

April 29, 2026

Mr. Craig Lindholm
City Administrator
EDC Director
The City of Mt. Vernon, TX
109 N. Kaufman St.
Mount Vernon, Tx 75457

Via E-mail: clindholm@comvtx.com

Re: 250-acre City Tract
Proposal for Land Planning Services

Dear Mr. Lindholm:

Pape-Dawson will provide Land Planning Consultant Services for the project known as 250-acre City Tract (the “Project”), as defined in the scope below.

- **The proposed project scope known as 250-acre City Tract for Land Planning services includes working with the City to determine the goals and objectives the City has for this project, prepare a Conceptual Land Use Plan to determine the location of housing product types, commercial use areas, main road and open space networks, form the Conceptual Land Use Plan then prepare a Schematic Lotting Plan indicating the potential layout of residential streets and lots/units.**

Our proposed scope of services and associated fees are as follows:

I. PLANNING RESEARCH INVENTORY & ANALYSIS (TASK 840) \$2,000

The Consultant will gather information and data which might affect the development plan for the site. The information is to be analyzed by the Consultant and reviewed with the Client, as necessary, to support accuracy and avoid potential delays and conflicts. This task includes, but not limited to:

- Development code research
- Identify and analyze existing physical conditions of the site
 - Topography
 - Floodplain
 - Drainage
 - Easements
 - Unique site features
 - Opportunities/Constraints

II. CONSULTATION (TASK 895) \$2,500

The Consultant is to meet with the Client, his engineer, and / or other consultants, as well as, the appropriate governmental authorities to form the parameters for developing the subject property in conformance with applicable regulations while accommodating the desired goals of the Client. This task includes, but not limited to:

- All meetings with clients, their consultants or representatives, and regulatory agencies
- Meet with the Client, and their consultant team as appropriate, for a project kick-off meeting.
 - Review/prepare project goals and objectives
 - Receive Client direction as to lot sizes and mix of products
 - Review known opportunities and constraints
 - Set project schedule

Note: This task will be billed as Time and Materials not to exceed the fee provided. If additional Consultation time is necessary an additional service request will be provided

III. LAND USE PLANNING (TASK 820) \$8,500

Based upon the information collected, the Consultant is to prepare up to two (2) initial and one (1) final conceptual land use plans for the Client's review and approval. These plans may be initially prepared by hand, but are to be converted into AutoCAD, generally to scale, and indicate suggested major thoroughfare and / or collector street alignments, drainage facilities and utility easements, as well as, any other physical encumbrances affecting the overall plan for the site. Consideration to be given to the resulting tracts that are created by the physical characteristics in terms of ultimate land use and development. The plan(s) are to indicate residential cells, proposed utility, and drainage facility sites, as well as, any other special land use site required by the Client. A general indication of potential lot yield and acreage of commercial reserves, if any, is to be reflected on the conceptual plan.

- Review and discuss with Client the Conceptual Master Plans and land use summaries to determine the preferred concept.
 - Billed within the Consultation task.
- Attend and participate in strategy meetings with the Client, Client's civil engineer and other consultants.
 - Billed within the Consultation task.
- Based on the Client comments of the initial Conceptual Master Plans Consultant will develop a Final Master Plan, in an AutoCAD format, for use in preparing the entitlement documents and for marketing purposes.

Note: Any revisions or additional scope changes to be billed as Time and Materials, unless an additional service amount is agreed upon

IV. SCHEMATIC LOTTING (TASK 821)

\$18,500

The Consultant is to analyze the data collected and incorporate the design parameters using the approved Conceptual Master Plan to generate up to two (2) initial and one (1) final schematic plans for the Client's review and approval. These plans may be initially prepared by hand, but are to be converted into AutoCAD, generally to scale, and indicate suggested street patterns and lot layout. Additionally, the acreage of reserve tracts, including recreation and landscape reserves, are to be reflected on the plan(s).

These Schematic Lotting Plans is to be developed:

- Based on the lot mix provided by the Client to evaluate the approximate development capacity;
 - Include alternative lot layouts and platting concepts that may be appropriate in responding to the site features; and
 - Prepare a land use summary that includes:
 - Residential Lot sizes, quantities, and acreages;
 - Non-residential uses and acreages; and
 - Open Space acreages.
- Attend and participate in strategy meetings with the Client, Client's civil engineer and other consultants.
 - Billed within the Consultation task.
- Based on the Client comments of the initial Schematic Lotting Plans Consultant is to develop a Final Schematic Lotting Plan, in an AutoCAD format, for use in platting the property.

Note: Any revisions or additional scope changes to be billed as Time and Materials, unless an additional service amount is agreed upon

THIS PROPOSAL ASSUMES AND/OR EXCLUDES THE FOLLOWING:

- ◆ *Any professional opinions or recommendations related to our scope of work shall be provided in written format on Pape-Dawson letterhead and not solely expressed verbally in meetings or as part of any demonstrative presentation or email discussions.*
- *Compensation for Additional Services to be negotiated and agreed upon in writing by both Owner and Consultant prior to commencement of work upon the Additional Services.*
- *The following tasks are **expressly excluded** from the scope of services:*
 - *Surveys – Topographic and boundary survey. Nor construction staking.*
 - *Existing Utility Information and Plans – existing on-site and offsite public and private utility drawing and information*
 - *Base Information – Client and or project Civil engineer to provide all digital base information*
 - *Civil plans, including any utilities, mass grading, drainage that may be required.*

- *Building/Structure Architectural Plans, including any utilities, structural that may be required or other architectural plans that are not specifically described in Scope of Services*
- *Landscape Architecture.*
- *Any amendments to the program elements that result in additional design will result in an add service.*
- *Illustrative plans, models, and drawings not specifically described in Scope of Services*
- *Agency review fees and impact fees are not included herein.*
- *City, state, or county-required fees are not included herein*
- *Additional site visits/ meetings not within the Scope of Services, if required, will be billed hourly.*
- ◆ *This proposal assumes that the Owner or project Architect to submit the Pape-Dawson site/civil documents to the Texas Department of Licensing & Regulation for review of elements controlled by the Americans with Disabilities Act.*

SUMMARY OF SCOPE AND FEES

I.	Planning Research Inventory & Analysis	Task 840	<i>Lump Sum</i>	\$2,000
II.	Consultation	Task 895	<i>Hourly</i>	\$2,500
III.	Land Use Planning	Task 820	<i>Lump Sum</i>	\$8,500
IV.	Schematic Lotting	Task 821	<i>Lump Sum</i>	\$18,500
			Total:	\$31,500

Notes:

- i. Budgets shown as hourly or allowance are estimates of the anticipated costs and will be billed on an hourly time and materials basis.*
- ii. Tasks that are shown lump sum will be billed on a percent complete basis.*

BASIS OF COMPENSATION

Pape-Dawson's compensation for the above services shown as hourly, allowance or Time and Materials (T&M) will be a charge on an as needed basis for personnel services plus an hourly charge for specialized equipment and computers. Pape-Dawson's compensation for the other above services will be a lump sum fee. A budget of **\$31,500** is the estimated cost of Pape-Dawson's current understanding of the services identified above. This budget figure does not include Direct Expenses (defined below. If this budget figure is exceeded, Pape-Dawson may request modification of this Agreement.

Direct Expenses include reproduction, travel, express mail, special deliveries and subcontractor expenses related to these services. Direct Expenses include a 10% markup on cost.

AGREEMENT

The attached Terms and Conditions set out as Exhibit A are incorporated into this Proposal by reference and become part of the agreement between the Client and Engineer by execution of this document. If the terms of this Proposal are acceptable, please acknowledge such by signing below and returning the executed document to us via e-mail or US Mail for our records. Receipt of the executed Proposal serves as authorization for us to proceed with the work.

The costs, fees, budget, and scope of work set out herein are valid for ninety (90) days from the date of this Proposal. If Pape-Dawson does not receive an executed Proposal from the Client within ninety (90) days from the date of this Proposal, the costs, fees, budget, and scope of work are subject to revision at Pape-Dawson’s sole discretion. Pape-Dawson to provide a revised Proposal with the modified costs, budget, and scope of work should revisions be made.

We appreciate the opportunity to work with you on this project.

Sincerely,
Pape-Dawson Consulting Engineers, LLC

THE CITY OF MT. VERNON, TX



Elliott Richter, RLA
Senior Project Manager

Signature: _____

Name: _____

Title: _____

Date: _____

**THE CITY OF MT. VERNON, TX
ACCOUNTS PAYABLE CONTACT INFO**

Name: _____

Address: _____

Phone: _____

Email: _____

Attachments:

- Pape-Dawson Terms & Conditions
- PD Schedule of Hourly Rates

SCHEDULE OF REPRESENTATIVE RATES

Effective: December 30, 2024

<u>Classification</u>	<u>Fixed Hourly Rate</u>
Executive Officer	\$450.00
Executive Vice President	\$450.00
Managing Principal	\$400.00
Senior Vice President	\$400.00
Managing Vice President	\$390.00
Vice President	\$390.00
Associate Vice President	\$380.00
Practice Leader	\$380.00
Senior Associate	\$380.00
Design Leader	\$310.00
Program Control Director	\$380.00
Client Services Manager	\$355.00
Construction Operations Leader	\$350.00
Senior Project Manager	\$315.00
Principal Engineer	\$270.00
Project Manager	\$240.00
Assistant Project Manager	\$210.00
Senior Project Engineer	\$230.00
Senior Project Engineer - Ret.	\$280.00
Project Engineer	\$200.00
Engineer I	\$140.00
Engineer II	\$150.00
Engineer III	\$160.00
Engineer IV	\$180.00
Senior Designer	\$210.00
Designer	\$160.00
Technician	\$135.00
Technician - Intern	\$100.00
Platting Manager	\$250.00
Plat Coordinator	\$180.00
Senior Land Acquisition Agent	\$180.00
Senior Planner	\$275.00
Land Planner	\$160.00
Utility Coordinator	\$190.00
Landscape Architect	\$120.00
Program Manager	\$360.00
Production Manager	\$220.00
Project Controls Manager	\$275.00
Project Controls Specialist	\$165.00

Senior Project Coordinator	\$230.00
Project Coordinator	\$185.00
Senior Construction Manager	\$270.00
Construction Manager	\$255.00
Senior Construction Inspector	\$185.00
Construction Inspector	\$150.00
Senior Construction Representative	\$190.00
Construction Representative	\$140.00
Field Manager	\$200.00
Field Coordinator	\$160.00
Senior Field Coordinator	\$220.00
Sr. Environmental Scientist / Geologist / Archaeologist	\$250.00
Project Environmental Scientist / Geologist / Archaeologist	\$160.00
Staff Environmental Scientist / Geologist / Archaeologist	\$120.00
Survey Manager	\$290.00
Project Surveyor	\$275.00
S.I.T.	\$160.00
Senior Survey Technician	\$195.00
Survey Technician	\$155.00
Geospatial Manager	\$215.00
Geospatial Staff	\$160.00
Director of GIS	\$350.00
GIS Manager	\$200.00
GIS Analyst	\$160.00
Data Analyst	\$140.00
Document Controls Specialist	\$200.00
Administrative Assistant	\$140.00
Operations/Clerical	\$90.00
Survey Crew Units	
Survey Crew (4 person) with equipment	\$350.00
Survey Crew (3 person) with equipment	\$310.00
Survey Crew (2 person) with equipment	\$230.00

EXHIBIT "A"
PAPE-DAWSON CONSULTING ENGINEERS, LLC
RE: 250 -ACRE CITY TRACT (the "Project")
TERMS AND CONDITIONS

Pape-Dawson Consulting Engineers, LLC, hereinafter referred to as "Consultant", has agreed to provide Professional Services to **THE CITY OF MT. VERNON, TX** hereinafter referred to as "Client," pursuant to the terms set out in a Proposal Letter Agreement with Scope of Services and Compensation (the "Proposal") executed by Client and these Terms and Conditions.

ARTICLE 1: SERVICES

Consultant agrees to perform Professional Services (the "Services") in conformance with the descriptions, definitions, terms and conditions as set forth herein and on the Proposal and any Exhibits, rate sheets, and Additional Services Requests subsequently attached hereto or incorporated hereto by reference. This description of Services is intended to be general in nature and is neither a complete description of Consultant's Services nor a limitation on the Services that Consultant is to provide under this Agreement.

ARTICLE 2: PROPOSAL AND ADDITIONAL SERVICES REQUESTS

2.1 These Terms and Conditions, the Proposal and any Exhibits, rate sheets, and Additional Services Requests for this Project are hereby incorporated by reference and are collectively referred to herein as the "Agreement."

2.2 The Proposal, as amended or modified by any Additional Services Requests, shall identify the specific Scope of Services to be performed and the amount and type of compensation for the specific services.

2.3 Client shall authorize and Consultant shall commence work set out in the Proposal and any Additional Services Requests upon Client's execution of the Proposal.

ARTICLE 3: CHANGES

3.1 The Client may at any time, by written Additional Service Request, make changes within the general scope of the Proposal relating to services to be performed for this Project. If such changes cause an increase or decrease in the Consultant's cost of, or time required for, performance of any services, an equitable adjustment shall be made and reflected in a properly executed Amendment.

3.2 The Consultant is not obligated to begin work on a change of scope or deliver that work product until a properly executed Additional Services Request is signed by the Client.

3.3 This Agreement is based on laws and regulations in effect as of the date of execution of this Agreement by Client. Changes after this date to these laws and regulations may be the basis for modifications to Consultant's scope of Services, times of performance, or compensation. In the event that there are modifications and/or additions to legal or regulatory requirements relating to the Services to be performed under this Agreement after the date of execution of this Proposal, the scope of Services, times of performance, and compensation provided for in these Terms and Conditions, the Proposal, and any subsequent Additional Services Requests shall be reflected in an appropriate Additional Services Request.

3.4 Should commencement of the individual tasks or services set out in the Proposal not be initiated within three (3) months of the date of execution of the Proposal by Client, Consultant reserves the right to revise the costs, fees, and scope of work for the tasks or services not yet initiated.

3.5 If after the commencement of work, Consultant's performance of the individual tasks or services is suspended at the instruction of client for a period of three (3) cumulative months, Consultant may at its sole discretion submit to client an invoice for all tasks and services performed prior to suspension, and Client shall pay that invoice within thirty (30) days after receipt. If Client fails to pay the invoice in full within thirty (30) days, Consultant may terminate this Agreement in accordance with the provisions of Article 7.1 herein.

ARTICLE 4: THE TERM

4.1 **Term.** Consultant shall be retained by Client as of the date Client executes the Proposal, Consultant shall complete its Services within a reasonable time, and this Agreement shall remain in effect until the Services have been fully performed or until the Consultant's Services are terminated under provisions of the Agreement.

ARTICLE 5: DUTIES

5.1 **Access.** Client will provide Consultant with access to the Property or to any other site as required by Consultant for performance of the Services.

5.2 **Client-furnished Data.** Client shall provide all criteria and full information as to Client's requirements for the Project; designate a person to act with authority on Client's behalf in respect to all aspects of the Project, examine and respond promptly to Consultant's submissions, and give prompt written notice to Consultant whenever he observes or otherwise becomes aware of any defect in the work; and provide any recordings, transcripts, notes, and/or minutes taken during any meetings between Client and Consultant upon request, inclusive of any artificial intelligence-generated documents. If either Client or Consultant intend to record a meeting, the recording party must first notify the other party that the meeting will be recorded, so that the other party may request any such recording or other work product created from the recording.

Client shall also do the following and pay all costs incident thereto: Furnish to Consultant core borings, probings and subsurface exploration, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment and similar data; appropriate professional interpretations of all of the foregoing; environmental assessment and impact statements, and any other information previously made available to the Client, which may be required by Consultant, all of which Consultant may rely upon in performing its services.

Provide such legal, accounting, independent cost estimating and insurance counseling services as may be required for the Project, any auditing service required in respect of constructor(s)' applications for payment, and any inspection services to determine if constructor(s) are performing the work legally.

5.3 **Other Information.** Consultant will rely upon commonly used sources of data, including database searches and agency contacts. Consultant does not warrant the accuracy of the information obtained from those sources and has not been requested to independently verify such information.

5.4 **Indemnity.** The Consultant agrees, to the fullest extent permitted by law, to indemnify and hold the Client harmless from damages and losses arising from the negligent acts, errors or omissions of the Consultant in the performance of the professional services under this Agreement, to the extent that the Consultant is responsible for such damages and losses on a comparative basis of fault and responsibility between the Consultant and the Client. The Consultant is not obligated to indemnify the Client for the Client's own negligence.

Notwithstanding the foregoing, to the fullest extent permitted by law, Consultant shall indemnify and hold the client harmless from and against all claims arising out of or resulting from bodily injury to, or sickness, disease or death of, any employee, agent or representative of Consultant or any of its subcontractors. To the fullest extent permitted by law, Client and Consultant waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants or subconsultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

5.5 **Ownership of Documents.** All designs, drawings, specifications, documents, and other work products of the Engineer, whether in hard copy or in electronic form, are instruments of service for the Services, whether Services are completed or not. Reuse, change or alteration by the Client or by others acting through or on behalf of the Client of any such instruments or service without the written permission of the Consultant will be at the Client's sole risk. Client agrees to indemnify the Consultant, its officers, partners, employees, and subcontractors from all claims, damages, losses, and costs, including, but not limited to, litigation expenses and attorney's fees, arising out of or related to such unauthorized reuse, change or alteration.

5.6 **Reporting Obligations.** Client has responsibility for complying with all legal reporting obligations. Nothing in the Agreement precludes Consultant from providing any notices or reports that it may be required by law to give to governmental entities.

5.7 **Laboratory Services.** In performing environmental services, Consultant may make use of an independent testing laboratory. Consultant will not, and Client shall not rely upon Consultant to, check the quality or accuracy of the testing laboratory's services.

5.8 **Changed Conditions.** The Client shall rely on the Consultant's judgment as to the continued adequacy of the Agreement in light of occurrences or discoveries that were not originally contemplated by or known to the Consultant, including

but not limited to suspension of Consultant's work as set out in Article 3.5 herein. Should Consultant call for contract renegotiation due to such changed conditions, the Consultant shall identify the changed conditions necessitating renegotiation and the Consultant and the Client shall promptly and in good faith enter into renegotiation of this Agreement. If terms cannot be agreed to, the parties agree that either party has the right to terminate the Agreement.

5.9 **Opinions of Cost.** Should Consultant provide any cost opinions, it is understood that those opinions are based on the experience and judgment of Consultant and are merely opinions. Consultant does not warrant that actual costs will not vary from those opinions because, among other things, Consultant has no control over market conditions.

5.10 **Construction Observation.** If construction phase services are included in the basic services, the Consultant shall visit the project at appropriate intervals during construction to become generally familiar with the progress and quality of the contractors' work and to determine if the work is proceeding in general accordance with the Contract Documents. The Client has not retained the Consultant to make detailed inspections or to provide exhaustive or continuous project review and observation services. The Consultant does not guarantee the performance of, and shall have no responsibility for, the acts or omissions of any contractor, subcontractor, supplier or any other entity furnishing materials or performing any work on the project. Consultant shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by Contractor(s) or the safety precautions and programs incident to the work of Contractor(s).

5.11 **Subconsultants.** Consultant may employ such Subconsultants as Consultant deems necessary to assist in the performance or furnishing of the Services, subject to reasonable, timely, and substantive objections by Client.

ARTICLE 6: COMPENSATION OF SERVICES

6.1 **Compensation of Services.** Consultant's compensation for services shall be set forth in the Proposal and any subsequent Additional Services Requests.

Compensation. Client agrees to pay Consultant for Professional Services in accordance with the descriptions, definitions, terms and conditions as set forth herein and in the Proposal and any Additional Services Requests, or Amendments subsequently attached hereto or incorporated herein by reference. Expenses directly related to these services, including reproduction, travel, long distance telephone bill, express mail, special deliveries and subcontractor expenses shall include a 10% markup on cost.

Consultant reserves the right to adjust the hourly billing rates set out in the Proposal, Additional Service Requests, and/or Amendments thereto on an annual basis. Consultant shall notify Client of any hourly billing rate adjustments when they go into effect.

Payments. Consultant will invoice Client monthly in accordance with the terms and conditions of this Agreement, the Proposal, and any subsequent Additional Services Requests for Services and reimbursables. Client agrees to promptly pay Consultant at the address or ACH noted in the monthly invoice, the

full amount of each such invoice upon receipt. In no event shall Consultant's failure to bill monthly constitute default under the terms and conditions of this Agreement.

6.2 **Sales and Use Tax.** Any State, City and MTA Sales Tax must be collected on Surveying Fees for the establishment of Real Property Boundaries and determining the location of structures or improvements in relation to the boundaries. Charges for prints and reproductions are also subject to a Sales Tax. Client agrees to pay Consultant the applicable Sales Tax on services and said tax is not considered a part of Consultant's compensation for services. In the event subsequent taxes are levied by Federal, State or Local authorities, relating to the services in writing and such modifications as are required shall be made a part of this Agreement.

6.3 **Right to Stop Performance.** If Client does not pay any amount due to Consultant within thirty (30) days after the invoice date, Consultant may, upon three (3) additional days' verbal or written notice to Client, stop performance of the Services until payment of the amount owed has been received.

6.4 **Interest.** Payments due and unpaid to Consultant under the Agreement shall bear interest at the rate of twelve percent (12%) per annum, or lesser if required by law, calculated from the date of the invoice, if the payment is not made within thirty (30) days of the date of the invoice.

6.5 **Attorney's Fees:** In the event Consultants' invoices for services are given to an attorney for collection, or if suit is brought for collection, or if they are collected through probate, bankruptcy, or other judicial proceeding, then Client shall pay Consultant all costs of collection, including the maximum attorney's fees allowed by Law and court costs, in addition to other amounts due.

ARTICLE 7: TERMINATION OF SERVICES

7.1 **Termination.** This Agreement may be terminated without cause at any time prior to completion of Consultant's services, either by Client or by Consultant, upon written notice to the other at the address of record. Upon receipt of written notice from Client to discontinue work, the Consultant shall discontinue work under this Agreement immediately. In the event Client terminates the Agreement based on Client's reasonable opinion the Consultant has failed or refused to prosecute the work efficiently, promptly or with diligence, the Consultant shall have ten (10) days, from the receipt of written notification by Client, to cure such failure to perform in accordance with the terms of this Agreement.

7.2 **Compensation in Event of Termination.** On termination, by either Client or Consultant, Client shall pay Consultant with respect to all contracted services rendered and expenses incurred before termination an amount fixed by applying the Consultant's Standard Hourly Rates, in force at the time of termination, to all services performed to date, in addition to termination settlement costs the Consultant reasonably incurs relating to commitments which had become firm before the termination.

ARTICLE 8: RELATIONSHIP OF PARTIES

8.1 **Independent Contractor:** It is understood that the relationship of Consultant to Client shall be that of an

independent contractor. Neither Consultant nor employees of Consultant shall be deemed to be employees of Client.

ARTICLE 9. LIMITATION OF LIABILITY

9.1 **Limitation of Liability.** To the fullest extent permitted by law, the total liability of Consultant and its subconsultants and subcontractors to Client for any and all injuries, claims, losses, expenses, or damages whatsoever from any cause or causes, including, but not limited to, strict liability, breach of contract, breach of warranty, negligence, or errors or omissions (collectively "Claims") shall not exceed the Consultant's total fee. In no event will Consultant, its subconsultants or subcontractors be liable for punitive, special, incidental, or consequential damages.

9.2 **No Certification.** Consultant shall not be required to sign any documents, no matter by whom requested, that would result in Consultant having to certify, guarantee, or warrant the existence of conditions whose existence Consultant cannot ascertain. The Client also agrees not to make resolution of any dispute with Consultant or payments of any amount due to Consultant in any way contingent upon Consultant's signing any such certification.

9.3 **Execution of Documents.** The Consultant shall not be required to execute any documents subsequent to the signing of this Agreement that in any way might, in the sole judgment of the Consultant, increase the Consultant's risk or the availability or cost of its professional or general liability insurance.

9.4 **No Supervision of Contractors.** 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 any contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work.

9.5 Consultant shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Consultant's own agents, employees, and Subconsultants) at the Project site or otherwise furnishing or performing any work for the Project.

ARTICLE 10: MISCELLANEOUS

10.1 **Entire Agreement.** The Agreement (including any exhibits) contains the entire agreement between Consultant and Client, and no oral statements or prior written matter shall be of any force or effect. The Agreement may be modified only by a written document executed by both parties.

10.2 **Governing Law.** The Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

10.3 **Venue.** Venue of any action under the Agreement shall be exclusively in the Texas County court where the Services are performed.

10.4 **Severability.** If any provision of the Agreement is held to be illegal, invalid or unenforceable under present or future laws,

such provision shall be fully severable and the Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions shall remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision, there shall be added automatically as a part of the Agreement, a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

10.5 Construction of Agreement. The parties acknowledge that each party and, if it so chooses, its counsel have reviewed and revised the Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the Agreement or any amendments or exhibits.

10.6 Successor and Assigns: Third Party Beneficiary. The Agreement shall be binding upon Consultant, Client and their respective legal representatives, successors and permitted assigns. Neither Consultant nor Client may assign the Agreement nor any right or obligation under it without the prior written consent of the other party. Nothing in the Agreement restricts Consultant's ability to hire subcontractors in connection with the Services. The Services and any report prepared under this Agreement are for the sole benefit and sole use of Client and are not for the use of any other person. Only Client may rely upon the Agreement and the Services, unless Consultant gives Client prior and specific written approval.

10.7 Dispute Resolution. Any claim, dispute or other matter in question arising out of or related to the Agreement of the Services provided thereunder shall be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation. Claims, disputes and other matters in question between the parties that are not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other Party to this Agreement and with the American Arbitration Association. No arbitration arising out of or relating to the Agreement shall include, by consolidation or joinder or in any other manner, an additional person or entity not a party to this Agreement. The foregoing agreement to arbitration shall be specifically enforceable in accordance with applicable law in any court having jurisdiction. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

10.8 Mediation: Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to non-binding mediation as a condition precedent to the institution of legal proceedings by either party. If such matter relates to or is the subject of a lien arising out of the Consultant's services, the Consultant may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or other legal proceedings.

Each party agrees to include a similar mediation provision in all agreements with independent contractors and consultants retained for the Project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with their respective subcontractors, suppliers, and subconsultants, thereby providing for mediation as the initial method for dispute resolution between the parties to all those agreements.

The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the county where the project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

10.9 No Warranty. Consultant makes no warranty, either expressed or implied, as to Consultant's findings, recommendations, plans, specifications, or professional advice. Consultant has endeavored to perform its services in accordance with generally accepted standards of practice by recognized professional firms in performing services of a similar nature in the same locality, under similar circumstances. Client recognizes that neither Consultant nor any of Consultant's subconsultants or subcontractors owes any fiduciary responsibility to Client.

10.10 Survival of Provisions. Termination of the Services for any reason whatsoever shall not affect (a) any right or obligation of any party that is accrued or vested prior to such termination, and any provision of the Agreement relating to any such right or obligation shall be deemed to survive the termination of the Services or (b) any continuing obligation, liability or responsibility of Consultant and of Client which would otherwise survive termination of the Services.

10.11 NON-SOLICITATION. During the term of this Agreement and for a period of two (2) years thereafter, neither Client, nor its affiliates, nor any of their respective employees, agents, owners, officers, members, shareholders, or directors ("Client Entities") shall directly, or indirectly through another person or entity: (i) induce or attempt to induce any employee, agent, owner, officer, member, shareholder, director, client, customer, vendor or supplier, or other business relation of Consultant ("Business Relation") to leave the employ of, or terminate its contract, affiliation, or other business relationship with Consultant, (ii) hire or recruit away any Business Relation of Consultant, within two (2) years after such person ceased to be affiliated with Consultant, (iii) induce or attempt to induce any Business Relation of Company to cease doing business with Consultant or its other Business Relations, or (iv) otherwise interfere with, sabotage, or otherwise undermine any of the foregoing relationships.

10.12 Complaints regarding surveying may be filed with the Texas Board of Professional Engineers and Land Surveyors, 1917 S. Interstate 35, Austin, TX 78741