of the Agreement apply to this Task Order and no terms herein shall be construed as a modification of any term set forth in the Agreement and will, instead, serve only to establish the specific scope of work, schedule, and fee agreed upon by the Parties in connection with this particular Task Order.

NOW THEREFORE, CONSULTANT and OWNER do hereby agree as follows:

1. **Scope of Work.** CONSULTANT shall provide any and all services set forth in Attachment A of this Task Order (“Task Order Scope of Work”).
2. **Schedule/Man Hours Estimate.** The work set forth in Attachment A shall be performed in accordance with the agreed upon schedule (“Schedule”) and in substantial conformity with any provided man hours estimate (“Man Hours”), such Schedule along with the Man Hours estimate, if any, to be set forth in Attachment B of this Task Order (“Task Order Project Schedule/Man Hours Estimate”).
3. **Fee.** The fee due to CONSULTANT for the services outlined in Attachment A shall be paid in accordance with the terms of the Agreement and in the format and amount set forth under Attachment C to this Task Order (“Task Order Compensation”).
4. **Authorization to Proceed.** OWNER will give CONSULTANT authorization to proceed with the work specified in this Task Order only after CONSULTANT submits to OWNER updated insurance certificates and endorsements as may be required under the Agreement.
5. For clarity, Parties agree that that no term beyond scope, schedule, and fee is intended to be altered by this Task Order and that, where this Task Order may conflict with the terms of the Agreement, the terms of the Agreement shall govern.

**IN WITNESS WHEREOF, CONSULTANT and OWNER have caused this Task Order No. [XX] to be executed this [XX] day of [MONTH], 20[XX].**

**CONSULTANT/ENGINEER: Volkert, Inc.**

**THE CITY OF BOAZ**

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

To be Attached before Execution on the following pages, as appropriate:

**TASK ORDER ATTACHMENT A: Task Order Scope of Work**

**TASK ORDER ATTACHMENT B: Task Order Schedule/Work Hours Estimate**

**TASK ORDER ATTACHMENT C: Task Order Compensation**

# TASK ORDER ATTACHMENT A

## SCOPE OF WORK

# TASK ORDER ATTACHMENT B

## SCHEDULE/MAN HOURS ESTIMATE

# TASK ORDER ATTACHMENT C

## COMPENSATION