

## EXHIBIT A

### SCOPE OF SERVICES

**PROJECT NAME:** *Farmers Branch Creek Emergency Erosion Control Downstream of Ford Road; City of Farmers Branch, Dallas County, Texas*

### PROJECT UNDERSTANDING

Pursuant to your request, Nathan D. Maier Consulting Engineers (NDM) is pleased to present this proposal for engineering services associated with performing preliminary design analysis and construction plan preparation for erosion control and improvements along Farmers Branch Creek. The eroded area is shown on the effective FEMA FIRM Panel 48113C0170K dated 07/07/2014 for Dallas County Texas. The subject area is within the Zone AE (detailed study) floodplain of Farmers Branch Creek on the FIRM. The project area is located in a reach of Farmers Branch Creek that is approximately 250 feet long. The channel erosion has resulted in oversteepened and unstable banks and an exposed waterline. This is shown on the attached Exhibit as the yellow area. Erosion control improvements, with end sections, will be designed to stabilize the slope in this area. These improvements may use stepped gabion walls with a tie-back system or concrete slopes. We also will design a replacement for an exposed waterline. Our scope of engineering services is as follows:

### SCOPE OF PROFESSIONAL SERVICES

The proposed scope of services includes the preliminary analysis, design, and plan preparation as defined by the following tasks.

#### Task 1 - Coordination and Meetings

NDM will provide overall coordination for the project. This will include coordination with the City of Farmers Branch staff during the project. All meetings will be conducted either in person or via teleconference.

#### Task 2 – Data Collection and Field Reconnaissance

NDM will collect and review information necessary to complete the design for the erosion control and protection at the project area. The City shall provide available topographic data (current and past data, in digital format), hydrologic and hydraulic models, previous reports, sub-division plans, roadway and storm sewer plans, sanitary sewer plans, water line plans, other utility information within the identified project areas, and right-of-way, easement and plat information. A field reconnaissance will be performed for the project sites to identify current conditions and evaluate potential improvement considerations.

#### Task 3 – Field Survey

NDM will perform detailed field survey within the identified project area. The proposed purpose of the survey will be to define the extent of the existing erosion problem as required for the preparation of construction plans. The area to be surveyed is shown in yellow on the attached exhibit. NDM will determine property ownership for adjacent properties by obtaining data from the Central Appraisal District. The City shall acquire right-of-entry permissions as required. Survey services will include the establishment of benchmarks and horizontal control using GPS that will tie into the existing City of Farmers Branch network and referencing to the Texas State Plane coordinate system (NAD 83, NAVD 88). The survey services shall include contacting 811 to get utility locates, tying utility locate information and securing survey data to prepare a topographic map with 1' vertical contours (as appropriate) for the site areas. The centerline elevation will be surveyed every 50' and at major drops along the reach where erosion can be monitored.

Detailed survey that will include the following:

- a. Channel area from approximately 50 feet back from the top of bank to 50 feet back from the top of the opposite bank at the proposed stabilization area. This shall include any existing fences and limits of residential improvements near the top of bank (houses, pools, fencing, buildings, etc. that are closest to the top of bank).
- b. Identify visible horizontal and vertical major changes in soil and rock in the bank.
- c. Locate and identify all trees 6-inches and larger in caliper within the proposed improvement area.
- d. Locate and establish horizontal and vertical locations of geotechnical borings.
- e. Survey of adjacent improvements, including existing gabions.
- f. Three (3) cross sections matching the currently available FEMA sections.

If required, perform a detailed boundary survey for exhibit documents. All property should be City Owned property. These boundary surveys will be used to establish and prepare any needed easements on these lots.

#### Task 4 – Geotechnical Services

Geotechnical services shall be provided for this project. The geotechnical scope is as followed:

1. Two (2) borings, one on each side of the creek, to an approximate depth of 50 feet, or 10 foot into unweathered rock.
2. A geotechnical report will be provided that will identify the parameters required for the design of the improvements, including a slope stability analyses for the site on each side of the creek. Improvements options may include gabion walls with tie-backs, or concrete retaining walls with piers.

#### Task 5 – Hydraulic Analysis

NDM will review the existing hydraulic model previously developed for Farmers Branch Creek, which was sent to NDM by Farmers Branch. The scope of services does not include developing a new hydraulic model. Based on the field survey and available topographic information, NDM shall revise the existing hydraulic model for Farmers Branch Creek. The hydraulic analyses shall be performed for the flood discharges available in existing models. Additional cross-sections will be added to the model as required for analyzing the proposed improvements. The use of the field survey data will more accurately reflect the hydraulic conditions within the project areas. The results from the HEC-RAS model will provide the following information:

1. Revised flood elevations within the channel.
2. Channel velocities distributions, as required for design purposes.
3. Information on the tractive forces during flood events.

#### Task 6 – Preliminary Design Analysis and Preliminary Plans (approximate 30% plans)

NDM will perform preliminary design analyses for the erosion control improvements at the project site. The purpose of the project shall be to determine measures necessary to stabilize the existing channel banks and to protect the project area from the erosive forces.

NDM will review updated hydraulic analyses related to erosive conditions. Preliminary design modeling will be performed to establish alternative options. The purpose of the modeling will be to identify improvements that will not result in adverse hydraulic conditions that would require a CLOMR. NDM will perform preliminary design analyses of options that will include slope stability improvements. These improvements may include gabion walls with tie-backs, rip-rap, gabion or concrete walls with anchor piers, or stable channel side slopes. The preliminary improvements will address the protection of the toe of the proposed improvements. The scope of services does not include improvements to the channel bottom. NDM will provide preliminary structural design for the improvements.

NDM will meet with City staff to discuss these alternatives. This meeting will address results of alternative designs for the site, opinions of probable costs, permitting issues, construction access issues and

recommended access location. The purpose of this meeting will be to present information to allow the City to select the appropriate options at the site and project access location. Following the meeting, the City will issue a letter to NDM with the City's selection of alternatives and the location of the construction access.

Based on the alternatives selected by the City, NDM shall complete the Preliminary Plans for the recommended improvements. Based on the proposed Preliminary Plans, NDM shall identify the approximate areas that may be required for any easements. The Preliminary Plans will include: general site plan layout, improvement plan cross-sections that shows proposed configuration and materials, proposed plan profile, and transitional improvements to existing conditions.

A preliminary schedule shall be provided that includes addressing permit requirements, plan preparation, and construction activities. The schedule shall include addressing waters of the U.S. only and no TPWD. This documentation shall address the permitting requirements for the project areas, site construction issues and access.

NDM will also provide preliminary contract documents for the replacement and encasement of approximately 160 feet of 12-inch water line. The limits of replacement will be extend from one side the bridge abutment to the other side of the bridge abutment. Preliminary construction plans, specifications, and details will be developed assuming the water line size will remain the same as existing.

#### Task 7 - Plans and Specifications (60%, 90%, and Final)

Once the Preliminary Plan has been accepted by the City, then NDM will begin the preparation of a set of construction plans for the project area. The construction plan set will be based on one plan set. As a part of the plans and specifications phase, the hydraulic models developed in the Preliminary phase will be updated to include any revisions from the Preliminary Plan for the final hydraulic models.

The construction plans will detail necessary erosion protection, project details, and description of project materials. This will include detailed structure design, structural details, project horizontal and vertical control data, rock riprap sizing, and other necessary project details. The general project plan will be developed at a scale of 1"=20'. A half-scale set of the project plans will be provided along with a full set of plan drawings. Structural design services will be provided for the improvements. Contract documents will also be developed which include the project technical specifications for the project area. NDM will provide the final contract documents for the replacement and encasement of the waterline as described in the Preliminary Design Task No. 6. Contract documents will be developed based on City of Farmers Branch standard conditions and NCTCOG standards, as appropriate.

Milestone submittals will be made at approximately 60% and 90% completion. A check set will also be submitted of the final plans, prior to sealing the drawings. NDM will also develop quantities with the 90% and final plan set submittals. It is understood that the plans for the project site improvements will be bid with as a single construction project.

#### Task 8 – Permitting

NDM shall provide services to the City of Farmers Branch related to regulatory permitting. The possible permitting entities included the U. S. Army Corps of Engineers (USACE) for a 404 permit and Texas Historical Commission. This scope assumes that improvements can be designed that will not raise the BFE and will not require any FEMA submittal.

Farmers Branch Creek will be jurisdictional waters of the U.S. and improvements will require a 404 permit. The scope includes establishing the limits of jurisdictional waters for the project area. This jurisdictional determination shall be submitted to the U. S. Army Corps of Engineers (USACE) for review and approval. The services will also include a Threatened and Endangered Species review and review of possible cultural resource impacts (including historic homes). NDM will submit documents for an appropriate nationwide permit. The scope of services do not include submittal for an Individual Permit. NDM shall provide coordination services with the USACE during the permitting activity. As a part of the

404 permitting, NDM will identify any mitigation that may be required for the project area. This will include the off-site mitigation required for the project.

NDM will also submit a letter to the Texas Historical Commission related to the survey findings. The services include an Antiquities Permit and Pre-Field Coordination, an Intensive Pedestrian Survey, and Laboratory Analysis and Technical Report. This report will be submitted to the THC for review under the ACT.

#### Task 9 - Bidding Phase

NDM shall attend the pre-bid meeting, provide bid documents, address contractor questions during the bidding phase, and provide any addendums required for plan revisions.

#### Task 10 – Construction Administration Services

NDM shall respond to RFIs, have monthly construction meetings, review pay estimates, and perform 8-10 site visits as needed.

#### Task 11 – Construction Observation Services

This is not included.

#### Task 12 – Easement Preparation

Not included. This project should be constructed on City property, if easements are needed then they will be developed as needed for \$3,000 per easement.

#### Task 13 – Record Drawing Services

NDM shall prepare record drawings for the completed project. The City shall provide mark-ups of the construction plans and contract documents that identifies changes made during construction. The Record Drawings will be based on the information provided by the City. No verification of the construction shall be provided by NDM.

### **DELIVERABLES**

The scope of services include the following deliverables:

1. Review submittals: Two (2) sets of full-size Preliminary Plans will be submitted to the City for review and comment to allow for revisions related to Preliminary approaches.
2. Milestone submittals (60% and 90%): Two (2) full sets of construction plans will be submitted, at each milestone submittal, to the City for review and comment to allow for revisions related to construction detail.
3. Final Submittal
  - a. Four (4) sets of 22" by 34" (full size) drawings.
  - b. One (1) CD's with digital copies of the drawings in pdf and AutoCADD format.
  - c. One original for the contract documents (including quantities and special specifications) for bidding purposes along with a digital copy.
4. Record Drawings
  - a. Two (2) CD's with digital copies of the drawings and construction documents in pdf and AutoCADD format.

Easements for lots and one temporary construction access easement, as required for project improvements.

## **COMPENSATION**

Engineering services to be completed will be performed on a lump sum basis. Attachment A provides the rates for the hourly basis. The total compensation is \$ 124,500 and the following fee breakdown is provided for information purposes only and does not represent the final compensation that may be required for each task.

Task 1 - Coordination and Meetings	\$ 5,300
Task 2 – Data Collection and Field Reconnaissance	\$ 2,500
Task 3 – Field Survey	\$ 15,200
Task 4 – Geotechnical Services	\$ 26,400
Task 5 – Hydraulic Analysis	\$ 2,100
Task 6 – Preliminary Design Analysis and Preliminary Plan	\$ 23,500
Task 7 – Plans and Specifications	\$ 30,000
Task 8a– Permitting	\$ 4,400
Task 8b – Cultural Resources Survey and Coordination	\$ 2,900
Task 9 – Bidding Phase	\$ 3,000
Task 10 – Construction Administration Services	\$ 6,200
Task 11 – Construction Observation Services	N/A
Task 12 – Easement Preparation	N/A
Task 13 – Record Drawings Services	\$ 2,200
Reimbursable	\$ 800
<b>TOTAL</b>	<b>\$ 124,500</b>

The costs listed above are based on the assumptions and conditions contained herein. Any deviations in the project from these specified assumptions and conditions may result in additional costs. Costs for additional scope items can be provided upon request, if needed.

All non-labor/reimbursable costs including mileage, deliveries and reproductions will be billed at the rate of actual cost plus 15%. Invoices will be submitted monthly on a percent complete basis and will be payable within 30 days. Any platting and boundary survey services are subject to State sales taxes. The Client or Owner shall pay all City and/or Federal fees.

## **SCHEDULE**

Engineering services for the Preliminary Phase shall be completed within six (6) months from the receipt of a signed contract and a written notice-to-proceed. The construction plans, based on the schedule, shall be provided to the City six (6) months after receipt of a written acceptance of the Preliminary Plans.

## **ADDITIONAL SERVICES**

The scope of services defines the work to be completed under this contract. Any services not specifically named in the Scope of Services shall be considered Additional Services. Additional Services required from NDM that may arise and are not outlined above shall be compensated for on an hourly basis according to the attached "Schedule of Fees and Charges". The City of Farmers Branch may request additional services to be performed, which could include, but is not limited to the following:

1. Any preparation for, or participation in meetings with homeowners.
2. This scope of services assumes that the existing models will be used, no new hydraulic or hydrologic models will be created. The hydrologic model will not be changed or revised.
3. NDM's cost for this scope of services does not include paying any fees to any agency.
4. Submittal for an Individual 404 permit for the proposed project improvements.
5. Submittal for any permitting and approvals (FEMA, CDC, etc.).
6. Services related to detailed review, investigations, and additional permitting required by the Texas Historical Commission or for threatened and endangered species.
7. Changes in project approach after acceptance of the Preliminary Plan approach.

8. Division of the plans into separate construction projects or additional bid phases. This scope that the project will be bid as a single construction project with only one bid advertisement and pre-bid meeting.
9. Additional survey other than what is included in this scope.
10. This scope of services does not include NDM having to correct any deficiencies found in any data provided by others.
11. The Client may also need an Arborist to evaluate the trees on the site and to develop a mitigation plan if trees are to be removed as a part of the reclamation plan. NDM will assist the Client as requested in obtaining the services of a qualified consultants to provide these services. This service is not included in the scope of this proposal.

**RIGHT TO RELY**

NDM shall have the right to rely on all information provided by the Client or any appropriate governmental agency in the performance of this contract.

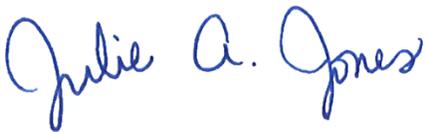
**GOVERNING LAW**

The law of the State of Texas shall govern this agreement. The venue for any disputes arising from services provided under this contract shall be Dallas County, Texas.

If you have any questions or comments, please give me a call. We are pleased to have the opportunity to submit this proposal to the City of Farmers Branch and look forward to serving the City on this project. If you have any questions about this proposal, I would be pleased to discuss them with you at your convenience.

Sincerely,

NATHAN D. MAIER  
CONSULTING ENGINEERS, INC.



Project Manager

JAJ/jaj

This proposal is accepted:

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

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

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

## ATTACHMENT "A"

NATHAN D. MAIER  
CONSULTING ENGINEERS, INC

### SCHEDULE OF FEES AND CHARGES

The following Schedule of Fees and Charges shall be modified on January 1, 2024.

Principal .....	\$150.00 - \$260.00 / hour
Expert Testimony (Trial and Depositions) .....	\$350.00 - \$500.00 / hour
Expert Testimony (Preparation Work) .....	\$250.00 - \$350.00 / hour
Registered Engineer .....	\$130.00 - \$240.00/ hour
Registered Surveyor .....	\$110.00 - \$240.00/ hour
Engineer-in-training .....	\$90.00 - \$115.00 / hour
Senior Designers .....	\$90.00 - \$135.00 / hour
Technician .....	\$85.00 - \$115.00 / hour
Drafter .....	\$60.00 - \$85.00 / hour
Field Party .....	\$165.00 / hour
Administrative Assistant .....	\$67.00 / hour
Construction Manager .....	\$120.00 - \$215.00/ hour
Construction Inspector .....	\$85.00 - \$115.00 / hour
Emergency Services .....	\$160.00 - \$280.00 / hour

#### Reimbursables

1. Direct costs, such as reproductions, equipment rental, delivery services, travel expenses, or subcontractor services will be billed at actual cost plus 15%.
2. Unless otherwise stated, statements will be submitted monthly for charges incurred during the month and payments will be due within thirty (30) days following receipt of the statements.

Effective January 1, 2023

## ATTACHMENT "B"

### Nathan D. Maier Consulting Engineers, Inc. STANDARD CONTRACT TERMS & CONDITIONS

1. **AUTHORIZATION FOR WORK TO PROCEED**  
Signing of this AGREEMENT for services shall be authorization by the CLIENT for Nathan D. Maier Consulting Engineers, Inc., Inc. (NDM) to proceed with the work, unless stated otherwise in the WORK AUTHORIZATION/AGREEMENT.
2. **COST OPINIONS FOR PROPOSED CONSTRUCTION**  
Construction cost opinions provided by NDM are prepared from experience and judgment. NDM has no control over market conditions or construction procedures and does not warrant that proposals, bids, or actual construction costs will not vary from NDM opinions.
3. **STANDARD OF PRACTICE**  
Services performed by NDM under this AGREEMENT will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representation, expressed or implied, and no warranty or guarantee is included or intended in this AGREEMENT, or in any report, opinion, document or otherwise.
4. **LIMITATION OF LIABILITY**  
**To the fullest extent permitted by law, the total liability, in the aggregate of Consultant and its officers, directors, partners, employees, agents, and subconsultants, to Client, and anyone claiming through or under Client, for any claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way relating to this Project or Contract, from any cause or causes, including but not limited to tort (including negligence and professional errors and omissions), strict liability, breach of contract, or breach of warranty, shall not exceed the total compensation received by Consultant or \$100,000, whichever is greater. The Client may negotiate a higher limitation of liability for an additional fee, which is necessary to compensate for the greater risk assumed by Consultant.**
5. **CONSEQUENTIAL DAMAGES**  
Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Client nor the Consultant, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation and any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the Client and the Consultant shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.
6. **CHANGED CONDITIONS**  
If, during the term of this Agreement, circumstances or conditions that were not originally contemplated by or known to the Consultant are revealed, to the extent that they affect the scope of services, compensation, schedule, allocation of risks or other material terms of this Agreement, the Consultant may call for renegotiations of appropriate portions of this Agreement. The Consultant shall notify the Client of the changed conditions necessitating renegotiation, and the Consultant and the Client shall promptly and in good faith enter into renegotiation of this Agreement to address the changed conditions. If terms cannot be agreed to, the parties agree that either party has the right to terminate this Agreement in accordance with the Termination provision hereof.
7. **CERTIFICATIONS, GUARANTEES AND WARRANTIES**  
The Consultant shall not be required to sign any documents, no matter by whom requested, that would result in the Consultant's having to certify, guarantee or warrant the existence of conditions whose existence the Consultant cannot ascertain. The Client also agrees not to make resolution of any dispute with the Consultant or payment of any amount due to the Consultant in any way contingent upon the Consultant's signing of such certification.
8. **DELAYS**  
The Client agrees that the Consultant is not responsible for damages arising directly or indirectly from any delays for causes beyond the Consultant's control. For purpose of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions or other natural disasters or acts of God; fires, riots, war or other emergencies; failure of performance by the Client or the Client's contractors or consultants; or discovery of any hazardous substances or differing site conditions.  
In addition, if the delays resulting from any such causes increase the cost or time required by the Consultant to perform its services in an orderly and efficient manner, the Consultant shall be entitled to a reasonable adjustment in schedule and compensation.
9. **DEFECTS IN SERVICE**  
The Client shall promptly report to the Consultant any defects or suspected defects in the Consultant's services of which the Client becomes aware, so that the Consultant

may take measures to minimize the consequences of such a defect. The Client further agrees to impose a similar notification requirement on all contractors in its Client/Contractor contract and shall require all subcontracts at any level to contain a like requirement. Should legal liability for the defects exist, failure by the Client and the Client's contractors or subcontractors to notify the Consultant shall relieve the Consultant of any liability for costs of remedying the defects above the sum such remedy would have cost had prompt notification been given when such defects were first discovered.

#### 10. CONSTRUCTION OBSERVATION

The Consultant may visit the site from time to time, or as otherwise agreed to in writing by the Client and the Consultant, in order to observe the progress and quality of the Work completed by the Contractor. Such visits and observation are not intended to be an exhaustive check or a detailed inspection of the Contractor's work but rather are to allow the Consultant to become generally familiar with the Work in progress and to determine in general, if the Work is proceeding in accordance with the Contract Documents. Based on this general observation, the Consultant shall keep the Client informed about the progress of the Work and shall advise the Client about observed deficiencies in the Work.

If the Client desires more extensive project observation or full-time project representation, the Client shall request that such services be provided by the Consultant as Additional Services in accordance with the terms of this Agreement.

The Consultant shall not supervise, direct or have control over the Contractor's work nor have any responsibility for the construction means, methods, techniques, sequences or procedures selected neither by the Contractor nor for the Contractor's safety precautions or programs in connection with the Work. These rights and responsibilities are solely those of the Contractor in accordance with the Contract Documents.

The Consultant shall not be responsible for any acts or omissions of the Contractor, and subcontractor, any entity performing any portions of the Work or any agents or employees of any of them. The Consultant does not guarantee the performance of the Contractor and shall not be responsible for the Contractor's failure to perform its Work in accordance with the Contract Documents or any applicable laws, codes, rules, or regulations.

#### 11. DESIGN WITHOUT CONSTRUCTION PHASE SERVICES

If the Client does not contract with the Consultant under this prime agreement to provide construction phase services, then it is understood and agreed that the Consultant's Scope of Services under this Agreement does not include project observation or review of the Contractor's performance or any other construction phase services, and that such services will be provided for by the Client. The Client assumes all responsibility for interpretation of the Contract Documents and for construction observation, and the Client waives any claims against the Consultant that may be in any way connected thereto.

In addition, the Client agrees, to the fullest extent

permitted by law, to indemnify and hold harmless the Consultant, its officers, directors, employees and subconsultants (collectively, Consultant) against all damages, liabilities or costs, including reasonable attorney's fees and defense costs, arising out of or in any way connected with the performance of such services by other persons or entities and from any and all claims arising from modifications, clarifications, interpretations, adjustments, or changes made to the Contract Documents to reflect changed field or other conditions, except for claims arising from the sole negligence or willful misconduct of the Consultant.

If the Client requests in writing that the Consultant provide any specific construction phase services, and if the Consultant agrees in writing to provide such services, then they shall be compensated for as Additional Services as provided in the attached proposal.

#### 12. INDEMNIFICATION

The Consultant agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Client, its officers, directors and employees (collectively, Client) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Consultant's negligent performance of professional services under this Agreement and that of its subconsultants or anyone for whom the Consultant is legally liable.

The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Consultant, its officers, directors, employees and subconsultants (collectively, Consultant) against all damages, liabilities, or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Client's negligent acts in connection with the Project and the acts of its contractors, subcontractors or consultants or anyone for whom the Client is legally liable.

Neither the Client nor the Consultant shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence or for the negligence of other.

#### 13. CONTRACTOR INSURANCE AND INDEMNITY REQUIREMENTS

The Client agrees, in any construction contracts in connection with this Project, to require all contractors of any tier to carry statutory Workers Compensation, Employers Liability Insurance and appropriate limits of Commercial General Liability Insurance (CGL). The Client further agrees to require all contractors to have their CGL policies endorsed to name the Client, the Consultant and its subconsultants as Additional Insured, on a primary and noncontributory basis, and to provide Contractual Liability coverage sufficient to insure the hold harmless and indemnity obligations assumed by the contractors. The Client shall require all contractors to furnish to the Client and the Consultant certificates of insurance as evidence of the required insurance prior to commencing work and upon renewal of each policy during the entire period of construction. In addition, the Client shall require that all contractors will, to the fullest extent permitted by law, indemnify and hold harmless the Client, the Consultant and its subconsultants from and

against any damages, liabilities, or costs, including reasonable attorneys' fees and defense costs, arising out of or in any way connected with the Project, including all claims by employees of the contractors.

14. DEFINITION OF "HAZARDOUS MATERIALS"

As used in this Agreement, the term *hazardous* materials shall mean any substances, including without limitation asbestos, toxic or hazardous waste, PCBs, combustible gases and materials, petroleum or radioactive materials (as each of these is defined in applicable federal statutes) or any other substances under any conditions and in such quantities as would pose a substantial danger to persons or property exposed to such substances at or near the Project site.

15. HAZARDOUS MATERIALS—SUSPENSION OF SERVICES

Both parties acknowledge that the Consultant's scope of services does not include any services related to the presence of any hazardous or toxic materials. In the event the Consultant or any other person or entity involved in the project encounters any hazardous or toxic materials, or should it become known to the Consultant that such materials may be present on or about the job site or any adjacent areas that may affect the performance of the Consultant's services, the Consultant may, at its sole option and without liability for the consequential or any other damages, suspend performance of its services under this Agreement until the Client retains appropriate qualified consultants and/or contractors to identify and abate or remove the hazardous or toxic materials and warrants that the job site is in full compliance with all applicable laws and regulations.

16. HAZARDOUS MATERIALS INDEMNITY

The Client agrees, notwithstanding any other provision of this Agreement, to the fullest extent permitted by law, to indemnify and hold harmless the Consultant, its officers, partners, employees and subconsultants (collectively, Consultant) from and against any and all claims, suits, demands, liabilities, losses, damages or costs, including reasonable attorneys' fees and damages or costs arising out of or in any way connected with the detection, presence, handling, removal, abatement, or disposal of any asbestos or hazardous or toxic substances, products or materials that exist on, about or adjacent to the Project site, whether liability arises under breach of contract or warranty, tort, including negligence, strict liability or statutory liability, regulatory or any other cause of action, except for the sole negligence or willful misconduct of the Consultant.

17. WAIVER OF CLAIMS FOR HAZARDOUS MATERIALS

In consideration of the substantial risks to the Consultant in rendering its services in connection with the Project due to the presence or suspected presence of hazardous materials (as defined in this Agreement) at or near the job site, the Client agrees to make no claim and hereby waives, to the fullest extent permitted by law, any claim or cause or causes of action of any kind, including but not limited to negligence, breach of contract or warranty, either express or implied, strict liability or any other

causes, against the Consultant, its officers, directors, partners, employees and subconsultants (collectively, Consultant), which may arise out of or may in any way be connected to the presence of such hazardous materials. The Client acknowledges that the Consultant is not and shall not be required to be in any way an arranger, generator operator or transporter of hazardous materials present at or near the Project site (as these items are defined in applicable federal or state statutes and all related regulations).

18. GOVERNING LAW AND JURISDICTION

The Client and the Consultant agree that this Agreement and any legal actions concerning its validity, interpretation and performance shall be governed by the laws of the State of Texas without regard to any conflict of laws provisions, which may apply the laws of other jurisdictions.

It is further agreed that any legal action between the Client and the Consultant arising out of this Agreement or the performance of the services shall be brought in a court of competent jurisdiction in Dallas County.

19. OPINIONS OF PROBABLE CONSTRUCTION COST

In providing opinions of probable construction cost, the Client understands that the Consultant has no control over the cost or availability of labor, equipment or materials, or over market conditions or the Contractor's method of priming, and that the Consultant's opinions of probable construction costs are made on the basis of the Consultant's professional judgment and experience. The Consultant makes no warranty, express or implied, that the bids or the negotiated cost of the Work will not vary from the Consultant's opinion of probable construction cost.

20. CADD AND ELECTRONIC FILES

The Client acknowledges the Consultant's drawings and specifications, including all documents on electronic media, as instruments of the Consultant's professional service. Nevertheless, the drawings and specifications prepared under this Agreement shall become the property of the Client upon completion of services and payment in full of all monies due to the Consultant. The Client shall not reuse or make or permit to be made any modification to the drawings and specifications without the prior written authorization of the Consultant. The Client agrees to waive any claim against the Consultant arising from any unauthorized transfer, reuse or modification of the drawings and specifications.

Any changes to these specifications by either the Client or the Consultant are subject to review and acceptance by the other party. Additional efforts by the Consultant made necessary by a change to the electronic file specifications shall be compensated for as Additional Services.

Electronic files furnished by either party shall be subject to an acceptance period of thirty (30) days during which the receiving party agrees to perform appropriate acceptance tests. The party furnishing the electronic file shall correct any discrepancies or errors detected and reported within the acceptance period. After the acceptance period the electronic files shall be deemed to

be accepted and neither party shall have any obligation to correct errors or maintain electronic files.

The Client is aware that differences may exist between the electronic files delivered and the printed hard-copy construction documents. In the event of a conflict between the signed or sealed hard-copy construction documents prepared by the Consultant and electronic files, the signed or sealed hard-copy construction documents shall govern.

In addition, the Client agrees, to the fullest extent permitted by law to indemnify and hold harmless the Consultant, its officers, directors, employees and subconsultants (collectively, Consultant) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from any changes made by anyone other than the Consultant or from any transfer or reuse of the electronic files without the prior written consent of the Consultant.

Under no circumstances shall delivery of the electronic files for use by the Client be deemed a sale by the Consultant, and the Consultant makes no warranties, either express or implied, of merchantability and fitness for any particular purpose. In no event shall the Consultant be liable for any loss of profit or any consequential damages as a result of the Client's use or reuse of the electronic files.

**21. JOBSITE SAFETY**

Neither the professional activities of the Consultant, nor the presence of the Consultant or its employees and subconsultants at a construction/project site, shall impose any duty on the Consultant, nor relieve the General Contractor of its obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending and coordinating the Work in accordance with the Contract.

Documents and any health or safety precautions required by any regulatory agencies. The Consultant and its personnel have no authority to exercise any control over any construction contractor or its employees in connection with their work or any health or safety programs or procedures. The Client agrees that the General Contractor shall be solely responsible for job site and worker safety and warrants that this intent shall be carried out in the Client's contract with the General Contractor shall defend and indemnify the Client, the Consultant and the Consultant's subconsultants. The Client also agrees that the Client, the Consultant and the Consultant's subconsultants shall be made additional insured under the General Contractor's policies of general liability insurance.

**22. STANDARD OF CARE**

In providing services under this Agreement, the Consultant shall perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locality.

**23. STATUTES OF REPOSE AND LIMITATION**

All legal causes of action between the parties to this Agreement shall accrue and any applicable statute of repose or limitation shall begin to run and not later than the date of Substantial Completion. If the act or failure to act complained of occurs after the date of Substantial Completion, then the date of final completion shall be used, but in no event shall any statute of repose or limitation begin to run any later than the date the Consultant's services are completed or terminated.

**24. THIRD-PARTY BENEFICIARIES**

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or the Consultant. The Consultant's services under this Agreement are being performed solely for the Client's benefit, and no other party or entity shall have any claim against the Consultant because of this Agreement or the performance or nonperformance of services hereunder. The Client and Consultant agree to require a similar provision in all contracts with contractors, subcontractors, subconsultants, vendors and other entities involved in this Project to carry out the intent of this provision.

IF ANY ONE OR MORE OF THE PROVISIONS CONTAINED IN THIS AGREEMENT SHALL BE HELD UNENFORCEABLE, THE ENFORCEABILITY OF THE REMAINING PROVISIONS SHALL NOT BE IMPAIRED.

\_\_\_\_\_ Client's Initials