

January 2, 2025

Mrs. Jody Weaver
City of Port Lavaca
202 N. Virginia
Port Lavaca, TX 77979

Re: Architectural Services – City Hall Master Plan – Phase 4 – Security Upgrades and Interior Renovations

Dear Mrs. Weaver,

Thank you for allowing RMA the opportunity to provide Architectural Services for the above referenced project. Based upon our initial site meeting the City is requesting secure level 3 ballistic aluminum storefront entry to secure the existing corridor. Two ballistic level 3 service windows, provisions for owner provided access control, Level 3 ballistic wall upgrades and interior renovations to create 4 offices including new floor to ceiling interior finishes. The scope of our Architectural Services are as follows:

City Hall Master Plan – Phase 4 – Security Upgrades and Interior Renovations:

- Provide construction documents and specifications for bidding and procurement.
 - o Documents to include:
 - Dimensional Floor Plan(s), Reflected Ceiling Plan(s) Finish Plans and Details
 - Architectural Specifications
- Assist the City during the bidding and procurement process to evaluate and rank proposals and select a qualified contractor.
- Provide construction administration services during construction.
 - o Services to include:
 - Periodic construction observation
 - Review shop drawings
 - Review and certify payment applications
 - Generate final punch list
 - Coordinate final project closeout and owner occupancy

Our office proposes to perform these services billed at an HOURLY rate NOT TO EXCEED \$25,000.00. See attached hourly rates.

It has been determined that additional MEP engineering services will be required for the described scope of work at a **fee of \$5,280.00**. A fee proposal for those services is attached for your records. This fee will be in addition to the hourly not to exceed amount above and will be billed through RMA at a 10% markup.

In addition to the fees stated above, reimbursable expenses such as out of town travel (meals excluded), postage and other delivery service expenses, plots and other document reproduction for Owner use, regulatory agency fees, and other similar pre-approved project expenditures will be billed at cost plus 10% markup.

Payment for the architectural services plus any reimbursable expenses will be billed monthly. Payment is expected within thirty days of the date of the invoice.

We are looking forward to continued work with The City of Port Lavaca. If you have any questions about this proposal please give us a call. If this proposal is accepted, please sign below, keep one copy for your records, and return a copy to our office.

If this letter agreement is acceptable, please sign below:

Respectfully,



William Berger, AIA, LEED AP
RMA Principal in Charge

Accepted:
City of Port Lavaca, Texas

Signature,

Jack Whitlow

Printed Name

Mayor

Title

January 13, 2025

Date

The Texas Board of Architectural Examiners has jurisdiction over complaints regarding the professional practices of persons registered as Architects in Texas; 333 Guadalupe, Suite 2-350, Austin, TX 78701-3942, (512) 305-9000.



Rawley McCoy & Associates, PLLC

Schedule of Current Hourly Rates - 2025

(These rates are subject to adjustment bi-annually in accordance with company salary, benefit, and overhead review practices.)

Architect, Principal	\$250.00/hr.
Architect, Associate	\$195.00/hr.
Architect, Project	\$150.00/hr.
Project Manager	\$110.00/hr.
Interior Designer	\$120.00/hr.
Project Administrator	\$95.00/hr.

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5656 S. Staples, Suite 312
Corpus Christi, TX 78413
Ph: 361.852.2727 Fx: 361.852-2922
Texas Firm No. F-005318

December 5, 2024

Proposal No. P_24232

Rawley McCoy & Assoc. PLLC
1908 N. Laurent St. Ste 540
Victoria, TX

ATTN: Brian Parker

RE: Port Lavaca City Hall Phase 4
Port Lavaca, TX

Dear Sir:

We are pleased to provide you with this proposal for Mechanical and Electrical Engineering Services for the above referenced project. The scope of services is as follows:

Scope of Work:

1. Survey existing site for MEP utilities.
2. Design of new interior lighting for remodeled office area.
2. Design of power for remodeled office area.
3. Design of HVAC grills and adjusting of ducts in remodeled office area.
4. Design of rough-ins for telephone/data/cctv in remodeled office area.
5. Specifications shall be on the drawings in sheet format.

Exclusions:

1. No plumbing design is included in our scope of work or proposal.
2. No site plans or site photometry is included in our scope of work or proposal.
3. No site storm drainage design is included in our scope of work or proposal.
4. No LEED calculations or paper work is included in our scope of work or proposal.
5. No Acoustical analysis or studies are included in our proposal.
6. No commissioning of HVAC or lighting is included.
7. No Civil, Structural, Environmental Engineering or studies are included in our scope of work or proposal.
8. No Architectural services are included in our scope of work or proposal.
9. No hard copies of work will be provided. NRG Engineering will provide only electronic copies of all design efforts in PDF format. The client shall be responsible for all printing and reproduction cost.

Deliverables:

1. Design Phase Services:
 - a. Survey existing site.
 - b. Issue one review set of MEP drawings.

- c. Issue final set of MEP drawings.
- d. Issue MEP Comcheck compliance reports.
- 2. Construction Phase Services (not included in our scope or proposal):
 - a. One submittal reviews of MEP submittals. Should submittals and shop drawing not be sent to NRG Engineering for review, the Contractor/Owner/Architect shall take full responsibility for the review and acceptance of all MEP materials and equipment.
 - b. One site visits with site observation report is included in our scope. Should additional site visits be required they will billed hourly plus milage per trip.

The fee for our services based on the above scope of work is as follows and will be net payable within 30 days of invoice date, with invoicing submitted monthly based upon percentage of scope completed.

Engineering Fees:

Design Phase Services including survey-----	\$3,960
Construction Phase Services -----	\$1,320

Any work not listed in the above scope will be billed on a time and material bases per the attached NRG Engineering rate schedule. Any liability for errors, omissions, and/or defects resulting from professional performance shall be limited as indicated herein. However, discrepancies that are within professional standards shall be corrected at the client’s direction and at the client’s expense.

Project Agreement

1. If this project is delayed or abandoned for more than 90 days from date of proposal, it is our option to renegotiate or terminate this agreement.
2. If the contract documents have to be revised due to budgetary constraints, all revisions will be billed as additional services based on NRG Engineering’s Hourly rates.
3. If the contract documents have to be revised due to value engineering, all revisions will be billed as additional services based on NRG Engineering’s Hourly rates.
4. If the contract documents have to be revised due to any owner or architectural changes after the design documents have been issued, all revisions will be billed as additional services based on NRG Engineering’s Hourly rates.
5. All billing shall be done in accordance with our standard office billing procedure with invoices delivered to your office on or about the first day of each month. We will invoice for percentage completed on the project, with payment due upon receipt of our invoice.
6. A 5% per month charge will be added to all unpaid invoices after 30 days.
7. Should the construction of this project be abandoned or delayed, we will invoice for the percentage of Engineering completed at that time. The invoices will be due and payable as stated above.
8. Limitation of Liability: See attached Standard Terms and Conditions.

Proposal Approval

If this proposal meets your approval, please indicate your acceptance by the proper authorized signature in the space provided below and returning the signed original to our office. Once we have received a signed copy, we will proceed with the above scope of work. Signature below acknowledges and accepts the standard terms and conditions included herein.

Please call should you have any questions concerning our proposal or the terms of our agreement. Thank you for considering NRG Engineering for these consulting services and we look forward to working with you and your office.

Respectfully,



Sean M. Rodriguez
Principal - Project Manager
NRG Engineering

ACCEPTED BY: Rawley McCoy & Assoc. PLLC

Signature: _____

Name: _____

Title: _____

Date: _____

NRG Engineering

5656 S. Staples, Suite 312
Corpus Christi, Texas 78411
V 361.852.2727
F 361.852-2922
jrod@nrgcc.com

RATE SCHEDULE FOR ENGINEERING SERVICES Effective January 1, 2024

The per diem and miscellaneous expense charges as well as Engineering, Commissioning, Design, and Drafting Services are based on the following rates:

<u>CATEGORY</u>	<u>HOURLY</u>
<u>RATE</u>	
Principal Engineer (PE2) -----	\$250.00/hr
Associate Engineer (PE1) -----	\$175.00/hr
Commissioning Authority (CxA)-----	\$200.00/hr
Commissioning Technician (CxT)-----	\$150.00/hr
Project Manager (PM) -----	\$175.00/hr
Graduate Engineer (EIT3) -----	\$130.00/hr
Graduate Engineer (EIT2) -----	\$115.00/hr
Graduate Engineer (EIT1) -----	\$100.00/hr
Senior Design Technician (DT2) -----	\$150.00/hr
Design Technician (DT1) -----	\$100.00/hr
Revit Technician (RT1) -----	\$100.00/hr
CAD Operator (CO2) -----	\$100.00/hr
Administrative Assistance (AA1) -----	\$85.00/hr
 <u>EXPENSES:</u>	
Mileage -----	\$0.655/mile
Travel and Subsistence -----	Cost plus 10%
Reproduction -----	Cost plus 10%
Subcontractors, Consultants, etc. -----	Cost plus 10%
Overnight Shipping -----	Cost plus 10%
All other expenses -----	Cost plus 10%

TERMS AND CONDITIONS

Invoicing for services rendered shall be submitted on a monthly basis. Terms of payment for invoices shall be net invoice amount due and payable within 10 days of invoice date. Payments shall be made to NRG Engineering, 5656 S. Staples, Suite 312, Corpus Christi, Nueces County Texas 78411.



5656 S. Staples, Suite 312
Corpus Christi, TX 78413
Ph: 361.852.2727 Fx: 361.852-2922
Texas Firm No. F-005318

STANDARD TERMS AND CONDITIONS

ARTICLE 1: PROFESSIONAL SERVICES

1.1 **Parties.** “Client” refers to the entity identified on Page 1 of the Proposal. “Engineer” refers to NRG Engineering.

1.2 **Services.** In connection with the property described in the Proposal (“Property”), Engineer shall render the professional services (“Services”) for the project described in the Proposal (“Project”) as outlined in the Proposal and any Amendments.

1.3 **Agreement.** The Professional Services Agreement includes the Proposal, Amendments to the Proposal, and these Terms and Conditions (collectively, the “Agreement”).

ARTICLE 2: PROPOSALS

2.1 **Scope.** The Proposal(s) shall identify the specific scope of Services to be performed and the amount and type of compensation for the specific Services (“Basic Services”). Services not expressly included in Basic Services are considered “Additional Services,” for which Engineer is entitled to additional time and compensation on an hourly basis.

2.2 **Acceptance of Agreement.** Client shall authorize and Engineer shall commence work upon Engineer’s receipt of the properly executed and signed Proposal(s), as may be amended from time to time. If the Agreement is not executed by Client within ninety (90) days of the date tendered, it shall become invalid unless: (1) Engineer extends the time in writing; or (2) at the sole option of Engineer, Engineer accepts Client’s oral authorization to proceed with the Services, in which event the terms of the oral authorization shall be presumed to include all the terms of this Agreement. Engineer’s performance of the Services under the oral authorization shall be in reliance on the inclusion of all the terms of this Agreement in the oral authorization.

ARTICLE 3: CHANGES

3.1 **Changes.** The Engineer and Client may at any time, by written amendment, make changes within the general scope of individual Proposal(s) or relating to Services to be performed. If such changes cause an increase or decrease in the Engineer’s cost of, or time required for, performance of any Services under individual Proposals, an equitable adjustment shall be made and reflected in a properly executed Amendment or Additional Services Proposal.

3.2 **Regulatory Changes.** In the event that there are modifications or additions to regulatory requirements relating to the Services to be performed under this Agreement after the date of execution of this Agreement, the increased or decreased cost of performance of the Services provided for in this Agreement and subsequent Proposals shall be reflected in an appropriate Proposal Amendment.

ARTICLE 4: THE TERM

4.1 **Term.** Engineer shall be retained by Client as of the date Client executes the attached Proposal until the Services have been fully performed or until the Engineer’s Services are terminated under provisions of the Agreement. Engineer will pursue completion of Services in accordance with the timely completion specified in the Proposal and any amendments thereto. Engineer shall not be liable or responsible for any delays caused by circumstances beyond Engineer’s control, including, without limitation, previously unknown conditions, market

factors, acts or omissions of third parties, decisions by governing jurisdictions, or other facts which may affect the future progress of the Project.

ARTICLE 5: DUTIES

5.1 **Access.** Client will provide Engineer with access to the Property or to any other site as required by Engineer 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 Engineer's submissions, and give prompt written notice to Engineer whenever he observes or otherwise becomes aware of any defect in the work.

Client shall 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 contractor(s)' applications for payment, and any inspection services to determine if contractor(s) are performing the work.

5.3 **Other Information.** Engineer will rely upon commonly used sources of data, including database searches and agency contacts. Engineer does not warrant the accuracy of the information obtained from those sources and has not been requested to independently verify such information. Engineer shall be entitled to rely on the accuracy and completeness of information, services, and work provided by other sand shall not be liable for same, even when incorporated into the Engineer's Services.

5.4 **Ownership of Documents.** All designs, drawings, specifications, documents, and other work products of the Engineer, whether in hard copy or electronic form, are instruments of service for the Services and are owned by the Engineer regardless of whether Services are completed. Reuse, change or alteration by Client or by others acting through or on behalf of Client is not permitted without the written consent of Engineer. ANY REUSE, CHANGE OR ALTERATION BY CLIENT OR THIRD PARTIES IS AT THEIR OWN RISK AND CLIENT AGREES TO HOLD HARMLESS AND INDEMNIFY ENGINEER, AND ITS OFFICERS, PARTNERS, EMPLOYEES, AND SUBCONTRACTORS FROM ALL CLAIMS, DAMAGES, LOSSES, EXPENSES AND COSTS (INCLUDING ATTORNEYS' FEES), INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR ENGINEER'S ALLEGED NEGLIGENCE, ARISING OUT OF OR RELATED TO SUCH AUTHORIZED OR UNAUTHORIZED REUSE, CHANGE OR ALTERATION.

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

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

5.7 **Changed Conditions.** Client shall rely on Engineer'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 Engineer. Should Engineer call for contract renegotiation, Engineer shall identify the changed conditions necessitating renegotiation and Engineer and Client shall promptly and in good faith enter into renegotiation of this Agreement. If the terms cannot be agreed to, the parties agree that either party has the right to terminate the Agreement.

5.8 **Site Visit.** All conclusions, opinions and recommendations will be based upon site conditions at the Property as they existed at the time of Engineer's site visit. Any report should not be relied upon to represent conditions at a later date.

5.9 **Opinions of Cost.** Should Engineer provide any cost opinions, it is understood and agreed that Engineer is not a professional cost estimator, has no control over market conditions, the cost of goods or labor, contractor

pricing decisions, or the ultimate cost of Client's Project, and any estimate of cost or Client's budget whether provided or agreed to by Engineer, represents opinion only. Engineer does not warrant that actual costs will not vary from those opinions. Changes in design of Client's Project necessary to adjust the cost of the Project at any time will be performed by Engineer as Additional Services.

5.10 **Construction Observation.** If construction phase services are included in the Services, the Engineer shall periodically visit the Project 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. Client has not retained Engineer to make detailed inspections or to provide exhaustive or continuous Project review and observation services. Engineer 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. Engineer 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 **Permits.** Client is responsible for obtaining and complying with all required permits or other approvals of, and for giving any required notices to, all governmental and quasi-governmental authorities having jurisdiction over the Services or the Property. Before Engineer performs the Services, Client will provide Engineer evidence satisfactory to Engineer that all required permits or other approvals have been obtained and that all required notices have been given. Client will provide to Engineer copies of any such permits or any such notices, together with any other relevant information that will alert Engineer to the requirements of such permits, approvals, or notifications.

ARTICLE 6: COMPENSATION OF SERVICES

6.1 **Compensation of Services.** Engineer's compensation for Services shall be set forth in individual Proposal(s).

6.2 **Compensation.** Client agrees to pay Engineer for Services in accordance with the Agreement. Expenses directly related to these Services, including reproduction, travel, long distance telephone bill, express mail, special deliveries and subcontractor expenses shall include a ten percent (10%) markup on cost, unless these costs have been included in individual proposals.

6.3 **Payments.** Engineer will invoice Client monthly in accordance with the terms and conditions of the Proposal, and amendment(s) for Services and reimbursables. Client agrees to promptly pay Engineer at its office at 5656 S. Staples, Ste 312, Corpus Christi, TX 78411, the full amount of each such invoice upon receipt. In no event shall Engineer's failure to bill monthly constitute default under the terms and conditions of this Agreement.

6.4 **Right to Stop Performance.** If Client does not pay any amount due to Engineer within sixty (60) days after the invoice date, Engineer 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.

6.5 **Interest.** Payments due and unpaid to Engineer under the Agreement shall bear interest at the rate of five percent (5%) 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.

6.6 **Attorney's Fees.** In the event Engineers' invoices for Services are given to any 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 Engineer all cost 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 Engineer's services, either by Client or by Engineer, upon seven (7) days written notice to the other at the address of record. Upon receipt of written notice from Client to discontinue work, Engineer shall discontinue work under this Agreement. Such termination shall release Engineer from any further obligation to provide Services to Client on this Agreement, but all obligations of Client shall continue. In the event Client terminates the Agreement based on Client's reasonable opinion Engineer has failed or refused to prosecute the Services efficiently, promptly or with diligence, Engineer 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 or Proposal(s). Client waives any and all claims it has against Engineer arising out of termination of this Agreement by Engineer. Client waives any and all claims, causes of action, or damages that it has or may have against Engineer for failure to perform further Services under this or any other Agreement with Client.

7.2 **Compensation in Event of Termination.** Upon termination by either Client or Engineer, Client shall pay Engineer with respect to all contracted Services rendered and expenses incurred before termination an amount fixed by applying Engineer's standard hourly rates, in force at the time of termination, to all Services performed to date, in addition to termination settlement costs Engineer 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 Engineer to Client shall be that of an independent contractor. Neither Engineer nor employees of Engineer 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 ENGINEER, ITS EMPLOYEES, OFFICERS, 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 SHALL NOT EXCEED THE TOTAL FEE PAID TO THE ENGINEER. NOTWITHSTANDING ANY OTHER PROVISION OF THE AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY PUNITIVE, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES INCURRED DUE TO THE FAULT OF THE OTHER PARTY, REGARDLESS OF THE NATURE OF THIS FAULT OR WHETHER IT WAS COMMITTED BY CLIENT OR BY ENGINEER, THEIR EMPLOYEES, AGENTS, SUBCONSULTANTS, OR SUBCONTRACTORS. CONSEQUENTIAL DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, LOSS OF USE AND LOSS OF PROFIT.

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

9.3 **Asbestos or Hazardous Materials.** It is acknowledged by both parties that Engineer's scope of Services does not include any services related to asbestos or hazardous or toxic materials. In the event Engineer or any other party encounters asbestos or hazardous or toxic materials at the Property, or should it become known in any way that such materials may be present at the Property or any adjacent areas that may affect the performance of Engineer's Services, Engineer may, at its option and without liability for consequential or other damages, suspend performance of Services on the Project until Client retains appropriate specialist consultant(s) or contractor(s) to identify, abate, and/or remove the asbestos or hazardous or toxic materials and warrant that the Property is in full compliance with applicable laws and regulations.

9.4 **Delays.** Engineer is not responsible for delays caused by factors beyond Engineer's reasonable control,

including but not limited to delays because of strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of any governmental or other regulatory authority to act in a timely manner, failure of Client to furnish timely information or approve or disapprove of Engineer's Services or work product promptly, or delays caused by faulty performance by Client or by contractors of any level. When such delays beyond Engineer's reasonable control occur, Client agrees Engineer is not responsible for damages, nor shall Engineer be deemed to be in default of this Agreement. In the event such delay exceeds ninety (90) days, Engineer shall be entitled to an extension of time equal to the delay and an equitable adjustment in compensation. In the event Engineer is delayed by Client and such delay exceeds thirty (30) days, Engineer shall be entitled to an extension of time equal to the delay and an equitable adjustment in compensation.

9.5 **Project Enhancement.** If, due to Engineer's error or omission, any required item or component of the Project is omitted from Engineer's documents, Engineer shall not be responsible for paying the cost to add such item or component to the extent that such item or component would have been otherwise necessary to the Project or otherwise adds value or betterment to the Project. In no event will Engineer be responsible for any cost or expense that provides betterment, upgrade, or enhancement of the Project.

9.6 **Express Structural and Soils Disclaimer.** Client acknowledges and agrees Engineer is not providing geotechnical or structural services of any kind, is relying on information and work of other in this regard, and Engineer shall not be responsible for damage to Client or to structures or improvements caused by raising, shifting, heaving, swelling, settling, or other movement of soils or structures.

ARTICLE 10: MISCELLANEOUS

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

10.2 **Modifications.** No one has authority to make variations in, or additions to, the terms of this Agreement on behalf of Engineer other than one of its officers, and then only in writing.

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

10.4 **Venue.** Engineer and Client agree that the Services will be performed or partially performed in Nueces County, Texas, and the venue of any action under the Agreement shall be exclusively in Nueces County, Texas.

10.5 **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 party 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 terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

10.6 **Construction of Agreements.** 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.

10.7 **Successor and Assigns.** Client, for himself and partners, if any, and Engineer, for itself, each binds himself or itself and its successors, executors, administrators and assigns to the other party to this Agreement and to partners, successors, executors, administrators and assigns of such other party in respect to all covenants of the Agreement. Neither Client nor Engineer shall assign, sublet, or transfer his interest in this Agreement without the written consent of the other. Nothing herein shall be construed as giving any rights or

benefits hereunder to anyone other than Client and Engineer. Client's representative signing below warrants that he or she has full authority to bind Client to this Agreement and further warrants that Client has an ownership interest in the real property that is part of the Project. Client's representative signing below agrees to indemnify, save, and hold Engineer harmless for any and all claims, causes of action, and damages that may arise against Engineer if the representations contained in this Paragraph are not correct.

Nothing in Agreement restricts Engineer's ability to hire subcontractor 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 the Engineer gives Client prior and specific written approval.

10.8 **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 all 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 the 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.

10.9 **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 Engineer's Services, Engineer 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 similar mediation provisions 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.

10.10 **No Warranty.** Engineer makes no warranty, either expressed or implied, as to Engineer's findings, recommendations, drawings, specifications, or professional advice. Any warranties or guarantees contained in any purchase orders, certifications, requisitions, or notices to proceed issued by Client are specifically objected to and excluded. Client recognizes that neither Engineer nor any of Engineer's subconsultants or subcontractors owes any fiduciary responsibility to Client.

10.11 **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 Engineer and of Client which would otherwise survive termination of the Services.