

July 11, 2023

City of Mansfield
Mr. Matt Jones
Assistant City Manager
1200 East Broad Street
Mansfield, Texas 76063

**RE: Mansfield River Walk
Mansfield, Texas
SPEC23364**

Dear Mr. Jones,

We are excited to offer this proposal for preliminary design services for the proposed Mansfield River Walk project.

PROJECT UNDERSTANDING

SITE

The site encompasses approximately 200 acres of land located in the middle of the city along Matlock Road, E. Broad Street, Heritage Parkway and Regency Parkway. It is nearly in the geographical center of the City of Mansfield. The majority of the site is vacant pastureland, however there is existing multifamily structures included on the north side along E. Broad Street and a bank at the intersection of E. Broad and Matlock. The property has been previously planned as The Reserve of Mansfield.

PROPOSED DEVELOPMENT

The City of Mansfield would like to explore conceptual master planning to evaluate the feasibility of a future mixed use development that includes a river walk amenity lined with shops and restaurants that is highly walkable and a destination attraction for the area – similar to Riverwalk in San Antonio and Bricktown in Oklahoma City. Other uses would include a placeholder for a future municipal complex for the City and County that would consist of 30 acres total, 15 acres for the City and 15 acres for the County.

ASSUMPTIONS

This proposal is based on the following assumptions:

- > Available market studies will be provided to McAdams.
- > Project vision will be provided by City of Mansfield.
- > Decision making personnel will be available to meet with our personnel.
- > Access to the project site will be available to the project team.
- > This proposal is for site investigation, project programming and advanced planning services only. Amendments to this contract will be required for future design scope and fee.

- > Site investigation will utilize readily available GIS and aerial photography to gather site boundary, topography, and environmental information.
- > Master planning will be prepared off of GIS data. A site survey may be needed and can be quoted if required. If a survey is provided at a later date, the master plan will need to be updated to reflect the correct property boundary or other site characteristics.
- > If off-site road improvements are required, they will be quoted once improvements are defined.
- > Geotechnical engineering services will be by others. Coordination with geotechnical engineering firm will be provided at preliminary stages for determining key design elements, including subsurface conditions.
- > Environmental reports for the property will be provided by the Owner.
- > Wetland delineation and concurrence by federal, state and local authorities is not required and existing concurrence documents will be provided.
- > A traffic impact analysis (TIA) will not be required.
- > If off-site utility improvements are required, they will be quoted once improvements are defined.
- > Entire project will be through conceptual design only. Construction documents, permitting and any other subsequent phases are not included.

PROPOSED SERVICES + FEES

We propose the following services (Alphanumeric task numbers are for internal coding purposes):

PLANNING SERVICES

A1.10 Site Inventory/Due Diligence:

FEE: \$5,000

(billed percent complete, based on progress)

Perform an evaluation of the site inventory and project due diligence to include a graphic description of the physical and environmental characteristics of the site such as topography, vegetative cover, existing and planned utilities and roadways, drainage channels suitable to create canal-like improvement, floodplain identification and stormwater management. Said graphic description will be used as the bases for preparing future tasks in this agreement.

A1.15 Visioning:

FEE: \$4,000

(billed percent complete, based on progress)

Perform visioning exercise to obtain City goals and objectives, as well as project desires, theme, inspiration, and visual preference feedback. This task will include meeting with City personnel and McAdams to help provide expectations that may influence the master plan. Said visioning will be used to support the subsequent tasks.

A1.20 Land Use Plan & Imagery Packet:

FEE: \$15,000

(billed percent complete, based on progress)

Preparation of a framework plan that shows land use areas, major/minor street network, river walk amenity, pedestrian pathways, access points to perimeter streets, open space areas and site data tables that summarize the potential programming for the development. Additionally, an Imagery Packet will be prepared to visually illustrate the project's goals, theme, look and feel, preferred style, and examples of the planned built environment. This task includes the preparation of one plan and one Imagery Packet. Minor revisions to each document may be included; however, major revisions will require additional services at hourly rates.

A1.25 Collaboration/Coordination Meetings:

FEE: \$7,000

(billed percent complete, based on progress)

Attend up to two collaboration meetings with City personnel to present the Land Use Plan and Imagery Packet and to obtain feedback and input. McAdams will revise the plan as needed based on input received from said meeting.

A1.30 Master Plan:

FEE: \$30,000

(billed percent complete, based on progress)

Prepare a Master Plan of the project based on the information obtained in the above tasks. The Master Plan will be a preliminary layout of the subject property to illustrate the scale, character, and design intent, more specifically the key areas such as the Riverwalk, and the transition and interaction of the different built environments and connections to natural areas. It will include delineating the riverwalk canal, building placeholders, parking areas, site circulation, open space and pedestrian networks. The deliverables shall include hard-lined drawings in black and white with or without the aerial, an illustrative color rendering of the final Master Plan with insets to highlight key areas, and site data summary tables with breakdowns of the anticipated development program with total gross building square feet, listed uses, number and type of residential units. Said data summary will also be provided in excel.

ENGINEERING, COST ESTIMATION AND VISUALIZATION SERVICES**A13.20 Preliminary Engineering:**

FEE: \$10,000

(billed percent complete, based on progress)

Provide civil engineering due diligence input on the proposed master plan including required storm water improvements to facilitate the proposed riverwalk canal. Also included will be research on existing water, sanitary sewer, and roadway infrastructure from municipality utility records, as well as coordination with the Client and team on revisions to the layout that may be required. It is assumed existing water and

sanitary sewer infrastructure has adequate capacity to serve the proposed development. Said preliminary engineering analysis will be put into a report and provided to the City.

A13.40 Preliminary Opinion of Cost:

FEE: \$7,000

(billed percent complete, based on progress)

Prepare Preliminary Opinion of Cost for public improvements associated with proposed development. Said Opinion of Cost will include proposed riverwalk amenity, major/minor streets, public water, sewer, and storm lines based on above master plan.

A11.45 3D Massing Model:

FEE: \$6,000

(billed percent complete, based on progress)

Prepare 3D massing model for the mixed use development to aid in site plan development and study building heights, massing, scale, building use take off calculations, and provide context for the birds eye perspective illustration.

A11.50 3D Perspective Illustration:

FEE: \$3,750

(billed percent complete, based on progress)

Prepare Perspective Illustration based upon CAD Architectural elevations or architectural model of the proposed architecture. Firm will prepare perspective rendering of one birds eye view based upon 3-D model of proposed site, perspective view shall be agreed upon with the owner/client. Amendments to the perspective rendering will be billed at hourly rates. Additional perspective views based upon the built 3-D model will be billed at a discounted rate.

WATER RESOURCES SERVICES**A4.20 Preliminary Assessment:**

FEE: \$5,000

(billed percent complete, based on progress)

Water Resources preliminary assessment include researching the City of Mansfield's Floodplain Ordinance and Stormwater Management Design Manual, gathering background data (contours, FEMA shape files, etc), attending meetings, and coordinating with internal and City of Mansfield staff during the assessment phase(s).

EXTRA SERVICES**J. Additional Services**

When requested by the Owner and confirmed by the Owner and/or Firm in writing, the Firm shall perform services in addition to those described above in this Agreement and the Owner shall compensate the Firm by hourly charges in accordance with the attached Rate Schedule.

PROJECT SCHEDULE

The Firm's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the project. The following is the expected schedule for completion of work on this project:

Schedule to be mutually agreed upon between Owner and Firm.

The time limits and schedule set forth above have been agreed to by the Owner and Firm, but the time limits and schedule shall be extended for (1) reasonable cause, or for (2) any delays associated with the Firm's work on the project that are not the sole responsibility of the Firm.

OWNER RESPONSIBILITIES

Owner shall be responsible for the following:

- > Notification to proceed;
- > Timely approval of sketches presented for Owner approval;
- > Timely providing of information from other professional services (architect, geotechnical engineer, etc.), as described hereinabove;
- > Payment of all application, permit and filing fees, as well as any other required fees incurred;
- > Payment of invoices in accordance with Item 1 of Terms and Conditions; and
- > Notification to Firm of any problems, in accordance with Item 2 of Terms and Conditions.

Coordination with any subconsultants related to this Agreement will be provided by Firm as additional services based on subconsultant fee(s) plus 12.5%.

EXCLUSIONS

The following services are not included in this Agreement:

- > Off-site utility extensions or roadway improvements (will be quoted if required);
- > Off-site stormwater management facilities, revisions to the existing stormwater infrastructure or analysis of "downstream" stormwater system (will be quoted if required);
- > Subsurface Utility Location;
- > Wetlands delineation and permitting (will be quoted if required);
- > MEP and structural Engineering design services;
- > Traffic Impact Analysis;

- > Color graphics for meetings or marketing purposes (will be quoted if required);
- > Permit application, plans review or re-review fees;
- > Revised directives from Owner after design has begun;
- > Acquisition of easements; preparation of off-site easements;
- > Flood study;
- > Court appearances for litigation, or preparation for same;
- > Legal advertisements for construction contracts;
- > Soils investigations, borings, or compaction tests;
- > Environmental investigations, wetlands permitting, wetlands surveying; and
- > Any costs incurred by Owner or Contractor due to changes required by the approving authority or their inspectors after construction drawings have been approved.

GENERAL CONDITIONS

- > The attached "Terms and Conditions" shall apply to this Agreement.
- > This proposal is valid for 30 days from the above date.
- > Reimbursable expenses will be billed in accordance with the attached Rate Schedule.
- > Owner is responsible for all application and permit fees.

CONCLUSION

We appreciate this opportunity to propose our services. We are eager to pursue this project further and thank you for your consideration.

Sincerely,
MCADAMS



Randi Rivera AICP
Director, Planning + Entitlement

RR/kr

ACCEPTANCE

By: _____

Date: _____

Name: _____

Title: _____

ACCOUNTING INFORMATION

Billing Contact: _____

Billing Contact Email Address: _____

Billing Contact Phone Number: _____

Billing Address: _____

1. Specifications for contract by hourly charge, the following rates apply

ROLE	RATE
Chairman, President, Vice President	\$330-350 / hour
Department Head / Practice Lead	\$250-300 / hour
Planner	\$110-240 / hour
Project Manager	\$140-240 / hour
Technical Manager	\$140-240 / hour
Project Engineer	\$120-190 / hour
Licensed Professional	\$110-190 / hour
GIS Manager	\$190 / hour
GIS Technician	\$90-125 / hour
Designer	\$100-175 / hour
Intern	\$75-100 / hour
Administrative Assistant	\$80-110 / hour
Survey Technician	\$95-125 / hour
UAS LiDAR Technician	\$165-185 / hour
2 Man Survey Crew	\$145-165 / hour
UAS Crew	\$230-250 / hour
SUE Senior Project Manager	\$170 / hour
Vacuum Truck (Test Hole Priced Project-Specific)	\$3,100 / day
1 Man SUE Crew	\$95 / hour
2 Man SUE Crew	\$190 / hour
Construction Observer	\$140-160 / hour

Hourly services are recorded and rounded to the nearest 1/4 hour.

2. The following charges apply on all contracts, for copies of plans and specifications sent out of the Engineer's office (to Owner, City regulatory agencies, bidders, contractor, other consultants, etc.):

ITEM	FEE	ITEM	FEE
Oversize + Color Rep.	\$3.60/each	Oversize Mylar Sepia	\$24.00/each
Paper Reproductions	\$2.40/each	Mylar Sepia	\$18.00/each
Specifications	\$0.12/each	Paper Sepia	\$6.00/each

3. The following rates are charged in addition to the above fees:

ITEM	FEE
Fees Paid for Permits and Applications	Cost Plus 10%
Outside Photocopying, Travel, Overnight Delivery, Postage for Mass Mailings	Cost Plus 10%
Subcontractor Invoices	Cost Plus 12.5%

4. Fees are subject to adjustment at the beginning of each calendar year.
5. Projects are billed on a monthly basis and invoices are due upon receipt. Invoices which have been not been paid within 30 days are past due and subject to finance charges of 1.5% per month.

OWNER'S INITIALS _____ **DATE** _____

COLLECTION SCHEDULE

- > **Issuance** Client will be issued their invoice by McAdams within 30 days of the last day of the month in which the services were rendered.
- > **Net 30 Days** Invoices are due in full within 30 days after issuance. Exceptions to this policy must be discussed with and agreed upon by a McAdams representative **prior** to the due date of any issued invoice. Exceptions must be made in writing and acknowledged by both parties.
- > **Past 30 Days** Invoices that lapse 30 days without payment or notification are considered **past due**. McAdams will notify the client via email and confirm that invoices have been received, as well as advise that payment is due.
- > **Past 45 Days** Invoices that lapse 45 days without payment or notification are considered **overtly past due**. McAdams will notify the client via email and as well as make contact via phone.
- > **Past 60 Days** Invoices that lapse 60 days without payment or notification will have submittals for the project halted, and a formal letter issued to the client. This letter will:
 - Outline the services rendered & state the client's past due balance.
 - Notify a work hold for **all client projects** starting in 15-days (75 days from issuance).
 - State the procedures for payment to remove halts and ratify current account status.
- > **Past 75 Days** Invoices that lapse 75 days without payment or notification will result in the respective project AND all other projects placed on work hold on a case-by-case basis.
- > **Past 90 Days** Invoices that lapse 90 days from issuance without payment or notification will be pursued by McAdams on a case-by-case basis with the potential for a lien to be placed on the property.

CLIENT

Initials:

Date:

The proposal submitted by THE JOHN R. McADAMS COMPANY (“CONSULTANT”) is subject to the following terms and conditions (collectively referred to as the “Agreement”) and, by accepting the proposal or any part thereof, the CLIENT agrees and accepts the terms and conditions outlined below:

1. Payment

The CLIENT will pay CONSULTANT for services and expenses in accordance with periodic invoices to CLIENT and a final invoice upon completion of the services. Each invoice is due and payable in full upon presentation to CLIENT. Invoices are past due after 30 days. Past due amounts are subject to interest at a rate of one and one-half percent per month (18% per annum) on the outstanding balance from the date of the invoice.

In light of the obvious advantage of resolving questions and disputes regarding CONSULTANT’s services and invoices quickly, CLIENT will notify CONSULTANT, in writing, of any questions or dissatisfaction which it may have regarding the cost, quality or appropriateness of services provided related to an invoice within ten (10) days of the invoice date. If CLIENT fails to provide such notice to CONSULTANT, CLIENT agrees that it waives its right to dispute the accuracy and appropriateness of all or part of the invoice. In no way shall Client’s failure to dispute the accuracy or appropriateness of an invoice limit the Consultant’s obligations to meet the Standard of Care.

If the CLIENT fails to make payment to the CONSULTANT within 30 days after the transmittal of an invoice, the CONSULTANT may, after giving 7 days written notice to the CLIENT, suspend services under this Agreement until all amounts due hereunder are paid in full. If an invoice remains unpaid after 60 days from invoice date, the CONSULTANT may terminate the Agreement and/or initiate legal proceedings to collect the fees owed, plus other reasonable expenses of collection including attorney’s fees.

2. Notification of Breach or Default:

The CLIENT shall provide prompt written notice to the CONSULTANT if CLIENT becomes aware of any breach, error, omission or inconsistency arising out of CONSULTANT’s work or any other alleged breach of contract by the CONSULTANT. The failure of CLIENT to provide such written notice within ten (10) days from the time CLIENT became aware of or should have become aware of the fault, defect, error, omission, inconsistency or breach, shall constitute a waiver by CLIENT of any and all claims against the CONSULTANT for damages arising out of such fault, defect, error, omission, inconsistency or breach to the extent that such damages could have been avoided or mitigated by CLIENT’s having provided timely notice to CONSULTANT.

3. Representations of CLIENT:

CLIENT warrants and covenants that sufficient funds are available or will be available upon receipt of CONSULTANT’s invoice to make payment in full for the services rendered by CONSULTANT.

4. Ownership of Instruments of Service:

All reports, plans, specifications, field data and notes and other documents, including all documents on electronic media, prepared by the CONSULTANT as instrument of service, shall remain the property of the CONSULTANT. The CONSULTANT shall retain all common law, statutory and other rights, including the copyright thereto. In the event of termination of this Agreement and upon full payment of fees owed to CONSULTANT, CONSULTANT shall make available to CLIENT copies of all plans and specifications.

5. Change Orders:

CONSULTANT will treat as a change order any written or oral order (including directions, instructions, interpretations or determinations) from CLIENT which request changes in the Agreement or CONSULTANT's scope of work. CONSULTANT will give CLIENT written notice within ten (10) days of a Change Order of any resulting increase in CONSULTANT's fees. CLIENT acknowledges and agrees that CONSULTANT shall have no obligation to take any action or perform any services in regards to a change order until CLIENT has provided written authorization to proceed (including CLIENT's agreement to pay CONSULTANT for the fees and costs associated therewith), and that CONSULTANT shall have no responsibility or liability for any damages or delays incurred by CLIENT as a result of CONSULTANT's not taking any action or performing any services until such written authorization is received.

6. Site Operations:

CLIENT will arrange for right-of-entry to the property for the purpose of performing studies, tests and evaluations pursuant to the agreed services. CLIENT represents that it possesses or will possess the necessary permits and licenses required for all ongoing activities at the site. If CONSULTANT is advised or given data in writing that shows the presence of underground or overground obstructions, such as utilities, CONSULTANT will give special instructions to our field personnel. However, CONSULTANT is not responsible for any damage or losses due to undisclosed or unknown surface or subsurface conditions, owned by CLIENT or third parties. CONSULTANT will take reasonable precautions to minimize damage to the property caused by our operations. CONSULTANT's fee does not include any cost of restoration due to any damage which may result and CONSULTANT is not responsible for any such repairs unless CONSULTANT fails to take reasonable precautions. If CLIENT desires CONSULTANT to repair such damage, CONSULTANT will comply and add the cost to our fee. Field tests or boring locations described in CLIENT's reports or shown on sketches prepared by CONSULTANT are based on specific information furnished by others or estimates made in the field by CONSULTANT's personnel. Such dimensions, depths or elevations should be considered as approximations unless otherwise stated in CONSULTANT's proposal or report. In no way does this section limit CONSULTANT'S obligation to meet the Standard of Care.

7. Hazardous Substances:

The CLIENT agrees to advise the CONSULTANT upon execution of this Agreement of any hazardous substances or any condition existing in, on or near the Project Site presenting a potential danger to human health, the environment or equipment. By virtue of entering into this Agreement or of providing Services hereunder, the CONSULTANT does not assume control of, or responsibility for, the Project Site or the person in charge of the Project Site or undertake responsibility for reporting to any federal, state or local public agencies, any conditions at the project site that may present a potential danger to the public, health, safety or environment except where required of the CONSULTANT by law. In the event CONSULTANT encounters hazardous or toxic substances or contamination significantly beyond that originally represented by CLIENT, CONSULTANT may suspend or terminate the Agreement. CLIENT acknowledges that CONSULTANT has no responsibility as a generator, treater, storer, or disposer of hazardous or toxic substances found or identified at a site and CLIENT agrees to defend, indemnify, and hold harmless CONSULTANT, from any claim or liability, arising out of CONSULTANT's performance of work under this Agreement and made or brought against CONSULTANT for any actual or threatened environmental pollution or contamination except to the extent that CONSULTANT has negligently caused such pollution or contamination.

8. Assignment and Third Parties:

Except as otherwise noted within this section, nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than the CLIENT and CONSULTANT, and all duties and responsibilities

undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the CLIENT and the CONSULTANT and not for the benefit of any other party. Neither the CLIENT nor the CONSULTANT shall assign, sublet, or transfer any rights under or interests in this Agreement without the written consent of the other which shall not be unreasonably withheld; provided, however, that CLIENT may assign this Agreement without prior written consent of CONSULTANT to a single-purpose entity (SPE) formed by CLIENT for the purpose of undertaking the development of the project contemplated herein, with CLIENT remaining jointly responsible with the SPE for the payment of all sums due and owing to CONSULTANT under this Agreement (and any change order or additional work authorization issued in connection therewith), whether accruing before or after such assignment by CLIENT. However, nothing contained herein shall prevent or restrict the CONSULTANT from employing independent subconsultants as the CONSULTANT may deem appropriate to assist in the performance of services hereunder.

9. Project Site:

Should CLIENT not be owner of the project site, then CLIENT agrees to notify the OWNER(s) of the aforementioned possibility of unavoidable alteration and damage to the site. CLIENT further agrees to indemnify, defend and hold CONSULTANT harmless against any claims by the CLIENT or persons having possession of the site through the Owner which are related to such alteration or damage.

10. Survival:

All of CLIENT's obligations and liabilities, including but not limited to, its indemnification obligations and limitations, and CONSULTANT's rights and remedies with respect thereto, shall survive completion of the expiration or termination of this Agreement.

11. Unforeseen Occurrences:

If, during the performance of services hereunder, any unforeseen hazardous substance, material, element of constituent or other unforeseen conditions or occurrences are encountered which, affects or may affect the services, the risk involved in providing the service, or the recommended scope of services, CONSULTANT will promptly notify CLIENT thereof. Subsequent to that notification, CONSULTANT may: (a) if practicable, in CONSULTANT's sole judgment and with approval of CLIENT, complete the original scope of services in accordance with the procedures originally intended in the Proposal; (b) Agree with CLIENT to modify the scope of services and the estimate of charges to include study of the previously unforeseen conditions or occurrences, such revision to be in writing and signed by the parties and incorporated herein; or (c) Terminate the services effective on the date of notification pursuant to the terms of the Agreement.

12. Force Majeure:

Should completion of any portion of the Agreement be delayed for causes beyond the control of or without the fault or negligence of CONSULTANT, including force majeure, the reasonable time for performance shall be extended for a period at least equal to the delay and the parties shall mutually agree on the terms and conditions upon which Agreement may be continued. Force majeure includes but is not restricted to acts of God, acts or failures of governmental authorities, acts of CLIENT's contractors or agents, fire, floods, epidemics, riots, quarantine restrictions, strikes, civil insurrections, freight embargoes, and unusually severe weather.

13. Standard of Care:

CONSULTANT shall perform Agreement for CLIENT in a professional manner, using that degree of care and skill ordinarily exercised by and consistent with the standards of professionals providing the same services in the same or a similar

locality as the project. There are no other warranties, expressed or implied, including warranties of merchantability or fitness for a particular purpose that will or can arise out of the services provided by CONSULTANT or this Agreement. CONSULTANT represents and warrants that it is duly licensed and/or legally authorized to perform the services contemplated by this Agreement. CONSULTANT agrees that any services performed hereunder failing to satisfy the Standard of will be promptly corrected or reperfomed at no cost to CLIENT such that all services, once corrected or reperfomed, satisfy the Standard of Care. If CONSULTANT is unable to carry out any such reperformance or correction, Client shall have the right to hire another professional to carry out such reperformance or correction and CONSULTANT shall reimburse CLIENT for the consultants fees specifically for the reperformance or correction by others.

14. Waiver of Consequential Damages/Limitation of Liability:

CLIENT agrees that CONSULTANT's aggregate liability for any and all claims that may be asserted by CLIENT is limited to the extent of the CONSULTANT'S insurance coverage. Both CLIENT and CONSULTANT hereby waive any right to pursue claims for consequential damages against one another, including any claims for lost profits.

15. Safety:

CONSULTANT is not responsible for site safety or compliance with the Occupational Safety and Health Act of 1970 ("OSHA"). Job site safety remains the sole exclusive responsibility of CLIENT or CLIENT's contractors, except with respect to CONSULTANT'S own employees. Likewise, CONSULTANT shall have no right to direct or stop the work of CLIENT's contractors, agents or employees.

16. Arbitration:

Any claim or other dispute arising out of or related to this Agreement shall be subject to Arbitration. Such claims and disputes shall first be subject to non-binding mediation, and if mediation is unsuccessful, shall be subject to Arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. Any demand for Arbitration shall be filed in writing with the other party and with the American Arbitration Association.

17. Independent Contractor:

In carrying out its obligations, CONSULTANT shall be acting at all times as an independent contractor and not an employee, agent, partner or joint venturer of CLIENT. CONSULTANT's work does not include any supervision or direction of the work of other contractors, their employees or agents, and CONSULTANT's presence shall in no way create any liability on behalf of CONSULTANT for failure of other contractors, their employees or agents to properly or correctly perform their work.

18. Termination:

CLIENT may terminate the Agreement with or without cause and the CONSULTANT may terminate the Agreement with cause upon ten (10) days advance written notice, if the other party has not cured or taken reasonable steps to cure the breach giving rise to termination within the ten (10) day notice period. If CONSULTANT terminates for cause, CLIENT will pay CONSULTANT for all costs incurred, non-cancelable commitments, and fees earned to the date of termination and through demobilization, including any cancellation charges of vendors and subcontractors, as well as demobilization costs.

19. Severability:

If any provision of this Agreement, or application thereof to any person or circumstance, is found to be invalid then such provision shall be modified if possible, to fulfill the intent of the parties as reflected in the original provision, the

remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by the law.

20. No Waiver:

No waiver by either party of any default by the other party in the performance of any provision of this Agreement shall operate as or be construed as a waiver of any future default, whether like or difference in character.

21. Merger, Amendment:

This Agreement constitutes the entire Agreement between the CONSULTANT and the CLIENT and negotiations, written and oral understandings between the parties are merged herein. This Agreement can be supplemented and/or amended only by a written document executed by both the CONSULTANT and the CLIENT.

22. Choice of Law:

The validity, interpretation, and performance of this Agreement shall be governed by and construed in accordance with the law of the State of Texas, excluding only its conflicts of laws principles.

23. Indemnity:

To the fullest extent permitted by law, CLIENT shall indemnify and hold harmless CONSULTANT from all claims for bodily injury and property damage (other than to the Project itself and other property insured by CLIENT or CONSULTANT), including reasonable attorneys' fees, costs, and expenses, but only to the extent caused by the negligent or intentionally wrongful acts or omissions of CLIENT or anyone employed directly or indirectly by CLIENT.

To the fullest extent permitted by law, CONSULTANT shall indemnify and hold harmless CLIENT from all claims for bodily injury and property damage (other than to the Project itself and other property insured by CLIENT or CONSULTANT), including reasonable attorneys' fees, costs, and expenses, but only to the extent caused by the negligent or intentionally wrongful acts or omissions of CONSULTANT or anyone employed directly or indirectly by CONSULTANT.

24. Insurance:

Professional Liability Insurance with limits of no less than One Million Dollars (\$1,000,000), issued by an insurance carrier licensed to provide such coverage in the state where the Project is located for all negligent acts, errors, and omissions by CONSULTANT and its employees, that arise out of this Agreement.

Commercial General Liability covering bodily injury and property damage (including the property of the CLIENT and Indemnitees) with minimum limits of One Million Dollars (\$1,000,000) per occurrence, and Two Million Dollars (\$2,000,000) aggregate. This policy shall be primary to any policy or policies carried by or available to the CLIENT and/or any Indemnitee(s).

Workers' Compensation/Employer's Liability Insurance in full accordance with the statutory requirements of the state or states where the services are to be performed and shall include bodily injury, occupational illness or disease coverage.

Automobile Liability Insurance covering all operations of CONSULTANT pursuant to this Agreement involving the use of motor vehicles, including all owned, non-owned and hired vehicles with minimum limits of not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury, death and property damage liability.

Excess Liability Insurance. CONSULTANT shall maintain excess liability insurance with a limit of not less than Two Million Dollars (\$2,000,000). Such insurance shall be excess of the Commercial General Liability insurance, Business Auto Liability

insurance and Employers Liability insurance. This insurance will apply as primary insurance with respect to any other insurance or self-insurance programs maintained by CLIENT and shall be provided on a "following form basis". Continuing commercial excess coverage, if any, shall include liability coverage for damage to the insured's completed work equivalent to that provided under ISO form CG 00 01.

Upon execution of this Agreement and at every date of renewal of that policy, CONSULTANT shall cause a Certificate of Insurance to be issued. Provision of a valid Certificate of Insurance that meets the requirements of this Agreement is a condition precedent to the payment of any amounts due to CONSULTANT by the CLIENT.