



28 Blackwell Park Lane, Suite 201
Warrenton, VA 20186
540.349.4500

March 3, 2022
Via Electronic Mail

Town of Warrenton
21 Main Street
Warrenton, VA 20186

Attn: Denise M. Harris, AICP

RE: Professional Engineering Services
Geotech Peer Review
530 Fletcher Drive
Warrenton, VA 20186
Town of Warrenton
BE #VAB220040.00

Dear Ms. Harris:

Thank you for this opportunity to present Bohler Engineering VA, LLC's (the "Firm" or "Bohler") Contract for Professional Engineering Services to Town of Warrenton (the "Client") for the above referenced project. It was a pleasure to discuss the proposed project in Warrenton, Virginia. As we understand at this time, you are requesting a peer review of the Geotechnical Report prepared by Terracon Consultants. In preparation of this Contract, our office is currently in receipt of the "Exhibit" dated September 2, 2021, prepared by Kimley Horn; "Zoning Map Amendment for Harris Teeter Service Station" dated September 2, 2021, prepared by Kimley Horn; and the "Geotechnical and Environmental Engineering Report" dated March 3, 2020, prepared by Terracon Consultants, Inc. Collectively, these documents shall be referred to as the "Base Documents". The Client has provided the Base Documents, which have been utilized as a basis for the description of our scope of services and we assume the information presented to be accurate. The Base Documents shall be certified by the preparer(s) with written permission for its unlimited use by the Firm. It is understood and agreed by Client that since the Base Documents were not prepared by the Firm, the Firm shall not be liable for any errors or omissions resulting from (1) the use of the Base Documents, or (2) deficiencies or any inaccuracies contained in said Base Documents. Client represents and acknowledges that it desires for the Firm to rely upon and use the Base Documents rather than recreate or prepare new versions any such documents.

The Firm's scope of services, as defined within this Contract, will be to facilitate the Geotechnical Report peer review for Client review and evaluation. For clarity, we have delineated our Firm's services more specifically as outlined in the following sections (any items not specifically included in the below description are excluded):

SECTION I: OUTSIDE SERVICES (900)

A. Geotechnical Report Peer Review:

Under this scope of services, the Firm will ^{sub}contract with ECS-Mid Atlantic, LLC ("ECS") to provide a peer review of the "Geotechnical and Environmental Engineering Report" dated March 3, 2020, prepared by Terracon Consultants, Inc. The Firm will bill for this scope of services on a lump sum basis.

SECTION II: REIMBURSABLE EXPENSES (998)

A. Reimbursable Expenses:

This scope includes anticipated reimbursable expenses that may be required during the course of this project. These expenses include, but are not limited to, postage, Federal Express, application fees, escrow fees, mileage, travel expenses, printing, plotting, etc.

Miscellaneous Reimbursable Expenses:

Postage, Federal Express, etc.	\$Cost + 15%
Printing Supplies (Binders, Dividers, etc.)	\$Cost + 15%
Mileage Reimbursement*	\$0.585/mile
Travel (Hotel, Airfare, Meals)	\$Cost
Printing	\$3.50/sheet
Computer Mylars/Color Plots	\$20.00/sheet
Outside Services or Fees	\$Cost + 15%
Transparencies	\$0.60/each
Photo Copies	\$0.10/each

* Mileage reimbursement subject to change based upon IRS standard mileage rate.

We estimate the fees for the subject project and permitting services to be as follows:

	<u>WORKSCOPE:</u>	<u>FEE:</u>
SECTION I -	Outside Services (900)	
	A. Geotechnical Report Peer Review:	\$1,500
SECTION II -	Reimbursable Expenses (998)	
	A. Reimbursable Expenses:	T&M (Per Fee Schedule)

Should additional services be required, beyond what is described for in this Contract, a Contract Addendum will be coordinated between the Firm and the Client.

The pricing described in this Contract is valid and in effect for one-hundred and eighty (180) days from the date of this Contract. After one-hundred and eighty (180) days, the Firm has the right to modify and/or increase the pricing described herein. Further, if all of the scopes of Service described in this

Contract are not authorized in their entirety within ninety (90) days of the date the Client authorizes the first scope of Service, pricing for any unauthorized phases or scopes of Service are subject to the Firm's modification and/or increase.

Items not included in this Contract include but are not limited to:

- Plan Design & Revisions Pursuant to Requests by Owner, Review Board, or Permitting Entities
- Surveying Services
- Utility Pot-hole Locations
- Legal Descriptions
- Tree Inventory Survey
- Tree Removal Plan
- Preparation of Hearing Exhibits
- Wetland Delineations
- Environmentally Related Permitting
- Environmental Impact Statements
- Preparation of Geotechnical Engineering/Reports
- Structural Design/Detailing of Retaining Walls
- Utility Service Applications
- Underground Fire Line Design/Permitting
- Traffic Engineering
- DOT Highway Occupancy Permit Plans and access permits
- Off-site Roadway Improvements/Widening
- Off-site Detention
- Utility Extension Beyond the Parcel's Frontage
- Pump Station Design
- Inspection Services
- Irrigation Design
- Preparation, completion or processing of: bank or lenders consents, certifications, assignments letters or agreements
- Preparation or signature upon payment applications, certifications or similar documents
- Application Fees
- Miscellaneous Reimbursable Expenses
- Other Permits or Activities Not Specifically Identified Herein.
- Responsibility for Job-Site Safety during construction
- Responsibility for means and methods during construction
- Demolition responsibility during construction
- As-built/Punch-list Walk-Through
- Adjacent Property Owner Notifications/Mailings

Invoices for Professional Services and expenses incurred shall be generated on a monthly basis and are due and payable upon receipt. Additionally, attached to this Contract are the "Standard Terms and Conditions" of all agreements between our Firm and its clients. The attached "Standard Terms and Conditions" shall form a part of this Contract and are incorporated herein by reference.

If this Contract is acceptable, please provide an executed copy of this document to our office as your authorization to initiate Professional Services.

Thank you again for the opportunity to provide our Contract for Professional Services to be rendered to your office on this project. We are eager to continue our relationship with your organization.

If you have any questions or comments, or wish to discuss this Contract in further detail, please feel free to contact our office at your convenience.

Sincerely,

Bohler Engineering VA, LLC



John C. Wright, P.E.
Principal

By my signature below, I represent and acknowledge that I am authorized to execute this Contract on behalf of the entity or individual first named above and that, I acknowledge, agree to and accept all of the provisions, terms, conditions, and promises set forth in the within Contract and the attached Terms and Conditions (three pages) which are hereby incorporated herein and made a part of this Contract.

ACCEPTED BY:

TOWN OF WARRENTON

By: Denise Harris 3/3/2022
Denise M. Harris, AICP (date)

JCW/pw

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TERMS AND CONDITIONS

This document is incorporated in and forms a part of the Contract between **BOHLER ENGINEERING VA, LLC** (the "Firm"), and **TOWN OF WARRENTON** (the "Client"), to which these Terms and Conditions are attached:

- I. **PROFESSIONAL RESPONSIBILITY** – The Firm represents that it will perform the services described in the "Contract" attached hereto (the "Professional Services"), and in a manner consistent with and limited to that level of care and skill ordinarily exercised by comparable professional firms, under similar circumstances, at or near the same location, at the time the Firm performs the Professional Services. There are no other representations to the Client, either expressed or implied. The Firm does not guarantee approval of or a specific result from the preparation of any plans and/or documents submitted for review. The Firm will complete the Professional Services within a reasonable period of time consistent with applicable professional standards, subject to external parameters and delays and elements not within the Firm's control, however, the Firm is not responsible for the timeliness of the Client obtaining applicable approvals, permits, or the like. The Firm has no duty, obligation or responsibility to inspect, observe, comment, or report on the work of other contractors, vendors or material suppliers, or on conditions, of any nature whatsoever, which exist at, in, on, about, or near the project or property which is the subject of these Terms and Conditions and the Contract. The Firm has no duty, obligation or responsibility for the work and scope of services excluded in the attached Contract which exclusion includes, but is not limited to, responsibility for job site safety. The Firm shall meet the applicable standard of care which is in effect at the time the Firm performs its Services. The Firm shall perform the Professional Services in accordance with the requirements of applicable codes, regulations, and any current written interpretation of same which have been published, enacted and are in effect as of the date of this Contract. In the event of any changes in such codes, regulations or interpretations which occur at any time after the date of this Contract or during the course of the Project and which result in a substantive change or increase of or to the Professional Services, same is not included in the scope of the Professional Services described in the Contract and if Client desires that the Firm address those changes or interpretations, the Parties shall enter into an amendment or change order to provide for reasonable additional compensation to the Firm for the time and expense of addressing such changes. The following sentence is intended to make clear that the Firm is not responsible for any cost or expense that provides betterment, upgrade, or enhancement of or to the Project. The Client shall bear all costs of any and all changes that result in betterment to the Project, and same shall not be a basis for a claim against the Firm.
- II. **CLIENT RESPONSIBILITY** – Client agrees to provide access and right of entry to the subject property for Firm's personnel and any equipment or materials necessary for the Firm to complete the Professional Services. Client further agrees to assist the Firm by providing to the Firm, promptly after the Firm's request, with all information pertaining to the Project which is the subject of the Contract, any Agreement regarding the Project, if one exists and is applicable, and any other documents or materials related to an Agreement or the Project or referenced therein (collectively the "Contract Documents"), and/or these Terms and Conditions, including, but not limited to, existing plans, surveys, recorded deeds, correspondence, reports, specifications, subsurface reports, easement information, and any other related items or information, such that the Firm may perform and complete Professional Services in the most efficient fashion. The Firm is entitled to rely upon the accuracy of all Contract Documents. The Firm assumes no responsibility for errors and omissions that may or do exist in the data or related design plan that Client or Client's other consultants, contractors and professionals provided, and Client is solely responsible for same.

The Client acknowledges that the Firm has no ongoing maintenance or repair responsibilities related to the Professional Services or the Project, but rather that the Client is fully responsible for all ongoing and future maintenance and repair for any items, elements and/or features described or depicted in any plans, drawings, or specifications related to the Project. Plan notes and details, which are included on the plans that the Firm prepares, are part of the scope of Services in this Contract. The Client is fully responsible to ensure that the Client's contractors or professionals strictly follow and comply with the plan notes and details therein. In the event a conflict arises between the scope of Services described in this Contract and/or the plan notes and details, the plan notes and details take precedence with respect to the performance of the work and services described in the plan. The Firm recommends that the Client obtain and retain legal counsel to provide Client with legal and land use advice and guidance throughout the entirety of the Project. The Client authorizes the Firm to communicate with the Client's attorney, as needed. If, as part of the Firm's Services in this Contract, the Firm will provide testimony and assist in presentations at municipal meetings, note that the Firm cannot and will not provide legal representation or guidance at municipal meetings or at any other time, which must only be provided by Client's retained legal counsel. In the event legal issues are identified and conveyed to the Client, it is the Client's responsibility and/or the Client's legal counsel's responsibility to instruct the Firm as to how the Client will proceed with respect to said legal issue(s).

- III. **PAYMENT TERMS** – The Firm agrees to perform the Professional Services and the Client agrees to pay the Firm for the Professional Services described in the Contract, without regard to the success or time of completion of the Project, but upon the Firm's completion of the Professional Services and invoicing Client for same. The Firm shall generate Invoices for Professional Services and expenses, monthly. Payment for Invoices is due immediately upon Client's receipt of an Invoice and, in no event, later than thirty (30) days of mailing of an Invoice (the "Due Date"). If Client fails to pay an Invoice on or before the Due Date, the Firm reserves the right, three (3) days after the Firm delivers written notice to Client of said delinquency, to: 1) immediately cease all Professional Services; and 2) to pursue any and all remedies against Client. Client shall fully indemnify and hold the Firm harmless from and against any and all damages of any nature and kind whatsoever, without limitation, that result in whole or in part, from Firm's cessation of its Professional Services as described herein. Additionally, if Client fails to meet its payment obligations to the Firm required hereunder, the Firm may, at its discretion, use or apply a Client retainer for any project to satisfy monies the Client owes to the Firm on this Project or any other project. Should Client authorize the Firm to utilize Client's credit card to pay for invoices, services and/or reimbursable expenses, Client authorizes the Firm to also charge the Client's Credit Card the Credit Card Company's/Vendor's fee, charge or surcharge for the amount charged, as long as same is permitted under applicable law.

In the event the Firm commences a legal action or pursues a claim of any kind or any collection effort against Client for an unpaid Invoice(s) or portion of same (collectively "Claim"), the Client agrees that it shall, in addition to owing the Firm for principal and interest in the amount of one percent (1%) per month commencing on the Due Date, also reimburse and be liable to the Firm for all collection costs, including but not limited to, court costs, reasonable attorneys' fees, staff time, administrative time, in-house counsel time, and any other related expenses in connection with the Firm's pursuit of a Claim (collectively "Collection Fees"). In the event the Firm possesses a Client retainer, the Firm may, at its option, apply monies paid as a retainer to the Firm's Final Invoice or to any Invoice or delinquent Invoice(s), at any time, and Client specifically acknowledges and agrees to the Firm's right to do so. Once the Firm has been paid for all Professional Services, expenses and Collection Fees, the Firm shall refund any remaining retainer to the Client, after Client's request. Billing rates for Professional Services shall be those rates that are in effect when the Firm renders the Professional Services. The Firm reserves the right to modify or increase its billing rates and reimbursable expense rates during the term of this Contract.

Client shall provide the Firm with written notice of any disputed charge(s) on or before the Due Date for an Invoice (the "Dispute Notice"). If Client fails to provide the Dispute Notice, Client agrees that it is specifically waiving all rights to dispute said Invoice and any charges contained therein. If Client delivers the Dispute Notice to the Firm on or before the Invoice's Due Date, Client must pay the invoiced amount to Firm, minus the disputed amount, by the Invoice Due Date. Client shall not withhold amounts not disputed. The Dispute Notice must set forth, in specific detail, all bases and reasons for Client disputing said Invoice. Any bases and reasons that Client fails to include in the Dispute Notice are automatically and permanently waived. The Firm and Client shall attempt, in good faith, to promptly resolve disputed Invoices. If any dispute is subsequently resolved or settled in the Firm's favor, then the Client shall pay the disputed amount previously withheld within ten (10) days of such resolution (or settlement) in Firm's favor, including interest at the rate of one percent (1%) per month commencing on the Due Date for said Invoice through the date the Client pays said Invoice and all Collection Fees. If the dispute is subsequently resolved or settled in Client's favor, the Firm shall issue a credit on Client's subsequent Invoice for the disputed amount resolved or settled in Client's favor.

IV. **INDEMNIFICATION – Client and the Firm**

- A) **THE FIRM TO CLIENT:** The Firm hereby agrees to indemnify and hold the Client and its current and future owners, officers, directors, members, shareholders, parent corporations, subsidiaries, related entities, affiliates, and employees harmless from, against and for third party: losses, injuries, damages, claims, actions, causes of action, demands, liabilities, judgments, expenses, or the like, including reasonable attorney's fees and reasonable litigation costs (collectively "Damages"), which are directly and proximately caused by the Firm's or the Firm's employees, agents or subconsultant's negligent error(s) and/or omissions(s) in providing the Professional Services in accordance with this Contract; provided, however, that the Firm's obligation and liability hereunder shall not exceed the percentage which the Firm is found liable and responsible for said Damages and further shall not exceed the amount of insurance coverage the Firm maintains. The Firm's liability for

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reasonable and necessary defense costs incurred by indemnified persons or parties shall be limited to the proportionate extent caused by the negligent acts, errors or omissions herein and recoverable under applicable law as a direct and proximate result of the negligence. It is agreed that Firm's liability for any claim for damages, cost of defense, Firm indemnification obligation, Firm hold harmless obligation, or expenses which the Client or any third party may or does assert against the Firm for or as related to any and all design defects, errors, omissions, breach of contract, negligence and/or professional negligence shall be limited to \$50,000 or two times (2X) the total compensation received by the Firm for the specific Proposal or Work Order in question, whichever is greater. Under no circumstances shall the Firm be liable for extra costs, indirect damages, consequential damages or other consequences due to changed conditions or for costs related to the failure of the contractor or material men to install work in accordance with the plans and specifications. The limitation of liability described above to \$50,000 or two times (2X) the amount of the Firm's fee for a Proposal or Work Order is a specifically bargained-for provision of this Contract and these Terms and Conditions, reflected in the Firm's fees. After Client's request, the Firm will provide confirmation to the Client of the Firm's insurance coverage regarding professional liability and commercial liability coverage. The Firm's liability for reasonable and necessary defense costs incurred by indemnified persons or parties shall be limited to the proportionate extent caused by the negligent acts, errors or omissions herein and recoverable under applicable law as a direct and proximate result of the negligence.

- B) **CLIENT TO THE FIRM:** Client hereby agrees to indemnify and hold the Firm, and its current and future owners, officers, directors, members, shareholders, parent corporations, subsidiaries, related entities, affiliates, agents, servants, employees, consultants, and subconsultants (collectively "The Firm Parties") harmless from, against and for all Damages, deriving out of, for or in any way related to any third party claim or loss of and/or for damage to person(s) (injury or death), and/or to property including, but not limited to, the Project, and/or injuries to or death of or to any and all persons, including injury or death to The Firm Parties or third parties, or damage to the Firm's property (the foregoing indemnification language shall collectively be referred to herein as "Indemnification Protection"). The Indemnification Protection includes any injury, death or damage, as more fully described above, which is caused by or results from Client's breach and/or violation of either these Terms and Conditions, the underlying Contract, and/or the Contract Documents, and/or the Client's negligence, action(s) and/or omission(s). Client, as used in this Article IV B, includes the Client's agents, servants, employees, subcontractors, anyone or entity for whom Client is responsible and/or anyone acting by, through, on behalf of, or under the Client.

- V. **OWNERSHIP OF DOCUMENTS** – All reports, field data, data, notes, plans, calculations, estimates, drawing documents and other work and items which Firm creates or prepares, either in electronic format or otherwise (collectively "Firm Materials"), are instruments of service and shall remain the Firm's property. Upon Firm's receipt of payment in full for all Professional Services and expenses related to the Firm's creation of the Firm Materials or as required hereunder, the Firm shall convey to the Client a nonexclusive license to use the Firm Materials for the sole purpose of completing the work for the Project identified in the Contract. Client agrees that it shall immediately return to the Firm, upon Firm's demand, all Firm Materials which the Firm furnishes to the Client or Client's agents, servants, employees, subcontractors, any person or entity for whom Client is responsible and/or anyone acting by, through or under Client (collectively "The Client Parties") which are not fully paid for, and that same will not be used for any purpose other than to complete the Project, other phases of the Project for which Firm prepared the Firm Materials, or any other project, whatsoever. During the time period when Firm is performing the Professional Services, the Firm will retain all pertinent records related to the Professional Services and the Firm Materials. Proprietary information and the Firm's intellectual property including, but not limited to, the Firm's layering process for Plans (collectively "Proprietary Information"), are not included within the phrase Firm Materials and shall, without exception, remain the Firm's property and the Firm shall retain all ownership rights and interests to the Proprietary Information under all circumstances, and without limitation.

The Client agrees not to transfer, send, share, copy, convey or provide the Firm Materials to any individual or entity without the Firm's prior written consent and without executing the Firm's Standard Indemnification and Hold Harmless Agreement in the Firm's favor. The Client further covenants and agrees to waive any and all claims, actions, demands and causes of action, whether legal, equitable or otherwise, of every nature and description, that the Client has, had or may have against the Firm related to or resulting in any way either from the Client's unauthorized changes to (however small) or reuse of the Firm Materials for any other project, any other phase of the current Project, or any purpose by anyone other than the Firm (collectively "Misuse").

The Client agrees, to the fullest extent permitted by law, to indemnify, defend, and hold the Firm and The Firm Parties harmless from any and all claims, damages, losses, injuries, injury to property, injury to person, lawsuits, actions, causes of action, third party action(s), and the like and for all costs and expenses, including but not limited to, court costs, reasonable attorneys' fees, collection fees, staff time, administrative time, in-house counsel time, and any other related expenses (collectively "Claims, Damages and Costs") arising from or in any way related to Client's Misuse of the Firm Materials, changes made by anyone other than the Firm to the Firm Materials, use of the Firm Materials in spite of the Client's failure to meet its payment obligations to the Firm hereunder, or from any reuse of the Firm Materials without the Firm's prior written consent. Client agrees that the Firm shall not be liable for any damage, injury to or death of persons, or damage to property of Client or any other person or entity, from any cause whatsoever, arising from or in any way relating to Client's Misuse or reuse of the Firm Materials, changes made by anyone other than the Firm to the Firm Materials, or from any reuse of the Firm Materials without the Firm's prior written consent, which requirement of a writing cannot be waived.

- VI. **REVOCATION OF CERTIFICATION OR STATEMENTS** – The Firm shall have the right to revoke any certification, statements, professionally sealed documents or plans (the "Firm's Documents") either if the Firm is made aware of the unauthorized or prohibited use of same by the Client, The Client Parties or any others, or based upon Client's failure to pay Invoices by the Due Date. The Client assumes the risk of any and all damages, injuries, claims and/or actions that result from the unauthorized use of the Firm's Documents as described in this Article VI.

- VII. **CLIENT'S UTILITY AND SUBSURFACE RESPONSIBILITIES OBLIGATIONS** – The location of existing utilities to be shown on plans may be developed from a combination of: the appropriate jurisdiction's "One Call System," existing utility records, plans prepared by others, above ground examinations on site and other materials and information. Accordingly, the completeness or accuracy of the precise physical location and depth of any and all utilities are not within the scope of Services contained in the Contract. The Owner and Client shall use sufficient quality levels of subsurface utility engineering to properly determine the existence and position of underground facilities when designing complex projects. Should new construction be proposed, the Client is solely and completely responsible, in consultation with Client's other professionals, consultants and contractors, for verifying the physical location and depth of all utilities before the start of any construction. The Firm recommends that the Client engage a subsurface utility engineering company, preferably during the design phase, but no later than the bid phase for the work related to utility installation, to physically locate existing underground utilities when construction is proposed in the vicinity of or anywhere near the existing utilities. If the Client decides not to engage a subsurface utility engineering company, then the Client accepts full and sole responsibility for design, redesign, delays and/or damage from utility conflicts that may or do occur during construction and all costs related to same.

- VIII. **TERMINATION** – Client may terminate the Contract if the Firm fails to substantially perform under the Contract, after five (5) business days' written notice to the Firm and an opportunity for the Firm to cure during that time period. The Client may terminate this Contract for convenience after three (3) business days' written notice to the Firm of said intention. The Firm may terminate the Contract if Client breaches the Contract or these Terms and Conditions. The Firm may terminate the Contract if the Client (a) commits a material breach or material default in the performance or observance of any of its obligations under this Contract, and (b) such breach or default continues for a period of five (5) business days after delivery by the Firm or written notice detailing such breach or default. If the Client's breach or default relates to its payment obligations under Article III, the Firm shall have the right to terminate all contracts and work with the Client subject to the same notice and cure procedures outlined in this Article VIII. The terminating party must provide the other party with three (3) business days' written notice, which Notice describes, in detail, the reasons, to the extent they exist, for the termination. In the event either party terminates the Contract for any reason, Client shall pay the Firm for all Professional Services the Firm has performed and all expenses the Firm has incurred up through and including the termination date. The effective termination date is the third business day after the date the notice of termination is delivered, as described below in Article XVI.

- IX. **ASSIGNMENT** – This document is binding upon the parties, their successors, representatives, employees, agents, servants and assigns. The Client shall not assign or transfer this document or any interest herein or obligation hereunder without the Firm's prior written consent, which consent shall not be unreasonably withheld. The

TERMS AND CONDITIONS

Firm may assign or transfer this document, the attached Contract or any interest herein to any "Affiliate" of the Firm. The Firm may, without the Client's consent, subcontract any portion of the Professional Services hereunder or under the Contract.

- X. **NO WAIVER** – The failure of either party to insist, in any one or more instances, on the strict performance of any provisions of the Contract or these Terms and Conditions, or the failure of either party to exercise any right, option or remedy hereby reserved and/or provided under the applicable law, shall not be construed as a waiver of any such provision, right, option or remedy, or as a waiver of a subsequent breach. The Firm's consent or approval of any act by the Client requiring the Firm's consent or approval shall not be construed to waive or render unnecessary the requirement for the Firm to consent or approve any subsequent, similar act by Client. No provision of this document shall be deemed to have been waived unless such waiver shall be in writing and signed by the party to be charged with waiver.
- XI. **NON-SOLICITATION** – Client agrees not to solicit, recruit or hire any employee of the Firm or any of the Firm's affiliated entities (which includes any entity with "Bohler" in its name) both during the term of this Contract and for at least one (1) year after the termination or expiration of this Contract (regardless of the cause of the termination or expiration).
- XII. **EXERCISE OF REMEDIES** – The parties to this document agree that the Firm's exercise of any one or more of the remedies set forth in these Terms and Conditions shall, at the Firm's option, constitute an exercise of the same remedy or remedies under any contract with Client. The parties agree that the Firm can terminate or suspend work under any contract with Client or entity with common ownership with Client, if Client violates this Contract and/or these Terms and Conditions. Further, either party's exercise of any remedy hereunder or otherwise, shall not preclude that party from exercising other remedies which it is permitted to exercise under the law. The remedial right available to either party regarding the Contract or these Terms and Conditions may be exercised simultaneously, cumulatively, or alternatively as may be necessary or appropriate to enforce such party's rights.
- XIII. **CONSEQUENTIAL DAMAGES AND LIABILITY** – The Firm shall not be liable to the Client for consequential damages under any circumstances including, but not limited to, as a result of the Firm's termination of the Contract pursuant to Articles VIII and/or XII, hereunder. No principal, officer, owner, shareholder or employee of the Firm shall have personal liability for actions taken in the performance of Services under this Contract.
- XIV. **SEVERABILITY AND TITLES** – The provisions of the Contract and these Terms and Conditions shall be severable, and if any provision of either shall be determined by any court of competent jurisdiction to be invalid, such determination shall not affect or invalidate the remainder of these Terms and Conditions or the Contract. The titles given to the Articles in this document are for ease of reference, *only*, and shall not be relied upon or utilized for any other purpose. Where any language in this Contract and/or these Terms or Conditions conflicts or is inconsistent with the state-specific changes, the state-specific changes shall control.
- XV. **THIRD PARTIES** – Nothing contained in this document and/or the Contract shall create a contractual relationship with or cause of action in favor of any third party against the Firm, The Firm Parties, or the Client.
- XVI. **NOTICES** – Whenever in this document, or the Contract, written notice or demand is required or permitted, such notice or demand shall be deemed to have been given to, delivered or served upon the party intended to receive the same if such notice is in writing addressed to that party at the address identified in the Contract, and sent or delivered either by (i) Registered or Certified Mail, return receipt requested, postage prepaid; (ii) Federal Express or such other nationally recognized commercial, overnight, receipted delivery service; or (iii) hand delivery. Legal Counsel for any party hereto shall be entitled to give any notice for such party. The date of delivery of any notice provided for herein shall be the date after the date of deposit to the overnight delivery service, or two days after the deposit if sent Certified Mail, return receipt requested, or the date of actual delivery if hand-delivered, unless said date falls on a weekend or legal holiday and then the date of delivery shall be the first non-holiday and non-weekend as outlined above. The person and place to which notice may be given may be changed from time to time by the Client or the Firm, upon written notice to the other, effective five (5) business days after delivery of such notice.
- XVII. **ENTIRE AGREEMENT** – This is a complete agreement. Each party hereto acknowledges its full understanding of, and agreement with this document and, further, the parties agree and acknowledge that there are no verbal representations, promises, understandings or agreements in connection herewith, other than as contained in the Contract, that are not incorporated herein. All previous negotiations and agreements between the parties are merged into this document which, along with the Contract, fully and completely expresses the entire agreement between the parties hereto. The terms of this document may only be modified by a writing, signed by the parties hereto. The parties agree that the Contract and these Terms and Conditions have been mutually drafted and authored by both parties and that the Contract and these Terms and Conditions shall not be construed against any one party hereto.
- XVIII. **FORCE MAJEURE** – The Firm shall not be responsible for its performance, delays, damages and the like hereunder and shall be excused from same for any failure or delay in the Firm's performance of its obligations hereunder arising or caused directly or indirectly by forces or events beyond its control including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, catastrophes, acts of God, interruptions, loss or malfunctions of utilities, communications or computer hardware and/or software or any other causes beyond the Firm's control.
- XIX. **VENUE and GOVERNING LAW** – Any claims, actions, controversies, disputes, or the like, must be brought in the Federal or State County Court where the Firm is located, as indicated in the Contract. The parties hereto understand, agree and acknowledge the above constitutes a waiver of a right that the parties might otherwise have to bring a claim, action, etc., in any other venue, jurisdiction or location. This document shall be deemed to have been made in and shall be governed by and construed in accordance with the laws of the State where the Firm's principal place of business is located, as indicated in the Contract. Any applicable statutes of limitations shall begin to run no later than the substantial completion of the Firm's Services.

