

PROFESSIONAL SERVICES AGREEMENT

This Agreement, made and entered into this, the 13th day of February 2018 by and between the **City of Dripping Springs**, Texas (hereinafter referred to as the "City") and **CMA Engineering, Inc.**, (hereinafter referred to as "Contractor"), is understood and agreed to be as set forth herein:

- 1. Project Summary:** The City, in connection with its South Regional Wastewater Facilities in Hays County, requires the services of qualified personnel to assist the City in operating and maintaining its wastewater services. Contractor will develop a major permit amendment application to Wastewater Permit Number 14488-001 issued to the City of Dripping Springs for submittal to the TCEQ. Contractor will develop an Engineering Report to support increased permit capacity and permit phasing. The report will include a water balance to support the new surface irrigation areas and effluent holding tank.

- 2. Scope of Work:** The following assumptions and general understanding pertain to the provision of the services and form the basis of this Agreement:
 - (a) Amend the TCEQ Wastewater Permit Number 14488-001 issued to the City of Dripping Springs.

 - (b) The City will be responsible for providing as much information as possible on the existing WWTP treatment and disposal facilities required for the permit amendment application such as, operating data, effluent and sludge sampling (if any), sludge disposal contract(s), and analysis of soil samples from the root zone of the irrigated site(s), etc.

 - (c) Additional irrigation areas will be required for the permit amendment. The proposed new irrigation areas are surface irrigation areas within the proposed Carter/Caliterra subdivision and Heritage PID.

 - (d) The Contractor will at all times have access to the Work wherever it is in preparation or progress.

 - (e) All fees and public notice costs will be paid by City or will be considered reimbursable costs and are not included in the Project Budget.

 - (f) Project is not located in the Edwards Aquifer Recharge Zone but is within the Contributing Zone of the Barton Springs Segment of the Edwards Aquifer. Work required for developing a Contributing Zone Permit for submittal to the TCEQ is not included in this Scope of Work or Project Budget.

 - (g) The Scope of Work does not include the design of any equipment or instrumentation

for measuring rainfall, or soil moisture in the irrigation fields to determine if the soils are saturated within the proposed irrigation areas.

- (h) Contractor and City will work together to resolve any responses to deficiencies or variance requests with the TCEQ or any other reviewing authority. However, none are anticipated and not included in this Scope of Work or Project Budget.
- (i) The existing WWTP permitted effluent parameters will remain at 5 mg/L BOD and 5 mg/L TSS.
- (j) Services as described in Attachment "A".

3. Description of Services: The Contractor shall perform the below duties as needed by the City:

- (a) Contractor shall deliver written reports to City Hall via mail, in person, facsimile, or other electronic means as appropriate.
- (b) If the City's assignment of duties for a specific project is declined by Contractor, then the City may assign said duties to another employee or Contractor at the City's discretion. Contractor does not have the authority to unilaterally select another contractor to perform the work the Contractor was assigned except as allowed in Attachment "A" as Additional Services. Contractor shall assist the City in the selection of additional contractors when requested by the City.
- (c) Contractor may from time to time be called upon to perform the following services:
 - (1) Attend meetings of the City Council, when requested by the Mayor, City Administrator, or Deputy City Administrator; and/or
 - (2) Attend other public or private meetings involving review of engineering matters related to the duties performed under this Agreement.
- (d) Contractor shall conduct business in good faith displaying professionalism and a courteous manner in dealings with the staff, citizens, and customers of the City. Contractor agrees to abide by the Texas Engineering Practice Act and Rules as established by the Texas Board of Professional Engineers when professional engineering is used in performance of Contractor's duties and responsibilities.
- (e) Contractor will report to the Deputy City Administrator, verbally or in writing, any conflicts between Contractor and any citizen or customer in the course of performing said duties and responsibilities.
- (f) Contractor shall maintain complete and accurate records of work performed for the

City. Contractor shall manage both public and confidential records that Contractor obtains pursuant to this Agreement with the understanding that some records may be subject to state open records laws. Contractor shall comply with the City's public information policies.

(g) Performs other related duties as needed.

4. **Additional Services:** Additional services may be provided as outlined in Attachment "A", however, the Contractor shall seek written approval from the City before contracting with subcontractors for more than twenty-five hundred dollars (\$2,500) in additional services not covered in the base price.
5. **Payment for Services:** The City will compensate Contractor in accordance with the fee structure contained in Contractor's proposal attached as Attachment "A". Contractor shall invoice City in accordance with Contractor's attached proposal. Invoices will be submitted monthly and payment is due within 30 days of City's receipt and approval of the invoice. If payment is not received by the 45th day after the invoice is received by the City, then Contractor may suspend services under the Agreement until all invoice amounts due are paid in full. The work schedule shall be extended the total amount of time after Contractor suspends services to the time payments are received.
6. **Duration:** This Agreement shall be in effect for a period of two years (24 months), unless terminated as provided below or if all work associated with Agreement is completed. Contractor shall start work immediately after the execution of this Agreement.
7. **Renewal:** This Agreement shall automatically renew for successive one-year periods unless: (a) terminated, as set out below, or (b) either party provides notice of intent not to renew to the other party thirty (30) days prior to the end of the current term.
8. **Termination:** Either party may terminate this Agreement by a thirty (30) day written notice.
9. **Relationship of Parties:** It is understood by the parties that Contractor is an independent contractor with respect to the City and not an employee of the City. City will not provide fringe benefits, including health insurance benefits, paid vacation, or any employee benefit, for the benefit of Contractor. The City may contract with other individuals or firms for engineering services.
10. **Limitations:** During the period the Consultant is covered by this agreement, the Consultant will contact the City in writing if a potential conflict of interest with a third-party client may exist. If the City Council finds that a project for a third-party client of the Consultant has a direct conflict with the City, the City Council shall contact the Consultant in writing. If the conflict of interest cannot be resolved to either party's satisfaction, either the Consultant or the City Council may terminate this Agreement with seven (7) days'

notice to the other party.

- 11. Employees:** Contractor employees, if any, who perform services for City under this Agreement shall also be bound by the provisions of this Agreement. At the request of City, Contractor shall provide adequate evidence that such persons are Contractor's employees.
- 12. Mandatory Disclosures:** Texas law requires that vendors make certain disclosures. Prior to the effective date of this Contract, the Contractor has submitted to the City a copy of the Conflict of Interest Questionnaire form (CIQ Form) approved by the Texas Ethics Commission (Texas Local Government Code Chapter 176) and the Affidavit regarding Prohibition on Contracts with Companies Boycotting Israel (Texas Government Code Chapter 2270). The Contractor must also fill out Form 1295, as required by the Texas Ethics Commission, and submit it to the City. The form may be found here: https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm
- 13. Injuries/Insurance:** Contractor acknowledges his/her obligation to obtain appropriate insurance coverage for the benefit of Contractor's employees, if any. Contractor waives the rights to recovery from City for any injuries that Contractor and/or Contractor's employees may sustain while performing services under this Agreement. Contractor is to provide a copy of insurance coverage to City at least ten (10) days prior to end of any existing coverage period if Contractor uses the services of any of Contractor's employees for the provision of services to the City.
- 14. Indemnification:** Contractor agrees to indemnify and hold City harmless from all claims, losses, expenses, fees, including attorney's fees, costs, and judgments that may be asserted against City that result from negligent acts or omissions of Contractor, Contractor's employees, if any, and Contractor's agents.
- 15. Assignment:** Contractor's obligation under this Agreement may not be assigned or transferred to any other person, firm, or corporation without the prior written consent of City. However, subcontractors may be hired by the Contractor as agreed in Attachment "A" Additional Services.
- 16. Notice:** All notice required or permitted under this Agreement shall be in writing and shall be delivered either in person or deposited in the United States mail, postage prepaid, addressed as follows:

For the City:

City of Dripping Springs
Attn: City Administrator
PO Box 384
Dripping Springs, TX 78620
(512) 858-4725

For the Contractor:

CMA Engineering, Inc.
Attn: Robert P. Callegari, P.E.
235 Ledge Stone Drive
Austin, TX 78737
(512) 432-1000

Either party may change such address from time to time by providing written notice to the other in the manner set forth above. Notice is deemed to have been received three (3) days after deposit in U.S. mail.

- 17. Entire Agreement:** This Agreement contains the entire Agreement of the parties and there are no other promises or conditions in any other Agreement whether oral or written. This Agreement supersedes and prior written agreements between the parties. If a conflict exists between this Agreement and Attachment "A", this Agreement shall prevail.
- 18. Amendment:** This agreement may be modified or amended only if the amendment is made in writing and is signed by both parties.
- 19. Severability:** If any provision of this Agreement shall be held to be invalid or unenforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.
- 20. Waiver of Contractual Right:** The failure of any party to enforce any provision of this Agreement shall not be construed as a waiver of that party's right to subsequently enforce and compel strict compliance with every provision of the Agreement.
- 21. Applicable Law:** The laws of the State of Texas shall govern this Agreement.
- 22. Venue:** The venue for any and all legal disputes arising under this Agreement shall be Hays County, Texas.

CITY OF DRIPPING SPRINGS:



Todd Purcell, Mayor

March 13, 2018

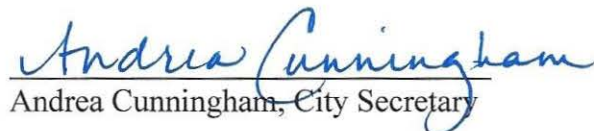
Date:

CMA ENGINEERING, INC:

Robert P. Callegari, P.E.

Date:

ATTEST:



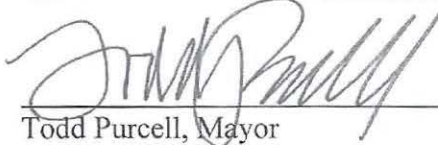
Andrea Cunningham, City Secretary



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18. **Amendment:** This agreement may be modified or amended only if the amendment is made in writing and is signed by both parties.
19. **Severability:** If any provision of this Agreement shall be held to be invalid or unenforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.
20. **Waiver of Contractual Right:** The failure of any party to enforce any provision of this Agreement shall not be construed as a waiver of that party's right to subsequently enforce and compel strict compliance with every provision of the Agreement.
21. **Applicable Law:** The laws of the State of Texas shall govern this Agreement.
22. **Venue:** The venue for any and all legal disputes arising under this Agreement shall be Hays County, Texas.

CITY OF DRIPPING SPRINGS:



Todd Purcell, Mayor

March 13, 2018

Date:

CMA ENGINEERING, INC:

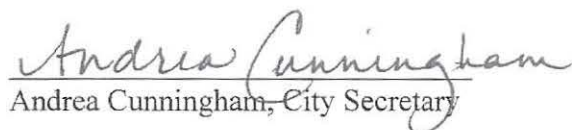


Robert P. Callegari, P.E.

3-27-18

Date:

ATTEST:



Andrea Cunningham, City Secretary



ATTACHMENT "A"
CONTRACTOR'S PROPOSAL

CMA Engineering, Inc.

Firm Registration No. F-3053

Robert P. Callegari, P.E.
Felix J. Manka, P.E.

January 10, 2018

Mayor Todd Purcell
City of Dripping Springs
P.O. Box 384
Dripping Springs, Texas 78620

Re: City of Dripping Springs
Engineering Services Agreement
South Regional Wastewater System
Wastewater Major Permit Amendment No. 2
CMA Job Number 1732

Dear Mayor Purcell:

CMA Engineering, Inc. (ENGINEER) proposes to render engineering services to the City of Dripping Springs (CLIENT) in connection with the further development of the City of Dripping Springs South Regional Wastewater Facilities in Hays County, Texas. All Services shall be performed by ENGINEER in accordance with the generally accepted standards of care, skill, diligence and professional competence applicable to ENGINEER. Work will include assisting the CLIENT in preparing a second major permit amendment application to the City of Dripping Springs' existing Municipal Wastewater Permit for submittal to the TCEQ (PROJECT). The amendment application will increase wastewater treatment capacity at the existing Wastewater Treatment Plant (WWTP) site and increase effluent irrigation disposal capacity via surface irrigation area and effluent holding pond within the proposed Carter/Caliterra subdivision and Heritage PID. The CLIENT is expected to furnish ENGINEER with full information as to the requirements for the PROJECT, and also to make available all pertinent existing data. ENGINEER shall be able to rely upon the accuracy of all information provided by the CLIENT.

SCOPE OF WORK

The following assumptions and general understanding pertain to the provision of the Services and form the basis of this Agreement/Proposal:

- A. The TCEQ Wastewater Permit to be amended is Permit Number 14488-001 issued to the City of Dripping Springs.
- B. CLIENT will be responsible for providing as much information as possible on the existing WWTP treatment and disposal facilities required for the permit amendment application such as, operating data, effluent and sludge sampling (if any), sludge disposal contract(s), and analysis of soil samples from the root zone of the irrigated site(s), etc.
- C. Additional irrigation areas will be required for the permit amendment. The proposed new irrigation areas are surface irrigation areas within the proposed Carter/Caliterra subdivision and Heritage PID.

- D. The ENGINEER will at all times have access to the Work wherever it is in preparation or progress.
- E. All fees and public notice costs will be paid by CLEINT or will be considered reimbursable costs and are not included in the Project Budget.
- F. PROJECT is not located in the Edwards Aquifer Recharge Zone, but is within the Contributing Zone of the Barton Springs Segment of the Edwards Aquifer. Work required for developing a Contributing Zone Permit for submittal to the TCEQ is not included in this Scope of Work or Project Budget.
- G. The Scope of Work does not include the design of any equipment or instrumentation for measuring rainfall, or soil moisture in the irrigation fields to determine if the soils are saturated within the proposed irrigation areas.
- H. ENGINEER and CLIENT will work together to resolve any responses to deficiencies or variance requests with the TCEQ or any other reviewing authority. However, none are anticipated and not included in this Scope of Work or Project Budget.
- I. The existing WWTP permitted effluent parameters will remain at 5 mg/L BOD and 5 mg/L TSS.

Our engineering services and the Scope of Work will consist of the following:

ENGINEER will develop a major permit amendment application to Wastewater Permit Number 14488-001 issued to the City of Dripping Springs for submittal to the TCEQ. The permit amendment application will generally include the existing permitted subsurface irrigation areas for effluent disposal and new areas for surface irrigation. The existing 162,500 GPD subsurface irrigation and 186,000 GPD surface irrigation permit areas will remain and additional surface irrigation permit phases of approximately 50,000 GPD and 60,000 GPD will be added to the permit. Actual permit phases will be established during amendment application preparation. The locations of the originally irrigation areas, effluent holding tank, and WWTP shall generally remain unchanged from the original permit. The proposed new surface irrigation areas and proposed effluent holding tank will be within the Carter/Caliterra subdivision and Heritage PID.

ENGINEER will develop an Engineering Report to support increased permit capacity and permit phasing. The report will include a water balance to support the new surface irrigation areas and effluent holding tank.

The application will include the necessary information required to make the application complete and acceptable for administrative review by the TCEQ. The estimated cost of professional services identified for this PROJECT is based on the standard and customary TCEQ approval processes. Work required to assist the CLIENT in protracted disputes or negotiations with governmental authorities or other interested parties, or as an expert witness in any litigations with third parties arising from the development of the PROJECT, will be considered Additional Services.

The Scope of Work, as set forth previously, shall be considered performed at such time as the application is declared administratively complete by the TCEQ. Any work required to address issues raised by the general public or any other party that may comment on the application after it is administratively complete will be considered Additional Services.

SCHEDULE

ENGINEER acknowledges the importance to the CLIENT of the PROJECT schedule and agrees to put forth reasonable efforts in performing the services with due diligence under this Agreement. The CLIENT understands, however, that the performance must be governed by sound professional practices. ENGINEER will start work on the PROJECT immediately after execution of this Agreement.

COMPENSATION

ENGINEER will perform the work on a reimbursable time and expenses basis at the hourly rates included as Attachment A, plus expenses. Expenses will include direct expenses incurred by ENGINEER plus 10%. Billing for professional services will be based upon the actual amount of time required to complete the work. Upon mutual agreement of CLIENT and ENGINEER, rates included on Attachment A may be amended annually.

Invoices will be submitted monthly and payment is due within 30 days of CLIENT's receipt of the invoice. If payment is not received by the 45th day after the invoice date, then ENGINEER may suspend services under the Agreement until all invoice amounts due are paid in full. The PROJECT schedule shall be extended the total amount of time after ENGINEER suspends services to the time payments are received.

ENGINEERING BUDGET

Total Labor Amount of This Contract	\$ 40,000
Total ODC Amount of This Contract	<u>\$ 2,500</u>
Total Amount of This Contract	\$ 42,500

ADDITIONAL SERVICES

It is recognized that certain items required for completion may require the services of subcontractors and are not included in the Project Budget. Such services may include surveying, agronomy consulting, environmental engineering, environmental investigations, electrical/instrumentation engineering, structural engineering, and geotechnical engineering, etc.

It is also recognized that certain elements within the scope of engineering work cannot be accurately predetermined or controlled entirely by the ENGINEER. Such engineering work will be performed as Additional Services. Such work may include but not be limited to:

- Assist the CLIENT as an expert witness in any litigation with third parties, arising from the development of the PROJECT.
- Changes in scope of work after receiving initial directions from the CLIENT.
- Change in design as a result of unexpected field conditions discovered during further site investigations of the PROJECT.
- Assist the CLIENT in protracted disputes or negotiations with governmental authorities or other interested parties.
- Support the CLIENT during regulatory agency review processes beyond administrative or technical reviews including public comments or contested case hearings, as required and requested by CLIENT.

Out of Scope and Additional Services will be reimbursable per hour based on the attached fee schedule Attachment A, plus expenses. Expenses for Out of Scope and Additional Services will include direct expenses incurred by ENGINEER plus 10%. Such expenses will include subcontractors, reproduction costs, mileage, postage and delivery, etc., as required to complete the PROJECT. Billing for all additional professional services will be based upon the actual amount of time required to complete the additional work. Out of Scope services and Additional Services will only be performed with approval from CLIENT.

CLIENT understands that ENGINEER cannot be held accountable in the case that an amended TCEQ Wastewater Permit is not issued, approved, and/or accepted by the TCEQ. In addition, CLIENT understands the ENGINEER cannot be held accountable if the amended TCEQ Wastewater Permit is not issued as a result of any opposition to the application.

This Proposal is subject to the General Provisions included as Attachment B and may only be modified in writing when signed by both Parties. The Proposal is in addition to any other agreement regarding a permit amendment for this Project.

Mayor Todd Purcell
City of Dripping Springs
January 10, 2018
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If this Proposal satisfactorily sets forth your understanding of our agreement, please sign both copies of the letter in the space provided below, and return one copy to us. This Proposal is valid for 45 days.

Very truly yours,

CMA Engineering, Inc.

City of Dripping Springs

Robert P. Callegari, P.E.
Principal

Todd Purcell
Mayor

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Accepted this _____ day of _____, 2018.

ATTACHMENT A – Rates
Billing Rates for Professional Services

Principal	\$175.00/hour
Project Engineer II (More than 15 years of experience)	\$165.00/hour
Project Engineer I (Less than or equal to 15 years of experience)	\$145.00/hour
Assistant Engineer II (More than 5 years of experience)	\$130.00/hour
Assistant Engineer I (Less than or equal to 5 years of experience)	\$115.00/hour
Senior Engineering Technician	\$125.00/hour
Engineering Technician	\$ 95.00/hour
Field Construction Representative II	\$ 105.00/hour
Field Construction Representative I	\$ 85.00/hour
Administrative Assistant	\$ 50.00/hour
Surveyor	\$140.00/hour
Survey Technician	\$115.00/hour
Survey Crew	\$135.00/hour
Copies	\$ 0.10/copy
24" x 36" Bond Plots (black and white)	\$ 1.00/sheet
Bond Plots (color)	\$ 2.00/square foot
24" x 36" Mylar Plots	\$ 12.00/sheet
CMA/personnel vehicle mileage	max allowed by IRS

ATTACHMENT B

GENERAL PROVISIONS

TERMINATION

Either Party may terminate this Agreement upon giving written notice to the other Party at least thirty (30) days prior to the date of termination. In the event of termination, the ENGINEER shall deliver to the CLIENT one (1) reproducible copy of all finished documents, data, studies, surveys, drawings, maps, CADD files, models, reports, etc. prepared by the ENGINEER and paid by the CLIENT under this Agreement. Additional copies of these materials shall be made available to CLIENT upon CLIENT compensating ENGINEER for time and expenses required to produce same. The ENGINEER shall be entitled to receive just and equitable compensation for any work performed in accordance with the provisions of this Agreement prior to termination notice. If the ENGINEER has completed the specified Tasks and phases prior to termination, ENGINEER will be entitled to the fees stipulated under this Agreement for such work completed. If termination should occur prior to the completion of a Task or phase, the ENGINEER shall be reimbursed for his work under that particular Task and phase based on the hours completed for that particular Task and phase.

OWNERSHIP OF DOCUMENTS

The CLIENT acknowledges the ENGINEER's Report and permit application, including electronic files, as the work papers of the ENGINEER are the ENGINEER's instruments of professional service. Nevertheless, upon completion of the services and payment in full of all monies due to the ENGINEER, the CLIENT shall receive ownership of the Report and permit application prepared under this Agreement. The CLIENT agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless the ENGINEER, its officers, directors, employees and subconsultants (collectively, ENGINEER) against any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from or allegedly arising from or in any way related to or connected with the unauthorized reuse or modification of the Report and/or permit application by the CLIENT or any person or entity that acquires or obtains the Report and/or permit application from or through the CLIENT without the written authorization of the ENGINEER.

CONFIDENTIALITY

All information and all materials, records, data, drawings, specifications, engineering and other documents and all other products of the services provided under this Agreement produced by, or coming into the possession of ENGINEER (including its subcontractors) in connection with the performance of the services shall be maintained in absolute confidence, and ENGINEER shall not at any time, except at the direction of CLIENT or its legal counsel, disseminate, transmit, publicize, or divulge to anyone any portion of such information, except as necessary to carry out the services pursuant to this Agreement.

MISCELLANEOUS

CONTROLLING LAW - This Agreement is to be governed by the laws of Hays County, Texas, and venue for any suit in conjunction with this Agreement shall be in the District Courts of Hays County, Texas.

LIMITATION OF LIABILITY - To the fullest extent permitted by law, the total liability, in the aggregate, of ENGINEER and ENGINEER's officers, directors, employees, agents and independent professional associates and consultants, and any of them, to CLIENT and anyone claiming by, through and under CLIENT, for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any

way related to ENGINEER'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 of ENGINEER or ENGINEER's officers, directors, employees, agents and independent professional associates and consultants, and any of them, shall not exceed the total compensation received by ENGINEER under this Agreement, or the total amount of \$250,000.00, whichever is lesser.

OPINIONS OF COST - Since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, ENGINEER's opinions of probable total PROJECT costs and construction costs provided herein are to be made on the basis of ENGINEER's experience and qualifications and represent ENGINEER's best judgment as an experienced and qualified professional engineer, familiar with the construction industry; but ENGINEER cannot and does not guarantee that proposals, bids or actual total PROJECT or construction costs will not vary from opinions of probable cost prepared by ENGINEER. If prior to the bidding or negotiating phase CLIENT wishes greater assurance as to total PROJECT or construction costs, CLIENT shall employ an independent cost estimator to modify the contract documents to bring the construction cost within any limitation established by CLIENT and will be considered Additional Services and paid for as such by CLIENT.

SUCCESSORS AND ASSIGNS - CLIENT and ENGINEER each binds himself and his partners, successors, executors, administrators, assigns and legal representatives to the other Party to this Agreement and to the partners, successors, executors, administrators, assigns and legal representatives of such other Party, in respect to all covenants, agreements and obligations of this Agreement.

- a. Neither CLIENT nor ENGINEER 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 as stated above and except prior to the extent that the effect of the 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 the paragraph shall prevent the ENGINEER from employing such independent consultants, associates and subcontractors as he may deem appropriate to assist him in the performance of services hereunder.
- b. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than CLIENT and ENGINEER.

ATTORNEY'S FEES - If any action be brought to either Party against the other, the prevailing Party shall be entitled to recover reasonable attorney fees.

DISPUTE RESOLUTION - Any claims or disputes between the CLIENT and ENGINEER, made during or after providing engineering services, shall be first submitted to non-binding mediation, thereby providing for mediation as the primary method for dispute resolution between the CLIENT and ENGINEER.