

# CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number \_\_\_\_\_

Meeting Type: Regular

Meeting Date: 2/14/2013

Action Requested By:  
Engineering

Agenda Item Type  
Resolution

Subject Matter:

Agreement with G.W. Jones & Sons Consulting Engineers, Inc.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into an agreement with G.W. Jones & Sons Consulting Engineers, Inc. for Engineering Design Services for Research Park Stormwater Improvements, Project No. 65-13-DR01

**Note: If amendment, please state title and number of the original**

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

Engineering services contract to provide construction plans and specifications to construct approximately 2,100 linear feet of 4' x 10' concrete box culvert for the Research Park Stormwater Improvements. Design services in a lump sum total contract amount of \$121,441.00. Account No. 24-6500-0816-8210

Associated Cost:

Budgeted Item: Select...

MAYOR RECOMMENDS OR CONCURS: Select...

Department Head: Kathy Nash

Date: 2/8/13

revised 3/12/2012

10  
2-7-13

# ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: **Engineering**

Council Meeting Date: **2/14/2013**

Department Contact: **Lynn Majors**

Phone # **256-427-5201**

Contract or Agreement: **Engineering Design Services**

Document Name: **Research Park Stormwater Imp Project No. 65-13-DR01**

City Obligation Amount: **\$121,441.00**

Total Project Budget: **\$121,441.00**

Uncommitted Account Balance: **0**

Account Number: **24-6500-0816-8210**

## Procurement Agreements

<b><u>Not Applicable</u></b>	<b><u>Not Applicable</u></b>
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## Grant-Funded Agreements

<b><u>Not Applicable</u></b>	<b>Grant Name:</b>
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Department	Signature	Date
1) Originating	<i>Kathy Martin</i>	2/8/13
2) Legal	<i>Mary Clates</i>	2/8/13
3) Finance	<i>[Signature]</i>	2/8/13
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		



**AGREEMENT BETWEEN**  
**CITY OF HUNTSVILLE, ALABAMA**  
**AND**  
**G.W. JONES AND SONS CONSULTING ENGINEERS, INC.**  
**FOR**  
**ENGINEERING DESIGN SERVICES**  
**FOR**  
**RESEARCH PARK STORMWATER IMPROVEMENTS**

**Project I.D Number 65-13-DR01**  
**February 14, 2013**

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**President of the City Council of the City of  
Huntsville, AL**  
**Date: February 14, 2013**

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**AGREEMENT BETWEEN**  
**CITY OF HUNTSVILLE, ALABAMA**  
**AND**  
**G. W. JONES AND SONS CONSULTING ENGINEERS, INC.**  
**FOR**  
**ENGINEERING DESIGN SERVICES**  
**FOR**  
**RESEARCH PARK STORMWATER IMPROVEMENTS**

Project I.D Number 65-13-DR01

THIS AGREEMENT made as of the 14th day of February in the year 2013, by and between the CITY OF HUNTSVILLE, ALABAMA (hereinafter called OWNER), and G. W. JONES AND SONS CONSULTING ENGINEERS, INC. (hereinafter called ENGINEER).

WITNESSETH, for the considerations hereinafter set forth, the parties hereto agree as follows:

**ARTICLE 1 - ENGAGEMENT OF THE ENGINEER**

The OWNER hereby engages the ENGINEER, and the ENGINEER hereby accepts the engagement to provide general engineering and consultation as a representative of the OWNER to include the following:

- 1.1 Professional engineering services for design of Research Park Stormwater Improvements, as further described in ARTICLE 2, and hereinafter called PROJECT.
- 1.2 By executing this Agreement, the ENGINEER represents to the OWNER that the ENGINEER is a professional qualified to act as the ENGINEER for the PROJECT and is licensed and certified to practice engineering by all public entities having jurisdiction over the ENGINEER and the PROJECT. The ENGINEER further represents to the OWNER that the ENGINEER will maintain all necessary licenses, certifications, permits or other authorizations necessary to act as ENGINEER for the PROJECT until the ENGINEER's remaining duties hereunder have been satisfied. The ENGINEER shall assign only qualified personnel to perform any service concerning the PROJECT. All services rendered by the ENGINEER for the PROJECT shall be performed by or under the immediate supervision of experienced and qualified professionals licensed, certified, and registered as appropriate in the State of Alabama possessing the expertise in the discipline of the service being rendered. The ENGINEER assumes full responsibility to the OWNER for the negligent acts, errors and omissions of its consultants or others employed or retained by the ENGINEER in connection with the PROJECT.
- 1.3 Execution of this Agreement by the ENGINEER constitutes a representation that the ENGINEER has become familiar with the PROJECT site and the local conditions under which the PROJECT is to be implemented. The ENGINEER agrees to provide all necessary

engineering services required to professionally accomplish the ENGINEER's defined scope of services.

## **ARTICLE 2 – DESIGN SERVICES OF THE ENGINEER**

- 2.1** ENGINEER shall provide for OWNER professional engineering services for design of Research Park Stormwater Improvements.
- 2.2** These services shall include consultation and advice; customary civil, structural, mechanical and electrical engineering design services; and Architectural services incidental thereto, as outlined herein and further described in the SCOPE OF SERVICES, ATTACHMENT 1.
- 2.3** Upon the OWNERS authorization, the ENGINEER shall prepare construction documents consisting of drawings and specifications setting forth in detail the requirements for construction of the PROJECT. The ENGINEER warrants that such construction documents are accurate, coordinated and adequate for the construction and in conformity and comply with applicable laws, codes and regulations. Products specified for use shall be readily available unless written authorization to the contrary is given by the OWNER. Products or materials specified by the ENGINEER that are available from only one source shall be justified in writing by the ENGINEER in order to meet applicable federal, state, or local procurement or bid requirements.
- 2.4** The ENGINEER shall prepare appropriate bid alternates as necessary in order to assure that the PROJECT can be awarded within the PROJECT budget limitations.
- 2.5** The ENGINEER shall serve as the OWNER's professional representative in those portions of the PROJECT to which this Agreement applies and shall consult with and advise the OWNER during the performance of these services.
- 2.6** The ENGINEER shall incorporate into its design, and into its final work products, the requirements contained within the OWNER's engineering standards, standard specifications, and design manuals referenced in ATTACHMENT 3. The requirements of the State of Alabama Department of Transportation design standards shall be reviewed for applicability and incorporated into portions of the work where joint participation between the OWNER and the State is applicable. When conflicts are noted between the OWNERS requirements and standards of others, the OWNERS standards shall take precedent. Discrepancies shall be brought to the attention of the OWNER. Deviations from OWNER's requirements shall be identified to the OWNER by the ENGINEER in writing prior to incorporating the changes.
- 2.7** The ENGINEER shall obtain all Planning Commission approvals with regard to location, character and extent, as required.
- 2.8** The ENGINEER shall obtain a Utility Project Notification Form (Attachment 10) from all affected utilities on the project by the 60% design review stage. Acceptance shall be provided as a signed original by all affected parties at the 90% design review stage.
- 2.9** The ENGINEER shall promptly correct, or have corrected, any errors, omissions, deficiencies or conflicts in the ENGINEER's work product or that of his sub-contractors/sub-consultants, without additional compensation for time, reproduction or distribution.
- 2.10** During the process of design and preparation of the construction documents, the ENGINEER shall review with the OWNER the construction documents, the estimate of probable construction cost, schedule, and other design services issues. Such review shall be, at a

minimum, as outlined in ATTACHMENT 4 as 0%, 30%, 60%, and 90% completion stage. Following such reviews, the ENGINEER shall make any appropriate revisions thereto to assure compliance with the OWNER's requirements.

- 2.11** Field surveying work is required and shall be performed in accordance with "Standards of Practice for Surveying in the State of Alabama" as required by the Alabama Board of Registration for Engineering and Land Surveyors. Surveying shall include P.K. Nails or other permanent stationing markings as well as staking of right-of-way, easements and parcels of land acquired by the City of Huntsville. Property corners shall be set at the new right-of-way. Easements shall be staked as requested by the City of Huntsville. The above field work shall be performed as a minimum as needed at the time of right-of-way acquisition and one additional time near the 100% submittal stage as determined by the OWNER. The cost for these services is included in the fees for Basic Services.

Survey data shall be based on a US Public Land Survey System corner or quarter corner. Said corner or quarter corner shall be field verified by the surveyor and a state plane coordinate provided in deliverables submitted to the City of Huntsville. All survey work shall be based on the following datum's:

Coordinate System:	US State Plane
Zone:	Alabama East 0101
Vertical Datum:	The North American Vertical Datum of 1988 (NAVD 88)
Horizontal Datum:	The North American Datum of 1983 (NAD 83)
Geoid Model:	Geoid03
Units:	US Survey Feet

- 2.12** The ENGINEER shall comply with the City of Huntsville Tree Ordinance and carry the requirements referenced therein with deliverables (drawings, specifications, etc.) in accordance with Section 27-57 of the City of Huntsville Code of Ordinances (Ord. No. 04-45, §13, 2-12-2004).
- 2.13** The ENGINEER shall prepare the prebid agenda after obtaining comments from stakeholders such as affected utilities, City of Huntsville Construction Project Engineer and Inspector(s), and other City of Huntsville departments as applicable. The ENGINEER shall moderate the prebid meeting, prepare meeting minutes, make clarifications, prepare addendums, and distribute to bidders.
- 2.14** A valid City of Huntsville license shall be maintained throughout the term of this contract. Additionally, the engineering firm shall be required to obtain and pay for all other federal, state or local permits, licenses, and fees which may be necessary or required in order to perform the work detailed herein
- 2.15** By executing this Agreement, the ENGINEER represents to the OWNER that the ENGINEER has read the attached draft Agreement (attachment #16), by and between City of Huntsville and IMI Huntsville, L.L.C. No changes will be made in those commitments unless made by written contract modification. The ENGINEER agrees the scope of work he is proposing in this agreement between ENGINEER and OWNER includes all commitments for design made in the aforementioned agreement unless specific exceptions have been identified in his proposal.

## **CONSTRUCTION ADMINISTRATION SERVICES**

**OMITTED**

## **ARTICLE 4 - ADDITIONAL SERVICES**

The following services of the ENGINEER are not included in Article 2. Nevertheless, the ENGINEER shall provide such services if authorized in writing by the OWNER, and they shall be paid for by the OWNER as provided in Article 7, unless otherwise noted.

- 4.1 Making revision in drawings, specifications or other documents when such revisions are inconsistent with written direction by the OWNER previously given, are required by the enactment of revision of codes, laws or regulations subsequent to the preparation of such documents and not reasonably anticipated, or are due to other causes not within the control or responsibility of the ENGINEER, either in whole or in part.
- 4.2 Preparing drawings, specifications and supporting data in connection with change orders, provided that such change orders are issued by the OWNER due to causes not within the control or responsibility of the ENGINEER, either in whole or in part.
- 4.3 Providing additional services for repair or replacement of work damaged by acts of God or other cause during construction provided that such services are required by causes not the responsibility of the ENGINEER, either in whole or in part.
- 4.4 Providing services not otherwise required herein which are made necessary solely by the default of the ENGINEER or major defects or deficiencies in the work of the ENGINEER. These services shall be provided with no increase in the contract amount and will not be compensable on an hourly basis.
- 4.5 Providing expert witness services and other services arising out of claims.
- 4.6 Provide services to stake site during construction.

## **ARTICLE 5 - RESPONSIBILITIES OF OWNER**

The OWNER, without cost to the ENGINEER, will perform the following in a timely manner so as not to delay the services of the ENGINEER:

- 5.1 Assist ENGINEER by placing at ENGINEER's disposal all available information pertinent to the PROJECT including previous reports and any other data relative to design or construction of the PROJECT.
- 5.2 Provide all criteria and full information as to OWNER's requirements for the PROJECT, including design objectives and constraints, space, capacity and performance requirements, flexibility and expendability, and any budgetary limitations. The OWNER shall also furnish copies of all design and construction standards, which OWNER will require to be included in the drawings and specifications.
- 5.3 Assist the ENGINEER as necessary in acquiring access to and making all provisions for the ENGINEER to enter upon public and private lands as required for the ENGINEER to perform the work under this agreement.
- 5.4 Designate in writing a person to act as the OWNER's representative with respect to the work to be performed under this Agreement, such person to have complete authority to transmit instructions, receive information, interpret and define the OWNER's policies and decision with

respect to materials, equipment elements and systems pertinent to the work covered by this Agreement. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER, obtain advice of an attorney, insurance counselor and other consultants as OWNER determines appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of ENGINEER.

- 5.5** When requested by the ENGINEER, the OWNER will intercede on the ENGINEER's behalf when data from, or reviewed by third parties is not on schedule through no fault of the ENGINEER
- 5.6** The OWNER's review of any documents prepared by the ENGINEER or its consultants shall be solely for the purpose of determining whether such documents are generally consistent with the OWNER's intent. No review of such documents shall relieve the ENGINEER of its responsibility for the accuracy, adequacy, fitness, suitability and coordination of its work product.

## **ARTICLE 6 - PERIOD OF SERVICES**

- 6.1** The ENGINEER shall commence services pursuant to this agreement as of February 15, 2013. The final completion date for the completion of design services as outlined in Article 2 shall be February 25, 2013.

The ENGINEER shall perform these services with reasonable diligence and expediency consistent with sound professional practices. The ENGINEER shall include in his schedule an allowance for time required for OWNER's review of submissions and for approvals of authorities having jurisdiction over the PROJECT. When approved by the OWNER, the schedule shall not be exceeded by the ENGINEER, except for cause.

If the ENGINEER becomes aware of delays due to time allowances for review and approval being exceeded, delay by the OWNER, the OWNER's consultants, or any other reason beyond the ENGINEER's control, which may result in the schedule of performance of the ENGINEER's services not being met, the ENGINEER shall promptly notify the OWNER. If the OWNER becomes aware of any delays or other causes that will affect the ENGINEER's schedule, the OWNER shall promptly notify the ENGINEER. In either event, the ENGINEER's schedule for performance of its services shall be equitably adjusted.

## **ARTICLE 7 - PAYMENT TO THE ENGINEER**

### **7.1 BASIC SERVICES**

The OWNER shall compensate the ENGINEER for services rendered pursuant to this Agreement, excepting those services described as Additional Services in Article 4 of this Agreement, by payment of the lump sum of ONE HUNDRED TWENTY-ONE THOUSAND FOUR HUNDRED FORTY-ONE AND NO/100 DOLLARS (\$121,441.00) for design services as described in Article 2. Additional services of the ENGINEER as described in Article 4, if any, shall be compensated on an hourly basis in accordance with Attachment 5.

### **7.2 REIMBURSABLE EXPENSES**

The scope of work for sub-contracted services is defined in the ENGINEER's scope of services, Attachment 1. The scope includes provisions for administration expenses for subcontracted services and reimbursable direct expenses including but not limited to

laboratory tests and analyses; computer services; word processing services; permit fees, bonds, telephone, printing, binding and reproduction charges; and other similar costs. Indirect costs will have administrative fee reimbursements limited to no more than 5%. Direct costs are also limited to no more than 5% reimbursement.

Reimbursable expenses shall be limited during the term of this agreement as stated in Art. 7.1 Basic Services.

#### **7.4 EFFECTIVE DATE**

This contract shall have no force or effect unless and until it is executed by the OWNER and the ENGINEER and a properly executed copy is mailed to the ENGINEER with a notice to proceed (NTP). The NTP will be issued pursuant to final acceptance of the attached draft Agreement (Attachment #16), by and between the OWNER and IMI HUNTSVILLE, L.L.C. and the OWNER has received payment under the terms of said agreement. If a NTP is not issued within sixty (60) days commencing from the last date of execution of this CONTRACT by the OWNER and the ENGINEER, then this CONTRACT shall be NULL AND VOID, the OWNER will not be obligated to any payment to the ENGINEER and the ENGINEER will not be obligated to perform any work under said CONTRACT.

#### **PAYMENT SUMMARY**

Engineering Design Services – lump sum	\$121,441.00
<b>TOTAL CONTRACT AMOUNT:</b>	<b><u>\$121,441.00</u></b>

### **ARTICLE 8 - GENERAL PAYMENT PROCEDURE**

#### **8.1 INVOICES**

**8.1.1** The ENGINEER shall submit monthly invoices to The Administrative Officer, Engineering Division, for the basic services described under Articles 2 and 4 for the design of the PROJECT. Invoices must include the City of Huntsville project name and number, dates of services, contract amount, previous billings and current billing.

Along with each invoice, the ENGINEER must submit a consultant progress report in the format shown in Attachment 6 hereto. No payment will be made without the consultant progress report completed and attached. Monthly progress reports shall be submitted monthly even if no request for payment is made. If services under Article 4 are included in the invoice for additional services not included under the lump sum provisions, or services billed as time and material, the classification and hours of such persons rendering the services shall be attached to the invoice.

**8.1.2** The signature of the ENGINEER on the invoice shall constitute the ENGINEER's representation to the OWNER that the services indicated in the invoice have progressed to the level indicated, have been properly and timely performed as required herein, that the reimbursable expenses included in the invoice have been reasonably incurred, that all obligations of the ENGINEER covered by prior invoices have been paid in full, and that, to the best of the ENGINEER's knowledge, information and informed belief, the amount requested is currently due and owing, there being no reason known to the ENGINEER the payment of any portion thereof should be withheld. Submission of the ENGINEER's invoice for final payment and reimbursement shall further constitute the ENGINEER's representation to the

OWNER that, upon receipt from the OWNER of the amount invoiced, all obligations of the ENGINEER to others, including its consultants, incurred in connection with the PROJECT, have been paid in full. ENGINEER must designate on Attachment 6 – Progress Report in the appropriate space provided that such action has been completed.

## **8.2 TIME FOR PAYMENT**

The OWNER shall make payment for services in Articles 2 and 4 within 60 days of receipt of valid invoice.

## **8.3 OWNER'S RIGHT TO WITHHOLD PAYMENT**

In the event the OWNER becomes credibly informed that any representations of the ENGINEER, provided pursuant to Article 8.1.2, are wholly or partially inaccurate, the OWNER may withhold payment of sums then or in the future otherwise due to the ENGINEER until the inaccuracy, and the cause thereof, is corrected to the OWNER's reasonable satisfaction. Additionally, failure by the ENGINEER to supply substantiating records shall be reason to exclude related costs from the amounts which might otherwise be payable by the OWNER to the ENGINEER.

## **8.4 REIMBURSABLE EXPENSES**

**8.4.1** In addition to the requirements set forth in 8.1 above, invoices for reimbursable expenses shall include such documentation as the OWNER may require. Reasonable expenses are limited to the following expenses:

- (a) Transportation outside the immediate Huntsville area (50 mile radius) approved in advance by the OWNER in writing and incurred in connection with the PROJECT; (Per Department of Treasury, Internal Revenue Service Publication 1542, Per Diem Rates, for travel within the continental United States). Refer to website: [www.irs.gov/pub/irs-pdf/p1542.pdf](http://www.irs.gov/pub/irs-pdf/p1542.pdf) for more information.
- (b) Charges for long-distance communications;
- (c) Fees paid for securing approval of authorities having jurisdiction over the PROJECT,
- (d) Actual costs of reproduction for items in excess of those included in the required services;
- (e) Postage and handling charges incurred for drawings, specifications and other documents.

**8.4.2** The ENGINEER shall set forth with particularity on its invoice the nature and cost of the expense item being billed, and attach to its invoice the written authorization, if any, required for such item; and shall bill expenses at actual cost or prevailing rate and without the addition of administrative charge, any multiple or surcharge.

## **8.5 W-9 TAXPAYER FORM**

All ENGINEERING FIRMS are required to submit a Federal Tax Form W-9 to City of Huntsville at the time a contract is awarded. No payments of invoices can be made until this W-9 Tax Form has been properly submitted. A copy of the W-9 Tax Form can be requested from the OWNER or at the following website: [www.irs.ustreas.gov/pub/irs-pdf/fw9.pdf](http://www.irs.ustreas.gov/pub/irs-pdf/fw9.pdf).

## **ARTICLE 9 - GENERAL CONSIDERATIONS**

### **9.1 GENERAL**

OWNER and ENGINEER agree that the following sections and provisions shall apply to the work to be performed under this Agreement and that such provisions shall supersede any conflicting provisions of this Agreement.

### **9.2 SUB-CONTRACTED SPECIALIZED SERVICES**

The ENGINEER may sub-contract specialized services required of the PROJECT to competent and experienced sub-consultants approved by the OWNER in writing. As a prime professional, the ENGINEER shall act as OWNER's representative for contracting, directing, and managing the services of sub-consultants. The OWNER shall have the right to reject any consultant provided that the OWNER raises a timely objection. At the time of the execution of this Agreement, the parties anticipate that the consultants listed in Attachment "7" hereto will be retained by the ENGINEER to provide services with respect to the PROJECT. Expenses payable to the ENGINEER for administration of subcontracted services are limited to no more than 5% of the cost of the subcontracted services.

### **9.3 PEER REVIEW**

The OWNER reserves the right to conduct, at the OWNER's expense, peer review of designs and drawings prepared by the ENGINEER and/or sub-consultant(s) for the PROJECT. The ENGINEER and sub-consultant(s) agree that knowledge and consent to review of their work by other engineers of the OWNER's choosing is hereby given in accordance with the ADMINISTRATIVE CODE (RULES AND REGULATIONS) of the Alabama State Board of Licensure for Professional Engineers and Land Surveyors, Chapter 330-X-14-.06(a) (13) effective January 2008 and as may be amended now or in the future pertaining to the Code of Ethics for review of the work of another engineer.

### **9.4 CLARIFICATION OF WORK**

If reviewing agencies raise questions regarding the work of ENGINEER, OWNER will participate in such meetings as deemed necessary to explain and clarify this work.

### **9.5 CANCELLATION OF WORK**

This Agreement may be canceled by either party in the event of default or violation of any of the provisions of this Agreement by the other party, by written notice delivered to the address of record by registered mail giving ten (10) days advance notice of the intention to cancel. In the event of cancellation of this Agreement, ENGINEER shall be paid for all work performed to date of cancellation, less any loss, damage, or liability incurred by reason of default of ENGINEER and all records, data, parameters, design calculations and other information collected or obtained in the performance of this Agreement shall be delivered to OWNER.

### **9.6 CHANGES**

**9.6.1** The OWNER may, at any time by written order, make changes within the general scope of the Agreement in the services to be provided. If such changes cause an increase or decrease in ENGINEER's cost of, or time required for performance of any services, whether or not changed by any order, an equitable adjustment shall be made and the Agreement shall be modified in writing accordingly. Upon notification of change, ENGINEER must assert any claim of ENGINEER for adjustment in writing within 30 days from the date of receipt unless OWNER grants a further period of time.

**9.6.2** If findings in any phase of this PROJECT significantly alter the scope of work for subsequent phases, or if regulations are changed resulting in a scope of work change for any phase, engineering fees set forth in Article 7 may be renegotiated by the OWNER and ENGINEER.

## **9.7 ENGINEER'S RECORDS**

Documentation accurately reflecting services performed and the time expended by the ENGINEER and his personnel and records of reimbursable expenses shall be prepared concurrently with the performance of the services and shall be maintained by the ENGINEER. The ENGINEER shall maintain record copies of all written communications, and any memoranda of verbal communications related to the PROJECT. All such records and documentation shall be maintained for a minimum of five (5) years after the PROJECT date of final completion or for any longer period of time as may be required by law or good practice. If the ENGINEER receives notification of a dispute or of pending or commencement of litigation during this five-year period, the ENGINEER shall continue to maintain all PROJECT records until final resolution of the dispute or litigation. The ENGINEER shall make such records and documentation available to the OWNER upon notice and shall allow the authorized representative(s) of the OWNER to inspect, examine, review and copy the ENGINEER's records at the OWNER's reasonable expense.

## **9.8 USE AND OWNERSHIP OF DOCUMENTS**

All rights of ownership, copyrights, construction documents, including all drawings, specifications and other documents, electronic media, computer source code, or things prepared by or on behalf of the ENGINEER for the PROJECT are hereby transferred to the OWNER and shall be the sole property of the OWNER and are free of any retention rights of the ENGINEER. The ENGINEER hereby grants to the OWNER an unconditional right to use or to refer to, for any purpose whatsoever, the construction documents and any other documents or electronic media, computer source code prepared by or on behalf of the ENGINEER for the PROJECT, free of any copyright claims, trade secrets or other proprietary rights with respect to such documents. The ENGINEER shall be permitted to retain copies thereof for its records. The ENGINEER's documents and other work products are not intended or represented to be suitable for re-use by OWNER or others on extensions of the PROJECT or on any other PROJECT. Any re-use without specific written verification or adaptation by ENGINEER will be at OWNER's sole risk and without liability or legal exposure to ENGINEER, and OWNER shall indemnify and hold harmless ENGINEER from all claims, damages, losses and expenses including attorneys' fees arising out of, or resulting from, such reuse by the OWNER; provided however, that this agreement to indemnify and save harmless shall not apply to any reuse of documents retained by, or through, the ENGINEER.

## **9.9 ESTIMATE OF CONSTRUCTION COST**

Since ENGINEER has no control over the construction cost of labor, materials, or equipment, or over the construction contractor(s) methods of determining prices, or over competitive bidding or market conditions, his opinion of probable PROJECT cost or construction cost provided for herein are to be made on the basis of his experience and qualifications and represent his best judgment as a design professional familiar with the construction industry; but, ENGINEER cannot and does not guarantee that proposals, bids or construction costs will not vary from opinions of probable cost prepared by him. If OWNER wishes greater assurance as to the construction cost, he will employ an independent cost estimator.

## **9.10 TERMINATION FOR CAUSE**

This Agreement may be terminated by either party upon seven (7) days written notice to the other should such other party fail substantially to perform in accordance with its material terms through no fault of the party initiating the termination.

## **9.11 TERMINATION BY THE OWNER WITHOUT CAUSE**

The OWNER may terminate this Agreement without cause upon seven (7) days' written notice to the ENGINEER. In the event of such a termination without cause, the ENGINEER shall be compensated for all services performed prior to termination, together with Reimbursable Expenses incurred. In such event, the ENGINEER shall promptly submit to the OWNER its invoice for final payment and reimbursement which invoice shall comply with the provisions of Paragraph 8.1.

# **ARTICLE 10 - INDEMNITY AND INSURANCE**

## **10.1 INSURANCE**

The ENGINEER shall carry insurance of the following kinds and amounts in addition to any other forms of insurance or bonds required under the terms of the contract specifications. The ENGINEER shall procure and maintain for the duration of the job until final acceptance by the OWNER, or as later indicated, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the ENGINEER, his agents, representatives, employees or subcontractor.

## **10.2 MINIMUM SCOPE OF INSURANCE:**

### **A. General Liability:**

Insurance shall be written on an occurrence basis. Claims-made coverage will be accepted only on an exception basis after the OWNER's approval. The same insurance company should write General Liability Coverage and OWNERs ENGINEERs Protective Insurance.

### **B. Commercial General Liability**

Products and Completed Operations  
Contractual  
Personal Injury  
Explosion, Collapse and Underground  
Broad Form Property Damage

### **C. Professional Liability:**

Insurance may be written on a "claims-made" basis, providing coverage for negligent acts, errors or omissions in the performance of professional services. Coverage shall be maintained for a discovery and reporting period of no less than five (5) years after completion of the professional services and Certificates of Insurance shall be submitted to the OWNER on a yearly basis during this time frame. Coverage shall be no less comprehensive than that which is carried by at least 25% of the registered engineers or engineering firms contracting in the State of Alabama. Such coverage shall be carried on a continuous basis including prior acts coverage to cover the subject PROJECT. The professional liability insurance shall contain contractual liability coverage.

**D. Automobile Liability:**

Business Automobile Liability providing coverage for all owned, hired and non-owned autos. Coverage for loading and unloading shall be provided under either automobile liability or general liability policy forms.

**E. Workers' Compensation Insurance:**

Statutory protection against bodily injury, sickness or disease or death sustained by employee in the scope of employment. Protection shall be provided by a commercial insurance company or a recognized self-insurance fund authorized before the State of Alabama Industrial Board of Relations. "Waivers of Subrogation" in favor of the OWNER shall be endorsed to Workers' Compensation Insurance.

**F. Employers Liability Insurance:**

Covering common law claims of injured employees made in lieu of or in addition to a worker's compensation claim.

**10.3 MINIMUM LIMITS OF INSURANCE:**

**A. General Liability:**

Commercial General Liability on an "occurrence form" for bodily injury and property damage:

\$ 2,000,000 General Aggregate Limit  
\$ 2,000,000 Products - Completed Operations Aggregate  
\$ 1,000,000 Personal & Advertising Injury  
\$ 1,000,000 Each Occurrence

**B. Professional Liability:**

Insurance may be made on a "claims-made" basis:

\$ 500,000 Per Claim - Land Surveyors  
\$ 1,000,000 Per Claim - Other Professionals

**C. Automobile Liability:**

\$ 1,000,000 Combined Single Limit per accident for bodily injury and property damage.

**D. Workers' Compensation:**

As required by the State of Alabama Statute

**E. Employers Liability:**

\$ 1,000,000 Bodily Injury by Accident or Disease  
\$ 1,000,000 Policy Limit by Disease

#### **10.4 OTHER INSURANCE PROVISIONS:**

The OWNER is hereby authorized to adjust the requirements set forth in this document in the event it is determined that such adjustment is in the OWNER's best interest. If the insurance requirements are not adjusted by the OWNER prior to the OWNER's release of specifications with regard to the PROJECT in question, then the minimum limits shall apply. The City of Huntsville/OWNER shall be named on the policies of general liability and automobile insurance and on the certificate of insurance as an Additional Insured. Additional Insured status on the Commercial General Liability policy shall be through ISO Additional Endorsement CG 20 10 11 85 or equivalent and coverage shall be afforded on a primary basis.

The policies are to contain, or be endorsed to contain, the following provisions:

##### **A. All Coverage:**

The ENGINEER is responsible to pay all deductibles. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, non-renewal or materially changed by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the OWNER. Cancellation of coverage for non-payment of premium will require ten (10) days written notice to the OWNER.

#### **10.5 ACCEPTABILITY OF INSURERS:**

Insurance is to be placed with insurers authorized by the State of Alabama with an A. M. Best rating of A-V or better.

#### **10.6 VERIFICATION OF COVERAGE:**

The OWNER shall be indicated as a Certificate Holder and the ENGINEER shall furnish the OWNER with Certificates of Insurance reflecting the coverage required by this document. The A. M. Best rating and deductibles, if applicable, shall be indicated on the Certificate of Insurance for each insurance policy. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf and must be an original signature. Certificates signed using digital signatures will not be accepted. All certificates are to be received and approved by the OWNER before work commences. The OWNER reserves the right to require complete, certified copies of all required insurance policies at any time.

#### **10.7 CONSULTANTS AND/OR SUBCONTRACTORS WORKING FOR THE ENGINEER:**

The ENGINEER shall furnish separate certificates and/or endorsements for each subcontractor and/or consultant showing insurance of the same type or types and to the extent of the coverage set forth in this Article 10.

#### **10.8 HOLD HARMLESS AGREEMENT:**

##### **A. Other Than Professional Liability Exposures:**

The ENGINEER, to the fullest extent permitted by law, shall indemnify and hold harmless the OWNER, its elected and appointed officials, employees, agents, and representatives against all claims, damages, losses and expenses, including, but not limited to, attorney's fees, arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense (1) is attributable to

personal injury, including bodily injury sickness, disease or death, or to injury to or destruction of tangible property, including loss of use resulting there from, and (2) is caused by any negligent act or omission of the ENGINEER or any of their consultants, or anyone directly or indirectly employed by them or anyone for whose acts they are legally liable. Such obligation should not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity, which would otherwise exist as to any party or person, described in this paragraph.

**B. Professional Liability:**

The ENGINEER agrees, to the fullest extent permitted by law, to defend, protect, indemnify and hold harmless the OWNER, its elected and appointed officials, officers, directors, employees, agents, and representatives from and against any and all liability, claims, demands, damages, loss, costs, fees, and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants) actually or allegedly arising out of, or resulting from, the professional services of the ENGINEER or the ENGINEER's consultants, subcontractors, or suppliers, including, without limitation, any breach of contract or any negligent acts, errors, or omissions in the performance of the professional services provided pursuant to or as a result of this Agreement. Neither, the OWNER nor the ENGINEER shall be obligated to indemnify the other party in any manner whatsoever for the other parties own negligence.

To the fullest extent permitted by law, the ENGINEER shall defend, protect, indemnify, and hold harmless the OWNER, its elected and appointed officials, officers, directors, employees, agents, and representatives from and against any and all liability, claims, demands, damages, loss, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants) for infringement of patent rights, copyrights, or other intellectual property rights, except with respect to designs, processes or products of a particular manufacturer expressly required by the OWNER in writing. If the ENGINEER has reason to believe the use of a required design, process or product is an infringement of a patent, the ENGINEER shall be responsible for such loss unless such information is promptly given to the OWNER.

## **ARTICLE 11- MISCELLANEOUS PROVISIONS**

### **11.1 GOVERNING LAW**

This Agreement shall be governed by the law of the State of Alabama.

### **11.2 INTENT AND INTERPRETATION**

**11.2.1** The intent of this contract is to require complete, correct and timely execution of the work. Any work that may be required, implied or inferred by the contract documents, or any one or more of them, as necessary to produce the intended result shall be provided by the ENGINEER.

**11.2.2** This contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one contract document shall be considered as required by the contract.

**11.2.3** When a word, term or phrase is used in this contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally

accepted meaning in the engineering industry; and third, if there is no generally accepted meaning in the engineering industry, according to its common and customary usage.

**11.2.4** The words "include", "includes", or "including", as used in this contract, shall be deemed to be followed by the phrase, "without limitation".

**11.2.5** The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this contract.

**11.2.6** Words or terms used as nouns in this contract shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

### **11.3 TIME IS OF THE ESSENCE**

Time limitations contained herein, or provided for hereby, are of the essence of this Agreement. The ENGINEER understands and acknowledges that time is of the essence in completion of the PROJECT and that the OWNER will incur damages if the PROJECT is not completed on time.

### **11.4 SUCCESSORS AND ASSIGNS**

The ENGINEER shall not assign its rights hereunder, excepting its right to payment, nor shall it delegate any of its duties hereunder without the written consent of the OWNER. Subject to the provisions of the immediately preceding sentence, the OWNER and the ENGINEER, respectively, bind themselves, their successors, assigns and legal representatives to the other party to this Agreement and to the successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body that may be party hereof, nor shall it be construed as giving any rights or benefits hereunder to anyone other than OWNER and ENGINEER.

### **11.5 NO THIRD-PARTY BENEFICIARIES**

This Agreement shall inure solely to the benefit of the parties hereto and their successors and assigns. Nothing contained herein is intended to or shall create a contractual relationship with, or any rights in favor of, or any cause of action in favor or, any third party, against the OWNER or the ENGINEER.

### **11.6 INTELLECTUAL PROPERTY/ CONFIDENTIALITY**

All information, documents, and electronic media, computer source code furnished by the OWNER to the ENGINEER belong to the OWNER, are considered proprietary and confidential, unless otherwise indicated by the OWNER, and are furnished solely for use on the OWNER's PROJECT. Such information, documents, and electronic media, computer source code shall be kept confidential by the ENGINEER, shall only be released as necessary to meet official regulatory requirements in connection with the PROJECT, and shall not be used by the ENGINEER on any other PROJECT or in connection with any other person or entity, unless disclosure or use thereof in connection with any matter other than services rendered to the OWNER hereunder is specifically authorized in writing by the OWNER in advance. This Section 11.6 shall survive the expiration of this Agreement.

## **11.7 SUBCONTRACT REQUIREMENTS**

The ENGINEER shall include the terms and conditions of this Agreement in every subcontract or agreement with a consultant for this PROJECT so that these terms and conditions shall be binding upon each subcontractor or consultant. The subcontractor(s)/consultant(s) will maintain all licenses and certifications to practice its profession or trade by all public entities having jurisdiction over the PROJECT. The subcontractor (s)/consultant(s) further represent to the OWNER that the subcontractor(s)/consultant(s) will maintain all necessary licenses, certifications, permits or other authorizations necessary for the PROJECT until the remaining duties hereunder have been satisfied.

## **11.8 NOTICES**

Unless otherwise provided, all notices shall be in writing and considered duly given if the original is hand delivered; if delivered by facsimile to 256-427-5325, or is sent by U.S. Mail, postage prepaid to City of Huntsville Engineering, P. O. Box 308 (35804), 320 Fountain Circle (35801), Huntsville, AL. All notices shall be given to the addresses set forth above. Notices, hand delivered or delivered by facsimile, shall be deemed given the next business day following the date of delivery. Notices given by U.S. Mail shall be deemed given as of the second business day following the date of posting.

## **11.9 STRICT COMPLIANCE**

No failure of the OWNER to insist upon strict compliance by the ENGINEER with any provision of this Contract for Professional Services shall operate to release, waive, discharge, modify, change or affect any of the ENGINEER's obligations.

## **11.10 WAIVER**

No provision of this Agreement may be waived except by written agreement of the parties. A waiver of any provision on one occasion shall not be deemed a waiver of that provision on any subsequent occasion, unless specifically stated in writing. A waiver of any provision shall not affect or alter the remaining provisions of this Agreement.

## **11.11 SEVERABILITY**

If any provision of this Agreement, or the application thereof, is determined to be invalid or unenforceable, the remainder of that provision and all other provisions of this Agreement shall remain valid and enforceable.

## **11.12 ETHICS**

The ENGINEER shall not offer or accept any bribes or kickbacks from or to any manufacturer, consultant, trade contractor, subcontractor, supplier or any other individual or entity in connection with the PROJECT. The ENGINEER shall not confer on any governmental, public or quasi-public official having any authority or influence over the PROJECT any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised. The ENGINEER shall not, without the express written permission of the OWNER, engage or recommend to the OWNER engagement of any consultant, trade contractor, subcontractor, or supplier to provide services on behalf of the ENGINEER, OWNER or PROJECT in which the ENGINEER has a direct or indirect proprietary or other pecuniary interest; or call for the use of or by exclusion require or recommend the use of products, materials, equipment, systems, processes or procedures in which the ENGINEER or in which any consultant, trade contractor,

subcontractor, or supplier of the ENGINEER has a direct or indirect proprietary or other pecuniary interest. Without prior notification and written approval of the OWNER, the ENGINEER and the ENGINEER'S subconsultants shall not offer services to the OWNER'S contractor.

**11.13 E-VERIFY – NOTICE**

The ENGINEER shall enroll, and shall remain enrolled for the duration of this contract, in a designated employment eligibility verification system (E-Verify) in accordance with the City of Huntsville Ordinance 09-735. If the ENGINEER uses subcontractors in connection with the performance of work herein and the value of the subcontract exceeds \$3,000, the subcontractor shall also comply with this ordinance. The ENGINEER shall include specific written notice in all requests for bids or proposals prepared by the ENGINEER that contractors and any subcontractors are required to enroll in the E-verify program as required by the ordinance. Failure to comply with the requirements of the ordinance shall be a material breach of the contract.

As a condition of this agreement, pursuant to 8 U.S.C. §1324a, G. W. Jones and Sons Consulting Engineers, Inc. hereby certifies that it has not knowingly employed, recruited, referred for a fee, or contracted with an unauthorized alien, with respect to employment in the United States. Further, G. W. Jones and Sons Consulting Engineers, Inc. hereby certifies that it has enrolled in the City of Huntsville designated employment eligibility verification system in accordance with Ordinance 09-735 and will maintain enrollment throughout the term of this contract.

G. W. Jones and Sons Consulting Engineers, Inc.  
(Company)

BY: \_\_\_\_\_  
(Authorized Representative)

**11.14 ENTIRE AGREEMENT**

This Agreement represents the entire agreement between the OWNER and the ENGINEER and supersedes all prior communications, negotiations, representations or agreements, either written or oral. This agreement may be amended only by written instrument signed by both OWNER and ENGINEER.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

**OWNER:  
CITY OF HUNTSVILLE**

**ENGINEER:  
G. W. JONES CONSULTING  
ENGINEERS, INC.**

BY: \_\_\_\_\_  
Tommy Battle

BY: \_\_\_\_\_  
Mark Yokley

TITLE: \_\_\_\_\_  
Mayor

TITLE: \_\_\_\_\_  
President

ATTEST: \_\_\_\_\_

ATTEST: \_\_\_\_\_

Given under my hand this \_\_\_\_\_ day

Given under my hand this \_\_\_\_\_ day

Of \_\_\_\_\_, 2013.

Of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_

My commission expires \_\_\_\_\_

**ATTACHMENT 1-SCOPE OF SERVICES**

**(Refer to letter dated January 31, 2013, from Mark Yokley to Kathy Martin and attachments).**

**GWJONES**  
**& Sons Consulting Engineers, Inc.**  
Established 1886

401 Franklin Street  
Huntsville, Alabama 35801  
256-533-3311  
Fax 256-535-9756

January 31, 2013

Mrs. Kathy Martin *KM*  
City Engineer *CM*  
City of Huntsville  
320 Fountain Circle  
Huntsville, Al 35801

RE: Cummings Research Park Stormwater Improvements  
Project Number 65-13-DR01  
Professional Services Proposal

Dear Kathy:

Enclosed is the G.W. Jones and Sons Consulting Engineers' (GWJ) proposal for the design of stormwater improvements at Cummings Research Park, primarily to include approximately 2,000 linear feet of box culvert from the intersection of Governors Drive West and Eagle Drive to Lake 4.

GWJ will provide all of the required surveying services for design and permanent / temporary easements. Following the completion of the survey phase, GWJ will provide 90 percent design plans for review and ultimately construction plans due to the accelerated design timeline for this project. Our design fee for this project has been based on the anticipated effort required for design completion.

If you have questions or need additional information, please call me at your convenience.

Sincerely,

G.W. Jones and Sons  
Consulting Engineers, Inc.

*[Signature]*  
Mark H. Yokley, PE, PLS

Enclosures

2/6/2013

City of Huntsville Engineering Division

3:40 PM

<b>Project No.</b>	Project No. 65-13-DR01
<b>Project Name</b>	Research Park Stormwater Improvements
<b>Description</b>	Base Grade Pave and Culvert Construction
<b>Scope of Work</b>	Culvert and Associated Improvements from Bridge Steet to Lake 4
<b>Project Length</b>	3100'
<b>C.O.H. Project Engineer</b>	Christopher McNeese
<b>Engineering Consultant</b>	GW Jones & Sons Consulting Engineers, Inc.

**GRAND TOTAL OF FEE PROPOSAL**

	Labor Cost	Out-of-pocket Expenses	Fee
Corridor Study	\$0.00	\$0.00	\$0.00
Field Surveys	\$24,000.00	\$0.00	\$24,000.00
Preliminary Roadway Plans	\$0.00	\$0.00	\$0.00
Preliminary Bridge Plans	\$0.00	\$0.00	\$0.00
Right-of-Way Map, Tract Sketches and Deeds	\$0.00	\$0.00	\$0.00
Roadway Plans	\$96,871.90	\$568.75	\$97,440.65
Bridge Plans	\$0.00	\$0.00	\$0.00
Drainage Plans	\$0.00	\$0.00	\$0.00
Sanitary Sewer Plans	\$0.00	\$0.00	\$0.00
Environmental	\$0.00	\$0.00	\$0.00
<b>GRAND TOTAL FEE</b>			<b>\$121,441</b>

LABOR RATES	Effective Time Period	
Classification	Hourly Rate	Assigned Personnel
Project Engineer	\$95.00	Charles Wilkins
Environmental Scientist		
Design Engineer	\$80.00	Gretta Buchanan
Engineer Tech. / CADD	\$75.00	Howard Anderson
Clerical	\$50.00	Carolyn Moses
PLS	\$90.00	Mark H Yokley
Survey Crew	\$95.00	Brian Williams

*Mark H Yokley*

Signed

February 6, 2013

Date

President  
Position/Title



2/6/2013

City of Huntsville Engineering Division

3:40 PM

<b>Project No.</b> Project No. 65-13-DR01			
<b>Project Name</b> Research Park Stormwater Improvements			
<b>Description</b> Base Grade Pave and Culvert Construction			
<b>Scope of Work</b> Culvert and Associated Improvements from Bridge Steet to Lake 4			
<b>Project Length</b> 3100'			
<b>C.O.H. Project Engineer</b> Christopher McNeese			
<b>Engineering Consultant</b> GW Jones & Sons Consulting Engineers, Inc.			
<b>FIELD SURVEY</b>			Engineer Tech. / CADD
Based on a 0 Man Crew			PLS Survey Crew
<b>Task</b>			<b>ESTIMATED MAN-DAYS</b>
Contact Property Owners	0.00	0.00	0.00
Perform Basic Control Survey	1.50	3.00	1.00
Obtain Topographic Data	2.00	8.00	2.00
Define Drainage Areas/Prepare Schematic Drainage Map	0.00	0.00	0.00
Identify/Locate Utilities	0.50	3.00	1.00
Tie to Required Property Corners	0.00	0.00	0.00
Obtain Copies of Latest Deeds	0.00	0.00	0.00
Set & Reference PIs, PCs, POTs, POCs, & other critical points	0.00	4.00	2.00
Prepare Detailed Topographical/Field Map	2.00	0.00	4.00
	0.00	0.00	0.00
	0.00	0.00	0.00
	0.00	0.00	0.00
<b>TOTALS</b>	<b>6.00</b>	<b>18.00</b>	<b>10.00</b>

2/6/2013

City of Huntsville Engineering Division

3:40 PM

<b>Project No.</b> Project No. 65-13-DR01
<b>Project Name</b> Research Park Stormwater Improvements
<b>Description</b> Base Grade Pave and Culvert Construction
<b>Scope of Work</b> Culvert and Associated Improv
<b>Project Length</b> 3100'
<b>C.O.H. Project Engineer</b> Christopher McNe
<b>Engineering Consultant</b> GW Jones & Sons Consulting Engineers, Inc.
<b>Out-of-pocket Expenses (Field Survey)</b>

PRINTING / REPRODUCTION COST					
Type of printing/reproduction	# of Sets	Sheets per Set	Total Sheets	Cost per Sheet	Total
	0	0	0	\$ -	\$ -
	0	0	0	\$ -	\$ -
	0	0	0	\$ -	\$ -
	0	0	0	\$ -	\$ -
	0	0	0	\$ -	\$ -
	0	0	0	\$ -	\$ -
<b>Total Printing/Reproduction C</b>					<b>\$ -</b>

<b>Communication Cost (telephone, fax, etc.)</b>	<b>Total</b>
	\$ -

<b>Postage Cost (overnight, stamps, etc.)</b>	<b>Total</b>
	\$ -

<b>Other (provide description on next line)</b>	<b>Total</b>
	\$ -

<b>Total Out-of-pocket Expenses</b>	<b>\$ -</b>
-------------------------------------	-------------

**Comments:**

2/6/2013

City of Huntsville Engineering Division

3:40 PM

<b>Project No.</b> Project No. 65-13-DR01			
<b>Project Name</b> Research Park Stormwater Improvements			
<b>Description</b> Base Grade Pave and Culvert Construction			
<b>Scope of Work</b> Culvert and Associated Improvements from Bridge Steet to Lake 4			
<b>Project Length</b> 3100'			
<b>C.O.H. Project Engineer</b> Christopher McNeese			
<b>Engineering Consultant</b> GW Jones & Sons Consulting Engineers, Inc.			
<b>Fee Proposal (Field Survey)</b>			
<b>PERSONNEL COST</b>			
	<b>Man-days</b>	<b>Daily Rate @ 8hrs/day</b>	
Project Engineer	0.00	\$ 760.00	\$ -
PLS	6.00	\$ 720.00	\$ 4,320.00
Survey Crew	18.00	\$ 760.00	\$ 13,680.00
Engineer Tech. / CADD	10.00	\$ 600.00	\$ 6,000.00
Clerical	0.00	\$ 400.00	\$ -
	<b>Sub-Total</b>		<b>\$ 24,000.00</b>
<b>SUB-CONSULTANTS (attach man-day &amp; fee FROM each sub-consultant; show total fee for each here)</b>			
			\$ -
			\$ -
			\$ -
			\$ -
			\$ -
			\$ -
			\$ -
Subconsultant Administration Expense (5%)			\$ -
	<b>Sub-Total</b>		<b>\$ -</b>
<b>TOTAL LABOR</b>			<b>\$ 24,000.00</b>



2/6/2013

## City of Huntsville Engineering Division

3:40 PM

ROADWAY PLANS  SHEET TITLE	# OF SHEETS	ESTIMATED MAN-DAYS					
		Project Engineer		Design Engineer		Engineer Tech. / CADD	
		DAYS/ SHEET	TOTAL	DAYS/ SHEET	TOTAL	DAYS/ SHEET	TOTAL
<b>PLAN &amp; PROFILE</b>							
Main Roadway	4.00	3.00	12.00	4.00	16.00	8.00	32.00
Crossroads	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Detours	2.00	0.00	0.00	2.00	4.00	4.00	8.00
Retaining Walls	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b>PAVING LAYOUT</b>							
Main Roadway	3.00	0.00	0.00	1.00	3.00	1.00	3.00
Crossroads	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Intersections	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b>INTERCHANGES</b>							
Geometrics	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Ramps Profiles	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Site Grading	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Cross Sections	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Signing	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b>TRAFFIC CONTROL</b>							
Sequence of Construction	1.00	0.00	0.00	2.00	2.00	2.00	2.00
Summary & notes	1.00	0.00	0.00	1.00	1.00	1.00	1.00
Typical Section Sketches	1.00	0.00	0.00	0.50	0.50	1.00	1.00
Signing Layout	2.00	0.00	0.00	1.00	2.00	1.00	2.00
Special Drawings	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b>STRIPING &amp; SIGNING</b>							
Signing, Striping & Pavement Markers Layout	1.00	0.00	0.00	1.00	1.00	1.00	1.00
	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b>SIGNALIZATION</b>							
Signal Layout (1 per site)	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Traffic Analysis	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Traffic Counts (1 per site)	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Signal Warrant Analysis (1 per site)	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Special Details	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b>UTILITY SHEETS</b>							
Utility Sheets	1.00	0.00	0.00	1.00	1.00	2.00	2.00
	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b>DRAINAGE SECTIONS</b>							
Pipe&Culvert X-Sect./Profiles	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b>LIGHTING</b>							
Plan Layout	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Special Details	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b>EROSION CONTROL</b>							

2/6/2013

City of Huntsville Engineering Division

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ROADWAY PLANS  SHEET TITLE	# OF SHEETS	ESTIMATED MAN-DAYS					
		Project Engineer		Design Engineer		Engineer Tech. / CADD	
		DAYS/SHEET	TOTAL	DAYS/SHEET	TOTAL	DAYS/SHEET	TOTAL
Erosion Control Layout	1.00	0.00	0.00	0.50	0.50	0.50	0.50
Erosion Control Details	1.00	0.00	0.00	0.50	0.50	0.50	0.50
<b>ROADWAY CROSS SECTIONS</b>							
Main Roadway	5.00	0.00	0.00	0.50	2.50	1.00	5.00
Crossroads	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Earthwork Balancing	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b>SUB-TOTAL</b>	<b>34.50</b>		<b>15.25</b>		<b>43.26</b>		<b>70.13</b>
<b>REVIEW MEETINGS</b>							
Design Criteria/Kickoff			0.00		0.00		0.00
30% Review			0.00		0.00		0.00
60% Review			2.00		1.00		2.00
90% Review			2.00		1.00		0.00
<b>Stormwater Permits</b>			2.00		2.00		1.00
<b>Drainage Report</b>			0.00		0.00		0.00
<b>Cost Estimates</b>			2.00		1.00		2.00
<b>Design Hearing</b>			1.00		1.00		0.00
			0.00		0.00		0.00
			0.00		0.00		0.00
			0.00		0.00		0.00
<b>SUB-TOTAL</b>			<b>9.00</b>		<b>6.00</b>		<b>5.00</b>
<b>TOTAL MAN-DAYS</b>			<b>24.25</b>		<b>49.26</b>		<b>75.13</b>

2/8/2013

City of Huntsville Engineering Division

3:40 PM

<b>Project No.</b> Project No. 65-13-DR01			
<b>Project Name</b> Research Park Stormwater Improvements			
<b>Description</b> Base Grade Pave and Culvert Construction			
<b>Scope of Work</b> Culvert and Associated Improvements from Bridge Steet to Lake 4			
<b>Project Length</b> 3100'			
<b>C.O.H. Project Engineer</b> Christopher McNeese			
<b>Engineering Consultant</b> GW Jones & Sons Consulting Engineers, Inc.			
<b>Fee Proposal (Roadway Plans)</b>			
<b>PERSONNEL COST</b>			
	<b>Man-days</b>	<b>Daily Rate @ 8hrs/day</b>	
Project Engineer	24.25	\$ 760.00	\$ 18,430.00
Design Engineer	49.26	\$ 640.00	\$ 31,526.40
Engineer Tech. / CADD	75.13	\$ 600.00	\$ 45,078.00
Clerical	0.00	\$ 400.00	\$ -
		<b>Sub-Total</b>	<b>\$ 95,034.40</b>
<b>SUB-CONSULTANTS (attach man-day &amp; fee FROM each sub-consultant; show total fee for each here)</b>			
Hodnett Hurst		\$	1,750.00
		\$	-
		\$	-
Subconsultant Administration Expense (5%)		\$	87.50
		<b>Sub-Total</b>	<b>\$ 1,837.50</b>
<b>TOTAL LABOR</b>			<b>\$ 96,871.90</b>

2/6/2013

City of Huntsville Engineering Division

3:40 PM

<b>Project No.</b> Project No. 65-13-DR01
<b>Project Name</b> Research Park Stormwater Improvements
<b>Description</b> Base Grade Pave and Culvert Construction
<b>Scope of Work</b> Culvert and Associated Improvements from Bridge Steet to Lake 4
<b>Project Length</b> 3100'
<b>C.O.H. Project Engineer</b> Christopher McNeese
<b>Engineering Consultant</b> GW Jones & Sons Consulting Engineers, Inc.
<b>Out-of-pocket Expenses (Roadway Plans)</b>

PRINTING / REPRODUCTION COST					
Type of printing/reproduction	# of Sets	Sheets per Set	Total Sheets	Cost per Sheet	Total
60% Plans	5	15	75	\$ 1.25	\$ 93.75
Construction Plans	10	18	180	\$ 1.25	\$ 225.00
	0	0	0	\$ -	\$ -
	0	0	0	\$ -	\$ -
	0	0	0	\$ -	\$ -
	0	0	0	\$ -	\$ -
<b>Total Printing/Reproduction C</b>					<b>\$ 318.75</b>

<b>Communication Cost (telephone, fax, etc.)</b>	<b>Total</b>
	\$ -

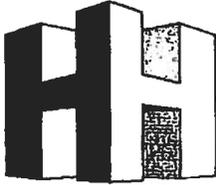
<b>Postage Cost (overnight, stamps, etc.)</b>	<b>Total</b>
	\$ 250.00

<b>Other (provide description on next line)</b>	<b>Total</b>
	\$ -

**Total Out-of-pocket Expenses \$ 568.75**

**Comments:**

**HODNETT • HURST**



**ENGINEERS, INC**  
**STRUCTURAL ENGINEERS**

February 5, 2013

Mr. Mark Yokley  
G. W. Jones & Sons, Inc.  
401 Franklin Street  
Huntsville, AL 35801

Reference: Bridge Street Box Culvert Junction Box  
Huntsville, Alabama

Dear Mr. Yokley:

We are pleased to propose the following agreement for providing structural engineering services on this project. This proposal will remain open for acceptance for three weeks from the date above.

### **DESCRIPTION OF PROJECT**

The project consists of the design of a box culvert bend as well as provision for a large pipe to tie in with the box culvert very near the bend. The culvert increases in size at the bend. It will be constructed of cast-in-place, reinforced concrete and will be covered by several feet of earth. There will be a road above a significant portion of the culvert. The required highway loading information will be provided as will soil investigation results.

### **SCOPE OF SERVICES**

The Structural Engineering Services to be provided are as follows:

1. Structural design and details for the above noted project. This will include structural plans, sections, details and notes as required.
2. Structural specifications in reproducible form, in a reasonable format.
3. Assistance in arranging the services of a geotechnical engineer.
4. Shop drawing review.
5. Limited field observation, as requested (maximum of three site visits).

This agreement does not include services for Project Peer Review, Special Inspections, or other Construction Administration services not listed above. We can provide these services upon request, at the hourly rates listed below.

This agreement does not include services for architectural, civil/site, mechanical, electrical, plumbing or environmental design. Hodnett/Hurst Engineers is not the Prime Professional. Our services are for the benefit of the party to whom this proposal is addressed only; no others have any claim. We will neither

300 East Clinton Avenue • Huntsville, AL 35801 • PHONE: 256-533-2771 • FAX: 256-533-2772

control nor supervise the Contractor's work.

**ENGINEERING CHARGES**

Compensation for our services shall be a lump sum fee of One Thousand Seven Hundred Fifty Dollars (\$1,750.00). If the services covered by this agreement have not been completed within 12 months of the date hereof, through no fault of the Structural Engineer of Record (SER), the remaining fees shall be escalated at the rate of 4% per year.

Additional Services shall be charged at our then current standard hourly rates.

Our current standard hourly rate schedule is:

Principals	\$150.00 per hour
Project Managers	\$125.00 per hour
Engineers	\$100.00 per hour
Staff Engineers	\$ 85.00 per hour
Drafters	\$ 65.00 per hour
Clerical	\$ 60.00 per hour

Reimbursable expenses shall be billed as a multiple of 1.1 times the cost incurred.

If the project criteria deviate from the Description of Project above, the engineering charges stated above shall be subject to renegotiation. If the project becomes a Fast Track Project, the engineering charges stated above shall be subject to renegotiation.

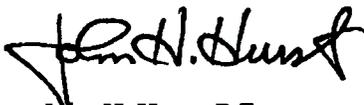
**ADDITIONAL PROVISIONS**

This Letter of Agreement (two pages), and Exhibit A (two pages), constitute the entire agreement between the parties. Please examine these documents and if acceptable, sign this letter and return it to us by fax or mail. Retain a copy for your records. We will begin services upon receipt of this signed agreement.

We anticipate that the Construction Documents can be completed approximately one month after receiving generally complete plans, sections, elevations, schedules, site plans, and highway loading information. This schedule shall be subject to renegotiation if progress is delayed by situations beyond the control of the SER, including but not limited to Owner-requested changes, Owner-delayed approvals, or insufficient project information from the Owner or its other consultants.

We are looking forward to working with you on this project.

Sincerely,



John H. Hurst, P.E.  
President

Accepted by (Client):



Signature

Date

Title

**ATTACHMENT 2 - ALABAMA IMMIGRATION ACT - REPORT OF OWNERSHIP FORM**

**CITY OF HUNTSVILLE, ALABAMA REPORT OF OWNERSHIP FORM**

**A. General Information.** Please provide the following information:

- Legal name(s) (include "doing business as", if applicable): GW Jones & Sons Consulting Engineers, Inc.
- City of Huntsville current taxpayer identification number (if available): 419  
(Please note that if this number has been assigned by the City and if you are renewing your business license, the number should be listed on the renewal form.)

**B. Type of Ownership.** Please complete the un-shaded portions of the following chart by checking the appropriate box below and entering the appropriate Entity I.D. Number, if applicable (for an explanation of what an entity number is, please see paragraph C below):

Type of Ownership (check appropriate box)	Entity I.D. Number & Applicable State
<input type="checkbox"/> Individual or Sole Proprietorship	Not Applicable
<input type="checkbox"/> General Partnership	Not Applicable
<input type="checkbox"/> Limited Partnership (LP)	Number & State:
<input type="checkbox"/> Limited Liability Partnership (LLP)	Number & State:
<input type="checkbox"/> Limited Liability Company (LLC) (Single Member)	Number & State:
<input type="checkbox"/> LLC (Multi-Member)	Number & State:
<input checked="" type="checkbox"/> Corporation	Number & State: <u>010-389 AL</u>
<input type="checkbox"/> Other, please explain:	Number & State (if a filing entity under state law):

**C. Entity I.D. Numbers.** If an Entity I.D. Number is required and if the business entity is registered in this state, the number is available through the website of Alabama's Secretary of State at: [www.sos.state.al.us/](http://www.sos.state.al.us/), under "Government Records". If a foreign entity is not registered in this state please provide the Entity I.D. number (or other similar number by whatever named called) assigned by the state of formation along with the name of the state.

**D. Formation Documents.** Please note that, with regard to entities, the entity's formation documents, including articles or certificates of incorporation, organization, or other applicable formation documents, as recorded in the probate records of the applicable county and state of formation, are not required unless: (1) specifically requested by the City, or (2) an Entity I.D. Number is required and one has not been assigned or provided.

Please date and sign this form in the space provided below and either write legibly or type your name under your signature. If you are signing on behalf of an entity please insert your title as well.

Signature: Michael R. Patterson Title (if applicable): CFO

Type or legibly write name: Michael R. Patterson Date: 1-26-2012

**ATTACHMENT 3**  
**CITY OF HUNTSVILLE STANDARDS AND DESIGN GUIDES**

1. City of Huntsville Standard Specifications for Construction of Public Improvements. Contract Projects, 1991.
2. City of Huntsville Engineering Standards, 1991.
3. City of Huntsville Design and Acceptance Manual for Force Mains and Pump Stations, 2011.
4. City of Huntsville Design and Acceptance Manual for Sanitary Sewers, 2011.
5. Alabama Department of Transportation Standard Specifications for Highway Construction, Current Edition.
6. City of Huntsville Subdivision Regulations, 1991.

**ATTACHMENT 4**  
**DESIGN REVIEWS**

**0% COMPLETE – PRE-DESIGN CONFERENCE**

The ENGINEER shall meet with the OWNER at a 0% complete - Pre-Design Conference. The OWNER's representative (Project Engineer) will be introduced.

**CONFERENCE FORMAT**

The pre-design meeting will be initiated by the OWNER. The purpose of the conference will be to give the ENGINEER an opportunity to discuss the design of the PROJECT, to visit the PROJECT site, to receive copies of OWNER -furnished documents, if applicable, and to meet the OWNER'S Project Engineer and other personnel working on the PROJECT.

**ATTENDEES:** (Required)

- ENGINEER
- ALDOT (as appropriate for the type of project)
- Real Estate
- Landscape Management
- Utilities
- Traffic Engineering
- Planning

**DISCUSSION TOPICS :**

- Authority of OWNERS representative (Written submittal made to the ENGINEER)
- Tree Ordinance
- Scope of Work
- Time Requirements
- Budget Restraints
- Testing Requirements
- Permit Responsibilities
- Design criteria
- LC&E requirements
- Plan Requirements
- Special Conditions
- Utility Project Notification and a list of all utilities that need to be contacted.

**REQUIRED SUBMITTALS TO THE PROJECT ENGINEER**

1. A Certificate of Insurance for the ENGINEER and the ENGINEER's subconsultants shall be submitted to the OWNER's PROJECT ENGINEER per Section 10.6.
2. Prior to the Pre-Design Conference, a completed **draft** design criteria document shall be prepared to the best of the ENGINEER'S ability and in conformance with his fee proposal and will serve as the basis of a discussion topic during the Pre-Design Conference. A **final** version of the design criteria based upon discussion during the meeting shall be prepared by the ENGINEER and distributed with the meeting minutes. A copy of a design criteria format may be found on the City of Huntsville web site at <http://www.huntsvilleal.gov/engineering/index.php>.
3. Within seven (7) calendar days of the 0% Complete - Pre-Design Conference, the ENGINEER shall submit to the OWNER's Project Engineer two color copies and an electronic copy of a schedule in Microsoft Projects format showing the critical path and indicating the time frame for the required milestone events and submittals outlined in this document. The schedule shall support a PROJECT completion date in accordance with the Period Of Services in Article 6. When approved, a baseline of the schedule shall be saved from which variances in the schedule can be measured and evaluated.

**ATTACHMENT 4**  
**DESIGN REVIEWS**

**30% COMPLETE – CONCEPTUAL DESIGN**

This design review is to show the OWNER how the functional and technical requirements will be met, to indicate the ENGINEER's approach to the solution of technical problems, to show compliance with design criteria or to justify noncompliance and to provide an estimate of probable cost. A field review shall be conducted at this juncture with the OWNER's staff and the ENGINEER to review the proposed field alignment of the PROJECT.

**CONFERENCE FORMAT**

**ATTENDEES: (Required)**

- Real Estate
- Landscape Management
- Utilities
- Traffic Engineering
- Planning
- City of Huntsville Construction Project Manager
- City of Huntsville Inspector
- City of Huntsville Environmental Representative

**DISCUSSION TOPICS:**

- ENGINEER presents recommended design/solutions along with other options and alternatives considered.
- ENGINEER presents updates on progress of permitting requirements
- ENGINEER presents progress on coordination with other project participants such as the State of Alabama, sub consultants, etc.
- ENGINEER presents budgetary constraints

**REQUIRED SUBMITTALS TO THE PROJECT ENGINEER**

1. A preliminary list of all permits to be obtained with associated fees.
2. An updated schedule in Microsoft Projects format showing the critical path shall be submitted.
3. Two color copies and an electronic copy of an updated schedule in Microsoft Projects format showing the critical path shall be submitted.

**ATTACHMENT 4**  
**DESIGN REVIEWS**

**60% COMPLETE – PRELIMINARY DESIGN CRITERIA**

The review of the PROJECT at this point is primarily to insure that funding limitations are not being exceeded and to insure that the contract documents, design analysis and cost estimates are proceeding in a timely manner, and that the design criteria and previous review comments are being correctly interpreted. An additional review may be required by the OWNER to review changes proposed from previous submittals.

**CONFERENCE FORMAT**

**ATTENDEES: (Required)**

- Real Estate
- Landscape Management
- Utilities
- Traffic Engineering
- Planning
- City of Huntsville Construction Project Manager
- City of Huntsville Inspector
- City of Huntsville Environmental Representative

**DISCUSSION TOPICS:**

- Additional land acquisition needs, as required.
- Utility Project Notification and a list of all utilities that need to be contacted.
- Technical specifications for special construction items not covered under standard specifications or deviations from standard specifications.
- Update on progress of permitting requirements.
- Erosion control plan requirements, if required by the OWNER.
- Budget constraints.
- Progress on coordination with other project participants such as the City of Huntsville Real Estate Officers (Engineering Department), State of Alabama, sub consultants, etc.

**REQUIRED SUBMITTALS TO THE PROJECT ENGINEER**

1. One full size print copy and one ½ size print copy of all drawings that have incorporated previous comments shall be submitted. Plan/Profile drawings shall be 75% complete. Right-of way drawings shall be 100% complete at this submittal (reference Real Estate Division Plan Requirements Section entitled DRAWINGS, included at the end of this proposal)
2. An update to the schedule in Microsoft Projects format showing the critical path shall be submitted.
3. Unless determined to be inapplicable by the OWNER, Hydraulic reports 75% complete, shall be submitted.
4. Three (3) copies of preliminary plans for utilities shall be submitted.
5. Legal descriptions for takings shall be submitted. The information shall be 100% complete. (reference Real Estate Division Plan Requirements Section entitled DESCRIPTIONS, included at the end of this proposal)
6. Traffic Control Plan, if required. Plan shall be 60% complete at this submittal.
7. Detailed preliminary construction cost estimate shall be submitted.
8. Results of geotechnical investigations shall be submitted.
9. A list of comments made at the 30% review and a summary of each resolution.
10. Two color copies and an electronic copy of an update to the schedule in Microsoft Projects format showing the critical path shall be submitted.

**ATTACHMENT 4**  
**DESIGN REVIEWS**

**90% COMPLETE – FINAL REVIEW**

The review of this submittal is to ensure that the design is in accordance with directions provided the ENGINEER during the design process.

**CONFERENCE FORMAT**

**DISCUSSION TOPICS**

Discussion topics will be handled open forum.

**REQUIRED SUBMITTALS TO THE PROJECT ENGINEER**

1. One full size print copy and one ½ size print copy of all drawings that have incorporated previous comments shall be submitted. Submittals include Plan/Profile drawings, Construction Details, Detailed cross-sections with cut and fill quantities and storm and sanitary sewer crossings, Erosion control plan, if required, Technical specifications, Right-of way drawings, Traffic Control Plan, Plans for Utilities, Signed Acceptance of Utility Project Notification Form by all affected parties, Design Calculations, and a final cost estimate. All submittals shall be 100% complete.
2. Any changes to Land Acquisition needs shall be identified and Legal descriptions for the changes shall be submitted.
3. A list of comments made at the 60% review and a summary of each resolution.
4. Calculations showing how quantities were determined for each bid item and how the item is to be measured in the field and paid. Three bound copies of corrected quantity calculations to match bid quantities. The following shall be required for each item:
  - Item Number
  - Item Description with standard specification used
  - Detailed calculation to include all measurements, conversion factors, and "standard" weights used
  - Final "calculated" amount and any "increased" amounts
  - Notes to include any deviation from referenced standard specifications

**ATTACHMENT 4**  
**DESIGN REVIEWS**

**100% COMPLETE – READY TO ADVERTISE**

After the 90% review, the ENGINEER shall revise the construction documents by incorporating any comments generated during the previous design reviews. The ENGINEER shall prepare final hard copy contract specifications, prepare a bid form, and update the cost estimate as necessary.

**CONFERENCE FORMAT**

This is a submittal only. **Return this sheet with submittal**

<b><u>YES</u></b>	<b><u>NO</u></b>	<b>REQUIRED SUBMITTALS TO THE PROJECT ENGINEER</b>
<input type="checkbox"/>	<input type="checkbox"/>	1. Two (2) sets of complete construction drawing prints sized 24" x 36" sealed and marked "ISSUED FOR CONSTRUCTION". Drawings information shall be referenced to Alabama State Plane Coordinate system, NAD1983 Alabama East Zone as described in the <u>Code of Alabama</u> (1975), Section 35-2-1. Surveys shall be tied to a minimum of two accepted GPS monuments or one GPS tie point plus an astronomic observation to determine grid north or GPS Survey.
<input type="checkbox"/>	<input type="checkbox"/>	2. One (1) Micro station digital and One (1) digital file in either .tiff or .pdf format of construction drawings (must be signed and sealed) – sized 11" x 17".
<input type="checkbox"/>	<input type="checkbox"/>	3. Two (2) sets of right-of-way drawing prints sized 24" x 36" sealed and marked "ISSUED FOR CONSTRUCTION". Drawings information shall be referenced to Alabama State Plane Coordinate system. NAD1983 Alabama East Zone
<input type="checkbox"/>	<input type="checkbox"/>	4. One (1) Micro station digital file of right-of-way drawings.
<input type="checkbox"/>	<input type="checkbox"/>	5. Two (2) print sets of 8-1/2" x 11" legal descriptions for right-of-way (REVISED SETS ONLY)
<input type="checkbox"/>	<input type="checkbox"/>	6. One (1) digital text file of legal descriptions for right-of-way (REVISED FILE ONLY)
<input type="checkbox"/>	<input type="checkbox"/>	7. One (1) print copy of Final Construction Cost Estimate.
<input type="checkbox"/>	<input type="checkbox"/>	8. One (1) digital spread sheet file of Final Construction Cost Estimate.
<input type="checkbox"/>	<input type="checkbox"/>	9. Three (3) printed and bound copies of corrected quantity calculations to match Final Bid Quantities.
<input type="checkbox"/>	<input type="checkbox"/>	10. One (1) digital spread sheet file (Excel 2003 format) of Final Bid Quantities.
<input type="checkbox"/>	<input type="checkbox"/>	11. Two (2) print sets of contract specifications.
<input type="checkbox"/>	<input type="checkbox"/>	12. One (1) digital text file of contract specifications.
<input type="checkbox"/>	<input type="checkbox"/>	13. One (1) complete set of signed and sealed calculations.
<input type="checkbox"/>	<input type="checkbox"/>	14. One (1) complete set of all approved permits including Location, Character, and Extent, COE, ADEM, etc.
<input type="checkbox"/>	<input type="checkbox"/>	15. One (1) complete set of all field notes.
<input type="checkbox"/>	<input type="checkbox"/>	16. One (1) copy of digital aerial photography obtained for this PROJECT in (.tif) format, as necessary.
<input type="checkbox"/>	<input type="checkbox"/>	17. Utility Project Notification forms and a list of all utilities that need to be contacted.

\_\_\_\_\_ Engineer

**ATTACHMENT 5 - ENGINEERS PERSONNEL FEE SCHEDULE**

**G. W. JONES & SONS CONSULTING ENGINEERS, INC.  
2013 STANDARD FEE SCHEDULE**

Principal Engineer	\$135.00/Hr
<b><u>Engineering</u></b>	
Principal Engineer	\$135.00/Hr
Project Manager	\$120.00/Hr
Project Engineer	\$95.00/Hr
Engineer	\$80.00/Hr
Senior Designer	\$75.00/Hr
Designer	\$65.00/Hr
<b><u>Surveying</u></b>	
Surveyor Manager	\$90.00/Hr
Senior Survey Technician	\$75.00/Hr
Survey Technician	\$65.00/Hr
Two (2) Man Survey Crew	\$95.00/Hr
Three (3) Man Survey Crew	\$120.00/Hr
Four (4) Man Survey Crew	\$140.00/Hr
GPS Survey Crew	\$185.00/Hr
Construction Stakeout – Two (2) Man Survey Crew	\$100.00/Hr
Construction Stakeout – Three (3) Man Survey Crew	\$125.00/Hr
Construction Stakeout – Four (4) Man Survey Crew	\$145.00/Hr
Two (2) Man Survey Crew – Overtime	\$108.50/Hr
Three (3) Man Survey Crew – Overtime	\$140.70/Hr
Four (4) Man Survey Crew – Overtime	\$164.30/Hr
<b><u>Drafting</u></b>	
Senior CADD Technician	\$75.00/Hr
CADD Technician – Overtime	\$89.00/Hr
<b><u>Construction Manager</u></b>	\$115.00/Hr
<b><u>Resident Project Representative</u></b> (Observation of Construction)	
Resident Project Representative	\$70.00/Hr
<b><u>Clerical</u></b>	
Technical Typist	\$50.00/Hr
Typist	\$40.00/Hr
<b><u>Prints</u></b>	
Mylar Prints	\$24.00(Min)
Record Plats	\$20.00/Each
TVA Quad Sheets	\$20.00/Each
Sepia Prints	\$7.00(Min)
Regular Prints – 24 x 36	\$5.00/Each
24 x 36 color prints on bond paper	\$15.00/Each
24 x 36 color prints on photo paper	\$55.00/Each
Xerox Copies	\$0.35/Each
<b><u>Mileage</u></b>	\$0.75/Mile
<b><u>Telephone</u></b>	\$0.30/Min

Note: These rates will remain in effect for the duration of this contract.

**ATTACHMENT 6 - PROGRESS REPORT**  
**(Article 8)**

PROGRESS REPORT NO. \_\_\_\_\_ FOR MONTH AND YEAR \_\_\_\_\_

PROJECT \_\_\_\_\_ PROJECT NO. \_\_\_\_\_

DATE \_\_\_\_\_ CITY'S PROJECT ENGINEER \_\_\_\_\_

CONSULTANT \_\_\_\_\_ CONSULTANT'S PROJ. MAN. \_\_\_\_\_

CURRENT MONTH % COMPLETE: \_\_\_\_\_ PREV. MONTH % COMPLETE: \_\_\_\_\_

ATTACH A "SHOULD HAVE STARTED TASKS REPORT" AND A "SLIPPING TASKS REPORT" FROM MICROSOFT PROJECTS THAT LISTS ALL ACTIVITY THAT IS BEHIND SCHEDULE.

ATTACH A "TASKS STARTING SOON" REPORT FROM MICROSOFT PROJECTS WITH A DATE RANGE OF THIRTY (30) DAYS AFTER THE DATE OF THIS PROGRESS REPORT.

STATE WHAT ACTION IS BEING TAKEN TO BRING PROJECT BACK TO SCHEDULE:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

MILESTONE SUBMITTALS	SCHEDULED DATE	ACTUAL DATE
30%	_____	_____
60%	_____	_____
90%	_____	_____
100%	_____	_____
"FINAL" INVOICE SUBMITTED	_____	_____
SUBCONSULTANTS PAID IN FULL	_____	_____
CONTRACTED COMPLETION DATE: February 25, 2013	_____	_____

(These scheduled dates shall be agreed upon at the beginning of the project (Attachment 3) with the Project Engineer and noted monthly on each progress report. The scheduled contract completion date shall not be changed except by contract change order. Changes to the scheduled milestone submittal dates shall be accompanied by a new project schedule approved by the OWNER'S Project Engineer.)

UPDATED SCHEDULE ATTACHED? \_\_\_\_\_ YES \_\_\_\_\_ NO

\*If yes, send an electronic copy to the Project engineer

COMMENTS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This progress report (4 copies) shall be submitted monthly. Scheduled completion dates will not be extended without a contract modification.

CERTIFICATION: I certify that the stated information is true and accurate to the best of my knowledge.

\_\_\_\_\_  
CONSULTANT

\_\_\_\_\_  
DATE

\_\_\_\_\_  
CITY PROJECT ENGINEER DATE

**ATTACHMENT 7 - SUB CONSULTANTS ENGAGED BY THE ENGINEER**  
**(Article 9.2)**

<b>CONSULTANT NAME AND ADDRESS</b>	<b>DESCRIPTION OF SERVICES</b>	<b>FEE</b>
Hodnett-Hurst Engineers, Inc. 300 East Clinton Avenue Huntsville, AL 35801	<b>Structural Engineering Services</b>	\$1,662.50
	<b>SUB-TOTAL</b>	\$1,662.50
	<b>5% Administrative Fee</b>	\$87.50
	<b>TOTAL</b>	\$1,750.00

**ATTACHMENT 8 - CONTRACT DOCUMENT REQUIREMENTS LIST**

<b>REQUIREMENT</b>	<b>SUBMIT TO</b>	<b>SUBMITTAL REQUIREMENT DATE</b>	<b>NUMBER OF COPIES</b>	<b>REFERENCE SECTION OF CONTRACT AND COMMENTS</b>
Deviations from OWNER's standards.	OWNER	Prior to incorporating deviations.	2	Article 2.5
Products or materials specified by the ENGINEER that are available from only one source.	OWNER	Prior to 100% submittal.	2	Article 2.2
Approval of ENGINEER's Request for Payment.	OWNER	Within ten (10) days of receipt of the request from the ENGINEER.	N/A	Article 3.4
Approval of ENGINEER submittals	OWNER	So as to cause no delay to the ENGINEER or the PROJECT.	N/A	Article 3.8
Change order changes that reduce construction requirements.	OWNER	Prior to authorizing a change.	N/A	Article 3.11
Any information pertaining to any claim.	OWNER	Immediately	2	Article 3.12
Information pertinent to the PROJECT, all criteria and full information as to OWNER's requirements, copies of all design and construction standards.	ENGINEER	So as to not delay the services of the ENGINEER.	2	Article 5.1, 5.2
Notification of delays.	ENGINEER; OWNER	Promptly	4	Article 6.1
ENGINEER's monthly invoices.	OWNER	Monthly	4	Article 8.1.1
Consultant progress report.	OWNER	Monthly	4	Article 8.1.1
Records, data, parameters, design calculations and other information.	OWNER	Cancellation of contract.	2	Article 9.7
Documentation, records of reimbursable expenses, record copies of all written communications, and any memoranda of verbal communications related to the PROJECT.	OWNER	Upon notice from the OWNER.	2	Article 9.4
Termination notification.	OWNER or ENGINEER	7 days prior to termination.	2	Article 9.10 & 9.11
Certificate of Insurance for ENGINEER.	OWNER	At 0% design conference	1	Article 10.2(B), 10.6, and Attachment 4.
Insurance cancellation, suspension, or reduction in coverage or limits.	OWNER	30 days prior to effective date except for cancellation which is 10 days notification.	1	Article 10.4(A)

Certificate of insurance for sub consultants/subcontractors.	OWNER	At 0% design conference.	1	Article 10.7
A schedule in Microsoft Projects format showing the critical path.	Project Engineer	Within 7 calendar days of Pre-design conference, 30% complete design review. 60% design review. Attachment 4	1 hard; 1 digital	Attachment 4
Drawings.	Project Engineer	30% complete design review, 60% design review, 90% review, and 100% complete.	3	Attachment 4
Cost estimate.	Project Engineer	30% complete design review, 60% review, 90% review, and 100% complete.	3	Attachment 4
Hydraulic reports.	Project Engineer	60% design review.	2	Attachment 4
Preliminary plans for utilities.	Project Engineer	60% design review.	3	Attachment 4
Real Estate Deliverables	Project Engineer	60% design review, 90% review, 100% complete.	Reference Real Estate Division Plan Requirements	Attachment 4, 14 Real Estate Plan Requirements at end of this proposal document
Traffic Control plan.	Project Engineer	60% design review.	N/A	Attachment 4
Results of geotechnical investigations.	Project Engineer	30% design review.	2	Attachment 4
Technical specifications.	Project Engineer	90% review, 100% complete.	N/A	Attachment 4
Relocation of Utilities	Project Engineer	0% review – list of all utilities that need to be contacted 60% review – from all affected parties 90% review – Signed Acceptance Utility Project Notification Form	2	Attachment 4, 10
Design Calculations	Project Engineer	90% review, 100% complete	1	Attachment 4
Digital copy of drawings.	Project Engineer	100% complete – 1 in .dgn format; 1 in .tiff or .pdf format	2	Attachment 4
Digital text files.	Project Engineer	100% complete.	1	Attachment 4
Bid Quantities.	Project Engineer	100% complete. Digital in Excel 2003 format and hard copy	3	Attachment 4
Permits and Permit Applications	Project Engineer	100% complete.	1	Attachment 4
Field notes.	Project Engineer	100% complete.	1	Attachment 4
Digital aerial photography.	Project Engineer	100% complete.	1	Attachment 4
Progress Report (Art. 8)	Project Engineer	30% complete design review, 60% design review, 90% design review, 100% completion stage.	4 hard; 1 digital monthly	Attachment 6

## **ATTACHMENT 9 - REQUIREMENTS FOR DOCUMENT SUBMITTALS**

All drawings shall be sized 24" x 36", unless otherwise approved by the OWNERS Project Engineer.

Title blocks shall as a minimum, contain the name of the project, date, city project number, and ENGINEER's name. The title block of drawings shall contain a space for the names of the preparer and the reviewer and/or checker. These blocks shall be signed on each submittal (See Attachment "11" for sample standard drawing format). Drawings shall contain alphanumeric revision designations. Drawings issued for review shall be issued with alpha revision designation and the revision letter shall be changed for each submittal containing drawing changes. Drawings issued for construction shall be issued with numeric designation at revision level "0" and described as "Issued for Construction" in the revision description block. Subsequent drawing changes require the revision level to be raised using successively higher numbers and the changes to be marked by circling and briefly described in a revision block.

Unless otherwise specified by the Owners Project Engineer, all drawings for review submittals shall be full or half-size copies. All documents shall be clearly marked in a revision block indicating the applicable submittal milestone, i.e. 30%, 60%, 90%, etc.

Submittals required by the State of Alabama for their review, bidding, etc., shall be of the size, form and numbers of copies as the state may require even though such submittals may differ from the submittals set forth as being required elsewhere in this Agreement.

All drawings shall be prepared in Micro station .DGN format, unless otherwise approved by the OWNERS Project Engineer. Transmittal letters shall consist of a list of files being submitted, a description of the data in each file, and a level/layer schematic of each design file. DGN design files shall have working units as follows: master units in feet, no sub-units, and 1,000 positional units. All data submitted shall use NAD 1983 Alabama East Zone horizontal datum and NAVD 88 vertical datum coordinates.

Digital files shall be submitted by 4-3/4" CD ROM, DVD, 3 and 1/2 inch floppy disk, or to the City of Huntsville F.T.P. site.

All print copies shall be first generation copies.

All text documents shall be prepared in Microsoft Word 2007 format.

All spreadsheets shall be in Microsoft Excel 2007 format.

A schedule showing the critical paths shall be in Microsoft Projects format, unless otherwise approved by the OWNERS Project Engineer.

Aerial photography files shall be in Intergraph (.COT) or (.tiff) format.

All mapping shall meet National Map Accuracy Standards unless otherwise noted. If National Map Accuracy Standards are not met, the accuracy of the map shall be identified to the Owners Project Engineer and on the maps derived from the aerial survey. National Map Accuracy Standards are shown below. This and other map standards are shown in Department of the Army, US Army Corps of Engineers standard, "EM 1110-1-1000, Engineering and Design - Photogrammetric Mapping". <http://140.194.76.129/publications/eng-manuals/em1110-1-1000/toc.htm>

**ATTACHMENT 10 – UTILITY PROJECT NOTIFICATION FORM**

NAME: \_\_\_\_\_  
(Utility Name)

PROJECT NAME: \_\_\_\_\_ PROJECT NUMBER: \_\_\_\_\_

CONSULTING ENGINEER: \_\_\_\_\_  
(Name)

ENGINEERING REPRESENTATIVE \_\_\_\_\_ PHONE: \_\_\_\_\_

I have reviewed design drawings or other information as available, and:

DO \_\_\_\_\_

DO NOT \_\_\_\_\_

have facilities that will require relocation. If relocation is required, a construction duration of \_\_\_\_\_ calendar days from the Notice to Proceed, is anticipated to be required for relocation.

LIST NAME(S) OF OTHER UTILITY(S) that share poles or facilities that have to be relocated prior to **YOU** starting your work:

NAME OF UTILITY: \_\_\_\_\_

NAME OF UTILITY: \_\_\_\_\_

NAME OF UTILITY: \_\_\_\_\_

OTHER: \_\_\_\_\_

COMMENTS: \_\_\_\_\_

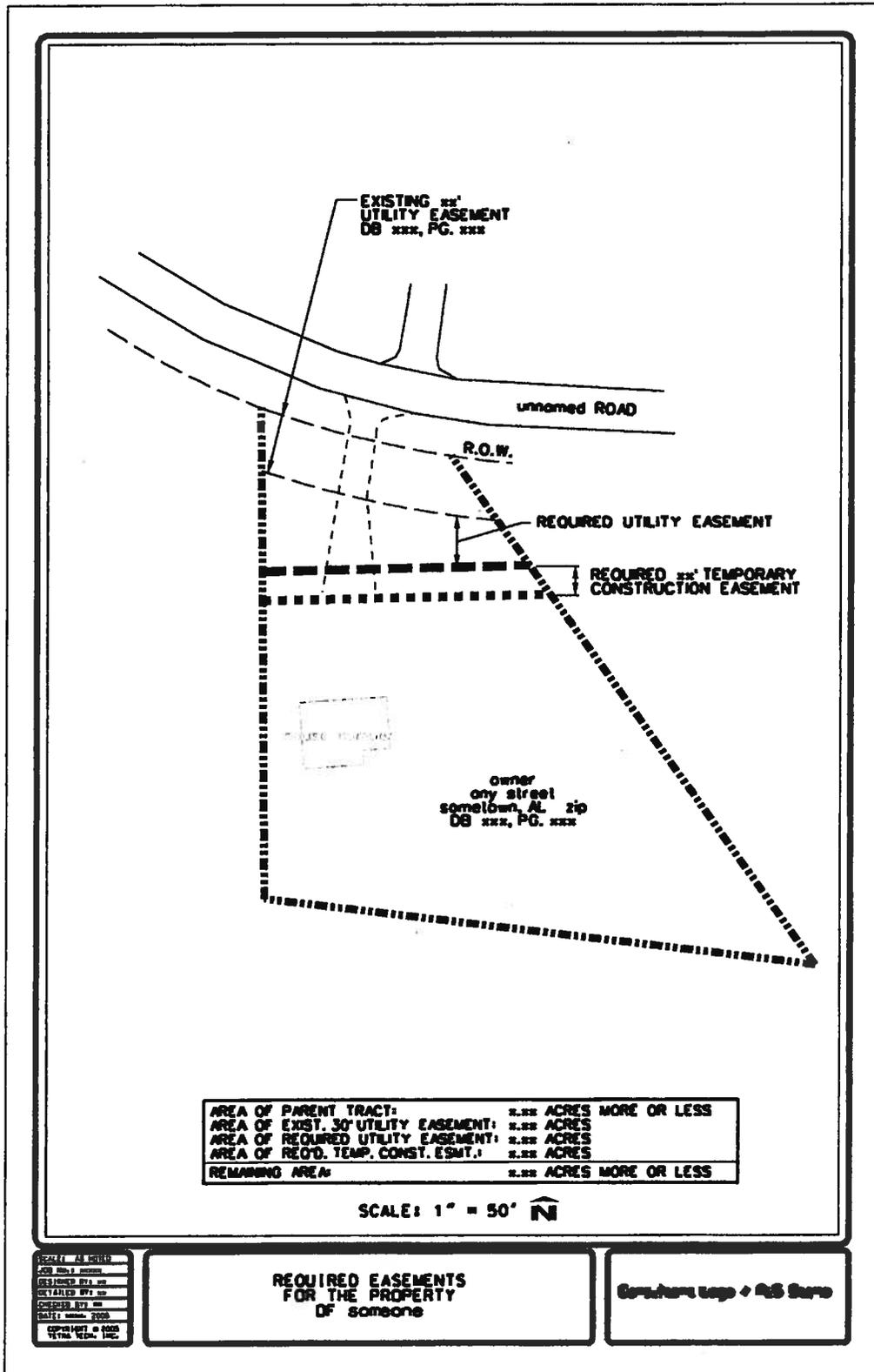
BY: \_\_\_\_\_  
AUTHORIZED REPRESENTATIVE

FIELD CONTACT PERSON: \_\_\_\_\_ PHONE: \_\_\_\_\_  
OFFICE CONTACT PERSON: \_\_\_\_\_ PHONE: \_\_\_\_\_

DATE: \_\_\_\_\_



**ATTACHMENT 12  
SAMPLE**



## **ATTACHMENT 13**

### **United States National Map Accuracy Standards**

*With a view to the utmost economy and expedition in producing maps which fulfill not only the broad needs for standard or principal maps, but also the reasonable particular needs of individual agencies, standards of accuracy for published maps are defined as follows:*

1. **Horizontal accuracy.** *For maps on publication scales larger than 1:20,000, not more than 10 percent of the points tested shall be in error by more than 1/30 inch, measured on the publication scale; for maps on publication scales of 1:20,000 or smaller, 1/50 inch. These limits of accuracy shall apply in all cases to positions of well-defined points only. Well-defined points are those that are easily visible or recoverable on the ground, such as the following: monuments or markers, such as bench marks, property boundary monuments; intersections of roads, railroads, etc.; corners of large buildings or structures (or center points of small buildings); etc. In general what is well defined will be determined by what is plottable on the scale of the map within 1/100 inch. Thus while the intersection of two road or property lines meeting at right angles would come within a sensible interpretation, identification of the intersection of such lines meeting at an acute angle would obviously not be practicable within 1/100 inch. Similarly, features not identifiable upon the ground within close limits are not to be considered as test points within the limits quoted, even though their positions may be scaled closely upon the map. In this class would come timber lines, soil boundaries, etc.*
2. **Vertical accuracy,** *as applied to contour maps on all publication scales, shall be such that not more than 10 percent of the elevations tested shall be in error more than one-half the contour interval. In checking elevations taken from the map, the apparent vertical error may be decreased by assuming a horizontal displacement within the permissible horizontal error for a map of that scale.*
3. **The accuracy of any map may be tested** *by comparing the positions of points whose locations or elevations are shown upon it with corresponding positions as determined by surveys of a higher accuracy. Tests shall be made by the producing agency, which shall also determine which of its maps are to be tested, and the extent of the testing.*
4. **Published maps meeting these accuracy requirements** *shall note this fact on their legends, as follows: "This map complies with National Map accuracy Standards."*
5. **Published maps whose errors exceed those aforesaid** *shall omit from their legends all mention of standard accuracy.*
6. **When a published map is a considerable enlargement** *of a map drawing (manuscript) or of a published map, that fact shall be stated in the legend. For example, "This map is an enlargement of a 1:20,000-scale map drawing," or "This map is an enlargement of a 1:24,000-scale published map."*
7. **To facilitate ready interchange and use of basic information for map construction** *among all Federal mapmaking agencies, manuscript maps and published maps, wherever economically feasible and consistent with the uses to which the map is to be put, shall conform to latitude and longitude boundaries, being 15 minutes of latitude and longitude, or 7.5 minutes, or 3-3/4 minutes in size.*

U.S. BUREAU OF THE BUDGET

## ATTACHMENT 14

### ENGINEERING DEPARTMENT - REAL ESTATE DIVISION PLAN REQUIREMENTS

#### **DRAWINGS:**

##### Individual Parcels

- Each individual parcel 8 ½" x 14" (dgn or dxf format)
- Show Calculations
  - Before
  - After
  - Taking
- All Parcels shall be closed shapes (polygons).
- Show Existing and Proposed Right-of-Way on each individual parcel map.
- Property Ownership

##### Overall Project Land Acquisition Maps

- Total project drawing in dgn or dxf format
- Indicate the following:
  - Stationing on Centerline
  - Existing Right-of-Way
  - Proposed Right-of-Way
  - Existing Easements
  - Proposed Easements
  - Existing Pavement
  - Proposed Pavement/Sidewalks/Structures
  - Existing Structures
  - Property Ownership

##### Color Standards

*(SAMPLE)*

<u>Description</u>	<u>Color</u>	<u>Line Style</u>	<u>Type</u>
Existing ROW	Red	Medium Dashed	
Proposed ROW	Red	Solid	Closed Polygon
Existing Easements	Orange	Medium Dashed	
Proposed Easements	Orange	Solid	Closed Polygon
TCE	Pink	Solid	Closed Polygon

#### **DESCRIPTIONS:**

- Microsoft Word on 3.5" Diskette or CD
- Each Description shall be complete and independent (separate file).
- Hard Copies signed and stamped by PLS.

#### **GENERAL:**

- P.K. Nails or other permanent stationing markings shall be required.
- Re-staking of right-of-way or easements may be required (See Article 4).
- All survey plats to be on Alabama State Plane Datum. Strip Maps shall indicate at least 2 monuments in place with Alabama State Plane Coordinate values shown on each.
- Parcel plats and legal descriptions shall indicate the Alabama State Plane Coordinate NAD83 Alabama East Zone Value of the point of beginning.

**ATTACHMENT 15 - GIS BASE MAP**

DESIGN LEVEL	CONTENTS	LINE CODE	COLOR	WEIGHT	TEXT SIZE	FONT	CELL NAME
1	State Plane Coordinate Grid	0	0	0	20	0	
2	Benchmarks	0	0	0			
3	Private Street Text	0	105	0	20	0	
3	Street Text	0	3	0	20 (or 18)	0	
4	Street R/W	7	0	0			
5	Street Centerline	7	0	0			
6	Street Pavement	0	3	0			
6	Proposed Street Pavement	3	16	0			
6	Private Streets	0	105	0			
6	Proposed Private Road	3	105	0			
7	Parking Lots	1	3	1			
7	Private Lots used as Roads	1	105	1			
8	Secondary Roads--Private	2	105	0			
8	Secondary Roads	2	3	0			
8	Trails	3	3	0			
9	Secondary Roads/Trails Text	0	3	0	20	0	
10	Sidewalks	5	3	0			
11	Bridges/Culverts/Paved Ditches	0	0	0			
12	Hydrology - Major	6	1	0			
12	Hydrology - Minor, Ditches	7	1	0			
13	Hydrology - Text	0	1	0	25	23	
14	Tailings & Quarries, Athletic Fields/Text, misc. areas	0	1	0			
15	Greenways	3	48	0			
16	Speed Tables	0	3	0			TCALM
17	Railroad Tracks (Patterned)	0	2	0			RR
18	Railroad Text	0	2	0	25	0	
19	Railroad R/W	2	2	0			
20	Utility Poles (Cell)	0	5	0			P POLE
21	Utility Easements	3	5	0			
22	Utility Text	0	5	1			
23	Geographic Names	0	3	1			
24	Building Structures	0	0	0			
24	Pools and Text	0	1	0	10	1	
24	Future Site of Structures	2	0	0			STRUCT
24	Existing Structures (exact location and shape unknown)	2	0	0			STRCEX
25	Property Lines/ refuge bdy.	6	6	1	30	1	
26	Cadastral Polygons	6	6	0			
27	Ownership Text	0	6	1			
28	Cemeteries/Text	4	6	0	10	1	
29	Lot Numbers				25	0	
30	Block Numbers				30	0	
31	Addition Names	0	0	0	35	0	
32	Open						
33	Lot Ticks						
34	Lot Lines/Property Lines	6	6	0			
35	Trees/Hedge Rows	0	6	0	AS=1		TREES
36	GPS Monuments	0	5	0	18	23	CONTRL
37	2' Topo Contour						
38	5' Topo Contour	0	7	0			
39	25' Major Topo Contour	0	7	0			

40	X Spot Elevation	0	7	0			
41	FEMA Monuments/Labels	0	3/0	0	18	1	FEMA
42	Quarter Sections						
43	Section Lines	0	5	0			
44	Features	0	2	0			
44	Cell Towers	0	12	0	AS=1		CELTWR
45	Fences (Pattern)	0	8	0	AS=1		FENCE
46	Format/Legend	0	0	0			Limleg Madleg
47	Mass Points	0	7	2			
48	Break Lines	0	7	2			
49	Open						
50	Billboards	0	37	1			BBOARD
51	Sanitary Sewer	0		3			
52	Sanitary Sewer Text						
53	Storm Water Features	0		3			
54	Storm Water Text						
55	Open						
56	Property Address	0	1	0			
57	Text Tag for Buildings	0	1	0	10-20	1	
58	One Way Arrows	1	3	1			
59	Open						
60	Open						
61	Open						
62	Monuments for Setup (point cell)						
63	Open						

Adopted 9/27/12

**ATTACHMENT 16 - COPY OF DEVELOPER AGREEMENT**

**RESOLUTION NO. 12- 849**

**BE IT RESOLVED** by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to enter into a Development Agreement by and between the City of Huntsville and IMI Huntsville, LLC, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Development Agreement between the City of Huntsville and IMI Huntsville, LLC," consisting of twenty-nine (29) pages and the date of September 27, 2012, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

**ADOPTED** this the 27th day of September, 2012.



\_\_\_\_\_  
President of the City Council of  
the City of Huntsville, Alabama

**APPROVED** this the 27th day of September, 2012.



\_\_\_\_\_  
Mayor of the City of  
Huntsville, Alabama

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**DEVELOPMENT AGREEMENT**

**by and between**  
**THE CITY OF HUNTSVILLE**  
**and**  
**IMI HUNTSVILLE LLC**

**Dated: September 27, 2012**

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\_\_\_\_\_  
President of the City Council of the City  
of Huntsville, Alabama  
Date: 9/27/12

## DEVELOPMENT AGREEMENT

This Development Agreement (this "Agreement") is made and entered into on and as of this 27th day of September, 2012 (the "Effective Date"), by and between The City of Huntsville, a municipal corporation under the laws of the State of Alabama (the "City"), and IMI Huntsville LLC, a Delaware limited liability company ("Developer").

### WITNESSETH

WHEREAS, Developer is the owner of the approximately 100 acre retail and mixed-use development located in Huntsville, Alabama and known as "Bridge Street Towne Centre" (the "Project"); and

WHEREAS, the City has determined that demand currently exists, and over the reasonably foreseeable future such demand will increase, for additional retail enterprises within and around the Project; and

WHEREAS, Developer has approached the City with a proposal for development of a new phase of the Project which will include additional retail enterprises within the Project, and is also contemplating future plans for a potential second new phase (each, a "Phase", and collectively, the "Phases"), which such Phases are herein more particularly described and referenced as "Phase III" and "Phase IV" of the Project; and

WHEREAS, Developer has reported to the City that it has negotiated and is in the process of finalizing and executing a lease agreement with a national or regional department store retailer for the Department Store (hereinafter defined), which Department Store will comprise a majority of the square footage of Phase III; and

WHEREAS, the City has determined that the Project is situated in an area important for economic development, and that Phase III will inure to the benefit of the City and its citizens by, among other things, (i) expanding the tax base of the City by attracting to the Project general commercial activity and development, (ii) attracting to the Research Park area individuals who desire to live and shop in an urban setting, (iii) facilitating the development of other portions of the Research Park area located in the vicinity of the Project, (iv) expanding employment opportunities within and surrounding the Project site, and (v) enhancing the overall quality of life for the citizens of the City; and

WHEREAS, development of Phase III will require certain public infrastructure improvements within and around the site of the Project including, without limitation, the City Work hereinafter defined.

NOW THEREFORE, in consideration of the premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

### ARTICLE I DEFINITIONS

1.1 **Defined Terms.** Each reference in this Agreement to any of the following terms shall have the meaning set forth below for each such term:

"**Affiliate**" means any Person directly or indirectly Controlling, Controlled by or under Common Control with the Developer.

"**Certificate of Substantial Completion**" means a certificate of an architect or engineer reasonably satisfactory to the City evidencing completion of the construction of that portion of the Project described in the certificate, less and except completion of punch list items, and, further, providing that construction has been completed such that said portion of the Project enjoys permanent utility access.

"**City Application Fees**" means standard, usual and customary fees levied or assessed by the City to review and process applications for City Approvals.

"**City Approvals**" means standard, usual and customary permits or approvals required under City Regulations in order to develop, use and operate the Project.

"**City Caused Overruns**" shall have the meaning given to such term in Section 2.5(f) hereof.

"**City Council**" means the City Council of the City or its designee.

"**City Development Fees**" means fees or assessments, other than City Application Fees, charged or required by the City in connection with any City Approval: (a) to defray, offset or otherwise cover the cost of public services, improvements or facilities; or (b) that are imposed for a public purpose.

"**City Obligations**" means the City Work set forth and described on Exhibit "C" hereto, along with the other City payment and performance obligations set forth in this Agreement.

"**City Regulations**" means the Zoning Ordinance and all other ordinances, resolutions, codes, rules, regulations and policies of the City in effect as of the time in question.

"**City Work**" means those items set forth on Exhibit "C" hereto.

"**Common Control**" means that two Persons are both controlled by the same other Person.

"**Construction Codes and Standards**" means the City Regulations pertaining to or imposing life safety, fire protection, mechanical, electrical and/or building integrity requirements with respect to the design and construction of buildings and improvements, including the then current applicable building codes.

"**Contingency Fund**" shall have the meaning given to such term in Section 2.5(c)(v) hereof.

**"Control"** means the ownership (direct or indirect) by one Person of an interest in the profits and capital and the right to manage and control the day to day affairs of another Person. The term "Control" includes any grammatical variation thereof, including "Controlled" and "Controlling".

**"Department Store"** shall have the meaning given to such term in Section 4.2(a)(i) hereof.

**"Department Store Lease Agreement"** means a fully executed and binding lease agreement between the Developer and a national or regional department store retailer respecting the Department Store, as contemplated in Section 4.2(a)(i) hereof.

**"Developer City Work Prepayment Amount"** shall have the meaning set forth in Section 2.5(c)(iv) hereof.

**"Estimated Total Cost"** shall have the meaning set forth in Section 2.5(c)(iv) hereof.

**"Exaction"** means (a) a requirement for the dedication of any portion of the property included in the Project to the City or any agency thereof, other than any dedication easement that may be required pursuant to Section 2.5(d) hereof, (b) an obligation for on-site or off-site improvements or construction of public improvements; (c) an obligation to provide services; or (d) the requirement to dedicate any easements, rights or privileges with respect to the Project or any portion thereof to the City or any agency thereof.

**"Excess City Costs"** shall have the meaning given to such term in Section 2.5(b) hereof.

**"Governmental Agencies"** means all governmental or quasi-governmental agencies (such as public utilities) having jurisdiction over, or the authority to regulate development of, the Project. As used in this Agreement, the term "Governmental Agencies" does not include the City or any of the departments of the City or the Design Control Committee of Cummings Research Park West (the "DCC").

**"Governmental Agency Approvals"** means all permits and approvals required by Governmental Agencies under Governmental Agency Regulations for construction, development, operation, use or occupancy of the Project.

**"Governmental Agency Regulations"** means the Laws, ordinances, resolutions, codes, rules, regulations and official policies of Governmental Agencies in effect as of the time in question.

**"IFB"** means an invitation for bids.

**"Laws"** means the Constitution and laws of the State of Alabama, the Constitution of the United States, and any federal, state, county or City ordinances, codes, statutes, regulations, or executive mandates, and any court decision, State or federal, with respect thereto.

**"Letter of Credit"** shall mean the letter of credit described in Article VII hereof.

**"Parties"** collectively means the City and the Developer (or the Developer's Permitted Transferees, as applicable, determined as of the time in question).

**"Permitted Transferee"** means a Transferee who has complied in all respects with the provisions of Article X of this Agreement.

**"Person"** means an individual, partnership, firm, association, corporation, trust, governmental agency, administrative tribunal or other form of business or legal entity.

**"Phase III Completion Damages Amount"** shall have the meaning given to such term in Section 4.2(c) hereof.

**"Phase IV Covenant Term"** shall have the meaning given to such term in Section 4.3(b) hereof.

**"Phase III Site"** means the real property more particularly described on Exhibit "A" attached hereto and incorporated herein by reference.

**"Phase IV Site"** means the real property more particularly described on Exhibit "B" attached hereto and incorporated herein by reference.

**"Phase IV Site Development Covenants"** shall have the meaning given to such term in Section 4.3(b) hereof.

**"Phase IV Site Development Restrictions"** shall have the meaning given to such term in Section 4.3(b) hereof.

**"Planning Commission"** means the Planning Commission of the City.

**"Plans and Specifications"** means the final plans and specifications to be used by the City to construct the City Work, as approved by Developer as provided herein, and as the same may be amended or modified, but subject to the terms of this Agreement.

**"Project"** means Bridge Street Towne Centre, together with the Phases.

**"Restaurant"** shall have the meaning given to such term in Section 4.2(a)(iii) hereof.

**"Site Lake"** shall have the meaning given to such term in Exhibit "C".

**"State"** means the State of Alabama and any department or agency acting on behalf of the State.

**"Technical City Permits"** collectively means any of the following technical permits issued by the City or any office, board, commission, department, division or agency of the City in connection with any building or improvement in either Phase: (a) demolition, excavation and grading permits; (b) foundation permits; (c) permits for the installation of underground lines and facilities for utilities; and (d) any other similar permits. "Technical City Permits" specifically

excludes building permits from the City for the construction of particular buildings or improvements.

"Term" means the term of this Agreement, as determined pursuant to Article IX hereof, unless sooner Terminated as provided in this Agreement.

"Terminate" means the expiration of the Term of this Agreement, or any termination of this Agreement by any party entitled to do so by the express provisions of this Agreement. The term "Terminate" includes any grammatical variant thereof, including "Termination" or "Terminated".

"Transfer" means the sale, assignment (as collateral or otherwise), encumbrance, transfer or hypothecation by Developer of any of its rights, duties or obligations under this Agreement, which may be made only in accordance with the terms, standards and conditions of Article X of this Agreement. Transfers do not include (a) a dedication of any portion of a Phase to the City or a Governmental Agency; (b) any other leases, subleases, licenses and operating agreements entered into in the ordinary course of business by Developer with tenants, for occupancy of space in any buildings or improvements (together with any appurtenant tenant rights and controls customarily included in such leases or subleases), and any assignment or transfer of any such lease, sublease, license or operating agreement by either party thereto; or (d) a collateral assignment of Developer's rights under this Agreement to a Mortgagee providing financing with respect to such Developer's portion of such Phase.

"Transferee" means the Person to whom a Transfer is proposed in accordance with Article X of this Agreement.

"Western Portion of the Site Lake" shall mean that portion of the Site Lake starting at the west face of the existing pedestrian bridge structure and extending to the Westernmost portion of the Site Lake (which such portion is located primarily in front of the proposed location of the Department Store).

"Zoning Ordinance" means The Zoning Ordinance of the City of Huntsville, Alabama, in effect as of February 2005, except as amended to expand on permissible uses.

1.2 Certain Other Terms. Certain other terms shall have the meanings set forth for each such term in this Agreement.

## ARTICLE II CITY WORK; CITY OBLIGATIONS AND OTHER PRELIMINARY MATTERS

2.1 General. In consideration of, and in reliance on, the covenants and commitments of the parties contained in this Agreement, the City will be unconditionally obligated to fulfill the City Obligations, but only in the manner and order set forth herein and only up to the sum of \$4,000,000, and the Developer will be unconditionally obligated to (i) complete the constructing, leasing and opening to the general public of Phase III pursuant to the provisions of and as set forth in Section 4.2(a) hereof, (ii) impose and record the Phase IV Site Development Covenants on the Phase IV Site, (iii) deliver and maintain the Letter of Credit, and (iv) cover all costs of the City Obligations in excess of \$4,000,000, all as more particularly set out herein.

2.2 [Reserved]

2.3 Designation of Coordinators. Each of the City and the Developer agree to designate one or more project coordinators to monitor and coordinate the acquisition, design, permitting, and construction of Phase III and the City Work in accordance with this Agreement.

2.4 Finalization of Plans and Specifications. Developer and the City will coordinate to the extent possible and cooperate with each other in connection with the finalization of the Plans and Specifications as promptly as possible after the Effective Date. Once the Plans and Specifications have been finalized and agreed upon by the City and the Developer, the same shall not be amended by the City in any material manner without Developer's prior written approval, which approval will not be unreasonably withheld.

2.5 Concerning the City Work. (a) In consideration of the agreement of the Developer as herein provided with respect to the development of Phase III and the recordation of the Phase IV Site Development Covenants, the City agrees that it will cover, whether in the form of out-of-pocket payments, waivers of fees and charges, allocations of costs of services provided by staff and resources of the City, or otherwise, not to exceed \$4,000,000 of the costs of the City Obligations. Developer agrees that it will timely pay and assume all such costs of the City Obligations in excess of \$4,000,000, as provided herein.

(b) In the event that the aggregate costs of performance of the City Obligations exceed \$4,000,000 (the amount of any such excess herein called the "Excess City Costs"), the City will provide notice of the same to the Developer with supporting information for such Excess City Costs as the same are incurred or are payable. City shall first utilize any amounts held on deposit in the Contingency Fund to pay any such Excess City Costs. To the extent amounts held on deposit in the Contingency Fund are not sufficient to pay such Excess City Costs, Developer shall remit the amount necessary for such Excess City Costs to the City within ten (10) calendar days of City's request therefor. Developer shall thereafter continue to be responsible for making additional deposits to the Contingency Fund for future Excess City Costs to the extent required by this Agreement.

(c) The City shall proceed with the development of the City Work after the Effective Date, in the following manner and order:

(i) As soon as practicable following the Effective Date, the City shall prepare the Plans and Specifications respecting the City Work and shall remit the same for approval by the Developer.

(ii) Following approval by the Developer of the Plans and Specifications, the Developer and the City shall cooperate and work with each other to prepare the IFB and related documentation for bidding of the City Work, all of which shall be subject to the reasonable approval of both the Developer and the City, and the Developer shall prepare at its sole cost and expense, and submit to the City for approval, the Phase IV Site Development Covenants as set forth in Section 4.3 hereof.

(iii) Upon (a) approval by the Developer and the City of the IFB respecting the City Work, (b) submission by the Developer to the City of the fully executed and enforceable Department Store Lease Agreement, (c) approval by the City of the Phase IV Site Development Covenants and recordation of the same by the Developer as set forth in Section 4.3 hereof, and (d) Developer's delivery to the City of the Letter of Credit, the City shall prepare and submit the IFB and related documentation for bidding of the City Work and shall commence and proceed with all other obligations of the City under this Agreement.

(iv) In the event that, based on bids submitted or otherwise, the product of 1.10 times the sum of (A) the total costs expended or incurred (whether in the form of out-of-pocket payments, waivers of fees and charges, allocations of costs of services provided by staff and resources of the City, or otherwise) by the City following the Effective Date but prior to the bid opening with respect to the City Obligations, (B) the total estimated cost of the City Work to be performed pursuant to the apparent winning bidder of the IFB, and (C) all other costs reasonably expected to be expended or incurred (whether in the form of out-of-pocket payments, waivers of fees and charges, allocations of costs of services provided by staff and resources of the City, or otherwise) by the City with respect to the City Obligations (the said product being herein called the "Estimated Total Cost"), exceeds \$4,000,000, then the Developer shall pay to the City the difference between the Estimated Total Cost and \$4,000,000 (said difference being herein called the "Developer City Work Prepayment Amount") in immediately available funds on the date that is not more than ten (10) calendar days following the City's determination of the Estimated Total Cost.

(v) In the event a Developer City Work Prepayment Amount is due and paid by Developer to City under this Agreement, the City agrees that the same shall be maintained in a separate fund or account of the City (the "Contingency Fund"), and such funds, together with any other amounts deposited into the Contingency Fund from time to time pursuant to this Agreement (including any interest earned thereon), shall be used by the City for no purposes other than payment of Excess City Costs actually incurred for which Developer is responsible under this Agreement (*i.e.*, Excess City Costs that are not City Caused Overruns). Upon reasonable request by Developer, the City shall provide a reasonable accounting regarding the use of any funds from the Contingency Fund and the City shall provide evidence of its maintenance of the segregated Contingency Fund as required above.

(vi) If, at any time during the development and construction of the City Work or the performance of the other City Obligations, the City reasonably determines that (a) the actual costs of the City Obligations will exceed the previously determined Estimated Total Cost and (b) the amount then held in the Contingency Fund is insufficient to cover such excess, the Developer shall be responsible for remitting any such anticipated shortfall to the City within ten (10) calendar days of City's determination of the same and notice to Developer, and

such amount shall be deposited by City into the Contingency Fund for use pursuant to the terms of this Agreement.

(vii) The Developer and the City acknowledge that in no event shall the City's costs (whether in the form of out-of-pocket payments, waivers of fees and charges, allocations of costs of services provided by staff and resources of the City, or otherwise) with respect to the City Obligations exceed \$4,000,000 plus the amount of City Caused Overruns, if any. If, during the development and construction of the City Work or the performance of the other City Obligations, the City ever actually incurs Excess City Costs for which Developer is responsible under this Agreement (i.e., Excess City Costs that are not City Caused Overruns) and the amount then held in the Contingency Fund is insufficient to cover such excess, the Developer shall be responsible for remitting the amount of such Excess City Costs (less any amount used by the City from the Contingency Fund for such costs) to City for City's direct payment of the same pursuant to the provisions of Section 2.5(b) hereof. To the extent the City has remaining obligations with respect to the City Obligations to be paid thereafter, then Developer shall continue to be responsible for the replenishment of the balance of the Contingency Fund to an amount to cover any remaining reasonably expected Excess City Costs pursuant to Section 2.5(c)(vi) hereof.

(viii) Upon completion of the City Obligations and full payment therefor (by City or Developer, as required under this Agreement), to the extent there remains any unused funds in the Contingency Fund (including any interest earned thereon), the same shall be promptly delivered by City to the Developer.

(d) The Developer acknowledges that, in the event the City determines that an easement on real property to which title is owned by the Developer or any Affiliate thereof is necessary to enable the City to commence or proceed with the City Work, the Developer shall grant such easement to the City for such purpose, all at no cost to the City.

(e) The City agrees that, upon reasonable notice, it shall provide to the Developer a reasonable accounting of the City's expenditures for the City Obligations up to \$4,000,000 and all invoices or other supporting documentation related to any Excess City Costs.

(f) Notwithstanding anything to the contrary hereinabove, Developer shall not be responsible for any Excess City Costs that are the direct result of mistakes in work being performed directly by City employees resulting in additional costs or expenses for the City Work (herein, the "City Caused Overruns"). Developer shall bear the burden of establishing that any Excess City Costs are the result of City Caused Overruns under this Agreement.

(g) The City agrees to complete the City Work on or before July 1, 2013; provided, that upon failure of the City to complete the City Work by such date, Developer's sole and exclusive remedy in such event shall be specific performance, and the Developer shall not be entitled to any other damages whatsoever, including, without limitation, incidental or consequential damages, whether arising at law or in equity; and, provided further, that neither any failure by the City to complete the City Work on or before July 1, 2013, as aforesaid, nor the

pursuit by Developer of any decree for specific performance as the sole and exclusive remedy for such failure, shall in any respect alter, extend, or modify any of the Developer's obligations hereunder, including, without limitation, the obligations of the Developer set forth in Sections 2.5, 4.2, 4.3, and 7.1 hereof.

2.6 Aid to Construction. The City hereby agrees to cover or cause to be waived Aid-to-Construction fees and similar assessments ("ATC Charges") with respect to the initial supplying of utilities to Phase III as a whole. Anything in the foregoing to the contrary notwithstanding, whether express or implied, ATC Charges shall not include standard utility meter fees or any point-of-service fees or assessments (for which Developer and any of its tenants, lessees, successors or assigns shall be fully responsible).

2.7 Clay Liner. To the extent that Developer's development of Phase III involves removal of the existing clay liner (the "Clay Liner") of the Site Lake (or any portions thereof), at such time as the Developer shall have removed the same from the Site Lake, placed it in an area where the City can reasonably obtain access thereto for purposes of removing the same, and notified the City that such portion of the Clay Liner is available for pick up by the City, the City agrees to pick up and transport the same from the Project. Except for the pick up and transporting under the conditions set forth above, under no circumstances shall the City be obligated to remove or otherwise relocate, or pay the costs in removing or otherwise relocating, the Clay Liner from the Site Lake.

ARTICLE III  
REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the City.

(a) The execution and delivery of this Agreement by the City have been duly authorized by the City Council of the City.

(b) The City has all right, power and authority to enter into the transactions contemplated by this Agreement and to perform its obligations hereunder.

3.2 Representations and Warranties of Developer.

(a) The execution and delivery of this Agreement by Developer has been duly authorized by all necessary action on the part of the governing body of the Developer and Developer's members and managers, if any.

(b) Developer has all necessary power and authority to enter into the transactions contemplated by this Agreement and, to the extent applicable, to perform its obligations hereunder.

ARTICLE IV  
THE PHASES

4.1 Development of the Phases. The Developer hereby agrees, with and for the benefit of the City, as follows:

(a) The Developer will develop Phase III in accordance with the terms and conditions of this Agreement, and any development of Phase IV during the Phase IV Covenant Term shall be in accordance with the Phase IV Site Development Covenants.

(b) Developer agrees to use all commercially reasonable efforts to commence and complete the development of Phase III as promptly as possible following the Effective Date and to comply with all Laws including, without limitation, all City Regulations applicable to the construction, development, and operation of the Phases and the Project.

4.2 Phase III. (a) Completion of Phase III of the Project shall require the following:

(i) Construction of a department store with a minimum total square footage area of approximately 170,000 square feet (but in no event less than 168,000 square feet), and leased to a national or regional department store retailer pursuant to the Department Store Lease Agreement, to be located in the Phase III Site (the "Department Store"), which such Department Store must open to the public for business for a minimum of one (1) day on or prior to March 31, 2015;

(ii) Construction of additional out parcels or other spaces for retail shop space with a minimum of 45,000 square feet of space in the aggregate, as evidenced by a Certificate of Substantial Completion; and

(iii) Construction of, and the occupancy or execution of a binding lease agreement by, one (1) restaurant of a sit-down dining type, and containing a minimum of 6,000 square feet of space (the "Restaurant"). The Restaurant must be a brand or type not located within Madison County, Alabama, at the time of such occupancy or lease agreement execution. The Restaurant can be included in the 45,000 square feet of retail space set out in Paragraph 4.2(a)(ii) above, and in such event the total minimum square footage requirement of Phase III (inclusive of the Department Store) shall be 213,000 square feet.

(b) Phase III shall be completed in accordance with the requirements of Section 4.2(a) on or before March 31, 2015. During construction of Phase III and of the City Work, the City will not prohibit the Developer from utilizing existing public infrastructure (including, without limitation, existing storm water collection and diffusion infrastructure) on or around the site of the Project for the purpose of draining and filling that portion of the Site Lake located on the Western Portion of the Site Lake. Any drainage or filling of any other portion of the Site Lake shall be subject to approval by the City and the findings, results or recommendations of any hydrologic studies or assessments conducted during performance of the City Work.

(c) If, for whatever reason, Phase III is not completed on or before March 31, 2015, then, in addition to all other rights and remedies of the City hereunder, the Developer shall be required to remit and pay to the City, in immediately available funds, an amount equal to the total amount paid to such date by the City for the City Obligations not already reimbursed by Developer, including all costs (whether out-of-pocket payments, waivers of fees and charges, allocations of costs of services provided by staff and resources of the City, or otherwise) of the City in connection with such obligations (the "Phase III Completion Damages Amount"). Anything in the foregoing notwithstanding, the City shall be authorized to draw, retain, and use for any purpose of the City the full amount available for drawing under the Letter of Credit (or, if the City has already drawn on the Letter of Credit pursuant to Section 7.2(b) hereof, all proceeds from such drawing) upon failure of the Developer, for whatever reason, to timely complete Phase III on or before March 31, 2015, whether or not the Phase III Completion Damages Amount is less than the full amount available under the Letter of Credit (which shall be the amount the City will be drawing on the Letter of Credit) or the amount theretofore drawn under the Letter of Credit pursuant to Section 7.2(b) hereof. Amounts drawn under the Letter of Credit shall be applied as a credit towards the Phase III Completion Damages Amount, and any amount drawn under the Letter of Credit in excess of the Phase III Completion Damages Amount shall be retained by and become funds of the City and used for any purpose determined by the City.

(d) Upon failure of the Developer to timely complete Phase III in accordance with this Agreement, the City shall have no further obligations hereunder.

4.3 Phase IV Site Development Covenants. (a) The Developer hereby covenants and agrees that, during the Phase IV Covenant Term, any future development of the Phase IV Site will include construction at a minimum of either (i) a hotel consisting of at least 100 rooms, or (ii) 50,000 square feet of retail space; and, further, that under no circumstances shall any Phase IV Site development during the Phase IV Covenant Term include any office space improvements (other than such as may be incident to the operation of the hotel and/or retail improvements on the Phase IV Site).

(b) The Developer understands, acknowledges and agrees that the agreements regarding the requirements and limitations upon any development of the Phase IV Site set forth in subparagraph (a) immediately above (herein called the "Phase IV Site Development Restrictions") are a material inducement to the City in entering into this Agreement. In order to ensure performance of the Phase IV Site Development Restrictions, the Developer shall be responsible for preparing, developing, imposing, and recording covenants on the Phase IV Site requiring that all owners of property within the Phase IV Site construct and develop improvements thereon solely in accordance with the Phase IV Site Development Restrictions and naming the City as a third party beneficiary thereof (the "Phase IV Site Development Covenants"). The Phase IV Site Development Covenants shall have a term of not less than thirty (30) years from the date of recordation thereof (herein called the "Phase IV Covenant Term").

(c) The Phase IV Site Development Covenants shall be of the form and content reasonably satisfactory to the City, and shall be submitted to the City for approval (such approval to be made by the Manager of Planning Administration for the City) prior to the recordation thereof. The Phase IV Site Development Covenants shall be recorded as and when required pursuant to Section 2.5(c)(iii) hereof.

(d) The Developer agrees that any development by Developer of Phase IV during the Phase IV Covenant Term shall be in compliance with the Phase IV Site Development Covenants. The parties hereto agree, however, except for the immediately preceding sentence, nothing in this Agreement shall create or constitute any obligation or commitment of any kind regarding any future development of Phase IV by Developer, and that upon expiration of the Phase IV Covenant Term, there shall remain no Phase IV Site Development Restrictions.

(e) Notwithstanding anything to the contrary contained herein, the parties agree that the Phase IV Site Development Covenants will permit Developer, in the absence of any vertical construction on the Phase IV Site (which such vertical construction shall at all times be subject to the requirements of Section 4.3(a) hereof), at any time in its sole discretion, to utilize the Phase IV Site for additional surface parking for the Project.

ARTICLE V  
[RESERVED]

ARTICLE VI  
ARCHITECTURE, ENGINEERING AND  
DESIGN REVIEW PROCESS GOVERNING  
THE PHASES

6.1 Certain Matters Relating to Zoning and City Regulations. (a) Except as otherwise specifically provided in this Agreement, and provided that construction of Phase III is commenced within the time period required under this Agreement, then during the period of five (5) years after the Effective Date: (i) the regulations and standards in the Zoning Ordinance that are applicable to the Project shall be deemed vested on behalf of Developer; and (ii) the City shall not impose on or apply to the overall design, development or construction of the Phases, any City Regulations which would:

(i) be inconsistent or in conflict with the intent, purposes, terms, standards or conditions of this Agreement;

(ii) change or modify the provisions of the City Regulations in effect on the Effective Date governing the permitted uses of the Project, the density or intensity of use of any Phase of the Project, the maximum height, bulk, or size of proposed buildings and improvements in the Project, the minimum setbacks for any buildings and improvements in the Project and the parking requirements for the Project;

(iii) increase the cost of development of a Phase;

(iv) other than to a *de minimis* extent, change, modify or delay, or interfere with, the timing, phasing, or rate of development of either Phase; or

(v) interfere with or diminish the ability of a party to perform its obligations under this Agreement, or expand, enlarge or accelerate Developer's obligations under this Agreement.

(b) Nothing in this Agreement is intended, should be construed or shall operate to preclude or otherwise impair the rights of Developer from applying to the City's Board of Zoning Adjustment for a variance or exception under the Zoning Ordinance with respect to any proposed buildings and improvements in its respective portion of the Project (collectively, the "Variances") in accordance with the procedures applicable to Variances under the City Regulations then in effect. The City shall process, review and approve or disapprove any application for a Variance filed by a Developer in accordance with such City Regulations.

6.2 Exceptions. Any other provision of Section 6.1 to the contrary notwithstanding:

(a) the City shall have the right to apply to the Project, or any portion thereof, at any time, as a ministerial act, the Construction Codes and Standards in effect at the time of the requirement of any City Approval hereunder; provided that such Construction Codes and Standards are uniformly applied by the City to comparable construction activity on a City-wide basis; and

(b) the Developer shall pay City Application Fees that are in effect at the time the relevant application for a City Approval is made, provided that such City Application Fees are uniformly imposed by the City at similar stages of project development on all similar applications for development in the City.

6.3 Project Approvals. As soon as practicable following the delivery to the City of final plans and specifications for the construction projects included in Phase III, the City will prepare and provide to Developer a list of all City Approvals that shall be required for the development, construction, use and occupancy of the each component of such Phase (collectively, the "Project Approvals").

6.4 Project Exactions. Except as specifically set forth in this Agreement, no Exactions shall be imposed by the City on either Phase, or on any application made by Developer for any City Approval, or in enacting any City Approval, or in connection with the development, construction, use or occupancy of any Phase or the Project, other than the City's sewer access fee and any other general fees or charges of the City that are uniformly imposed by the City on similar applications for development in the City.

6.5 City Development Fees. Within 45 days following delivery to the City of the plans and specifications for the construction and development of Phase III, the City will prepare and provide to Developer a list of all City Development Fees that, based on such plans and specifications, will be required for the development, construction, use and occupancy of such Phase.

6.6 Review and Processing of Project Approvals. All City Approvals required for the construction and development of Phase III or any buildings and improvements therein which

comply with the requirements of the City Regulations: (a) shall be issued over-the-counter by the director of the other applicable City departments having responsibility for the issuance of such City Approvals; (b) shall not require the approval of the Planning Commission, City Council or any other City board or commission, including without limitation, the DCC; and (c) shall not require a public hearing. The City Approvals covered under this Section 6.6 include but are not limited to, Technical City Permits, building permits and certificates of occupancy and completion. The City shall cooperate with the Developer in an effort to facilitate prompt and timely review and processing of all applications for City Approvals, including the timely processing and checking of all maps, plans, permits, building plans and specifications and other plans relating to development of the Phases filed by the Developer.

6.7 Project Signage. The Developer may provide, at its sole cost and expense, signage for the Project that is permitted in the City Regulations.

6.8 Governmental Agency Approvals. Developer shall apply for and pursue all required Governmental Agency Approvals from Governmental Agencies which are required during the course of design, development, construction, use or occupancy of the Phases. Developer shall take such reasonable steps as are necessary to obtain all such Governmental Agency Approvals and shall bear all costs and expenses for obtaining such Governmental Agency Approvals. When and if obtained, copies of all such Governmental Agency Approvals shall be submitted to the City promptly after a Developer's receipt of a written request therefore from the City. Developer shall comply with, and shall cause each Phase to comply with, all Governmental Agency Regulations and Laws related to the development, use and operation of the Project.

## ARTICLE VII LETTER OF CREDIT

7.1 Developer to Provide Letter of Credit. (a) In order, among other things, to secure its obligations to the City hereunder, the Developer shall deliver to the City an unconditional, irrevocable standby letter of credit in favor of the City in the face amount of \$4,000,000 and containing such terms and conditions as shall be reasonably acceptable to the City (including, without limitation, provisions permitting the City to make drawings under the letter of credit up to the maximum amount available thereunder from time to time and at any time (the "Letter of Credit"), subject to reduction of the face amount as provided for in paragraph (b) of this Section 7.1. Without limiting the generality of the foregoing, the Letter of Credit shall be from an issuer reasonably acceptable to the City and (i) be for an initial term of at least one (1) year, with automatic renewal features of not less than one (1) year each to occur immediately and without further actions of the issuer of the Letter of Credit in the event the issuer fails to notify the City in writing at least forty-five (45) days prior to the expiration of the then current term of the Letter of Credit of the issuer's determination not to renew the Letter of Credit for an additional renewal period, (ii) provide for unconditional payment upon presentment within the City of Huntsville, Alabama, and (iii) expressly permit each of the Mayor and the City Clerk/Treasurer to act on behalf of the City for purposes of making drawings thereunder. The Developer shall cause the Letter of Credit to be outstanding and available until the Termination of this Agreement pursuant to Section 9.1 or 9.2 hereof.

(b) The Letter of Credit shall at all times be in the face amount of, and permit one or more drawings up to, \$4,000,000; provided, that at such time as the Developer has caused to be poured and completed the foundation and all footings for all Phase III buildings (the completion of which shall be evidenced by a certificate signed by an authorized representative of the Developer and confirmed in writing by the City) the Developer may cause the issuer of the Letter of Credit to reduce the face amount of the Letter of Credit to \$2,000,000.

(c) Anything in this Section 7.1 notwithstanding, the City shall return the Letter of Credit to the Developer for cancellation upon the Termination of this Agreement pursuant to Section 9.1 or 9.2 hereof, but only in the event the City has not fully drawn upon the same.

**7.2 Draws Against the Letter of Credit.** (a) The City and Developer hereby agree that the City will not make any drawing under the Letter of Credit (except a drawing to be made if the issuer of the Letter of Credit indicates to the City of such issuer's intention or decision not to renew the same while this Agreement is in effect, a drawing made following a downgrade or reduction of the short-term or long-term credit rating of the issuer of the Letter of Credit beyond a level reasonably acceptable to the City by any entity maintaining a rating on the issuer of the Letter of Credit, or a drawing to be made pursuant to Section 4.2(c) following failure of the Developer to timely complete Phase III as set forth in this Agreement on or before March 31, 2015, in all of which cases the Developer understands the City may make drawings on the Letter of Credit immediately and without further notice to or cure rights of the Developer) until the expiration of a notice and a reasonable cure period that in no event shall exceed thirty (30) days. After the expiration of such notice and cure period, the City shall have the right, but not the obligation, to make one or more drawings against the Letter of Credit up to the full amount available for drawing thereunder upon failure of Developer to perform any of its obligations to the City under this Agreement including, without limitation, the obligation of Developer to make the Developer City Work Prepayment Amount and any other payments required of the Developer respecting the development, construction and performance of the City Obligations, and the obligation of the Developer to record the Phase IV Site Development Covenants as herein set forth. All proceeds from drawings on the Letter of Credit shall be retained by the City, whether or not the amount owed hereunder to the City by the Developer is less than the amount drawn by the City under the Letter of Credit, and may be used by the City for any purpose determined by the City.

(b) It is hereby further understood and agreed that the City may, but shall not be required to, withdraw the full amount available under the Letter of Credit upon notice from the issuer of the Letter of Credit then in effect of such issuer's decision not to renew the Letter of Credit for an additional one (1) year term or in the event of a downgrade or reduction of the short-term or long-term credit rating of the issuer of the Letter of Credit beyond a level reasonably acceptable to the City by any entity maintaining a rating on the issuer of the Letter of Credit, which such amount shall be held by the City outside the Contingency Fund to secure the obligations of the Developer to the City hereunder (including, without limitation, the obligations of Developer to make the payments required of the Developer respecting the development and construction of the City Work, and to make the other payments called for pursuant to Section 4.2(c) hereof and to timely complete Phase III as herein set forth). Without limiting the foregoing in any respect, upon termination of this Agreement, any funds so held by the City (exclusive of interest or earnings thereon) as a result of a drawing on the Letter of Credit

pursuant to this paragraph (b), and not otherwise applied to satisfaction of payments required of the Developer under this Agreement as aforesaid or that have not become the funds or property of the City pursuant to any other provisions of this Agreement, shall be returned to the Developer within ten (10) business days.

**ARTICLE VIII  
RESERVED**

**ARTICLE IX  
TERM AND TERMINATION**

9.1 **Term.** This Agreement, upon its execution and delivery by all parties thereto, shall become effective on the Effective Date and shall continue in effect until all payment and performance obligations of the Parties required under this Agreement have been fully performed and discharged.

9.2 **Termination.** This Agreement may be Terminated by the unanimous written consent of all parties to this Agreement, at any time prior to completion of the development of Phase III.

9.3 **Effect of Termination.** Upon any Termination of this Agreement in accordance with its terms, all obligations of the parties hereunder will terminate, except (a) the obligation of the Developer respecting the Phase IV Site Development Covenants, and (b) any obligations expressly stated herein to survive Termination of this Agreement; all of which such obligations shall survive such Termination and shall be fulfilled by the party obligated thereunder. In addition, termination of this Agreement in accordance with its terms shall not: (a) alter, impair or otherwise affect any City Approvals for the Project that were issued by the City prior to the date of Termination; or (b) prevent, impair or delay the Developer from (i) commencing, performing or completing the construction of any buildings or improvements in the Phases or (ii) obtaining any certificates or occupancy or similar approvals from the City for the use and occupancy of completed buildings or improvements in either Phase, that were authorized pursuant to City Approvals for such construction issued by the City prior to the date of Termination. Nothing herein shall preclude the City, in its discretion, from taking any action authorized by Laws or City Regulations to prevent, stop or correct any violation of Laws or City Regulations occurring before, during or after construction of the buildings and improvements in the Project by Developer.

**ARTICLE X  
ASSIGNMENT AND TRANSFER**

10.1 **Restrictions on Assignment; Conditions Precedent.** Except as otherwise expressly set forth in this Article X, Developer shall not have the right to assign or otherwise Transfer its rights or obligations under this Agreement, and any purported assignment, Transfer, encumbrance or hypothecation of this Agreement or any of the rights or obligations hereunder in violation of this Article X shall be void. Notwithstanding the foregoing, if, and to the extent, permitted herein, Developer may Transfer its rights under this Agreement only upon the satisfaction of each of the following conditions precedent:

(a) The Developer shall be in compliance with all of its obligations hereunder as of the effective date of the proposed assignment.

(b) The proposed Transferee shall be subject to the City's approval pursuant to Section 10.3 hereof.

(c) Prior to the effective date of the proposed Transfer, the Developer and proposed Transferee have delivered to the City an executed and acknowledged assignment and assumption agreement ("Assumption Agreement") in recordable form. Such Assumption Agreement shall include provisions regarding: (a) the rights and interest proposed to be Transferred to the proposed Transferee; (b) the obligations of the Developer under this Agreement that the proposed Transferee will assume; and (c) the proposed Transferee's acknowledgment that such Transferee has reviewed and agrees to be bound by this Agreement. The Assumption Agreement shall also include the name, form of entity, and address of the proposed Transferee, and shall provide that the Transferee assumes the obligations of the assigning Developer to be assumed by the Transferee in connection with the proposed Transfer. The Assumption Agreement shall be recorded in the Office of the Judge of Probate of Madison County concurrently with the consummation of the Transfer.

10.2 Transfer to Affiliate. Notwithstanding any restrictions on Transfers set forth in Section 10.1 above, Developer may at any time Transfer all of its rights, duties and obligations under this Agreement to an Affiliate of Developer; provided, that (i) the Developer shall provide at least five (5) business days advance Notice of such Transfer to the City, and (ii) unless the City agrees in writing to the contrary, no such Transfer shall, or shall be deemed to, release the Transferring Developer from its obligations hereunder and such Developer shall be responsible for the satisfaction of the remaining obligations hereunder. Such Affiliate shall become a Permitted Transferee upon: (a) delivery to the City of an Assumption Agreement pursuant to Section 10.1 hereof assuming, from and after the date such Affiliate acquires its interest, the applicable rights, duties and obligations of the Transferring Developer under this Agreement, and (b) unless the prior written consent of the City to the contrary is first obtained, the Developer acknowledges in writing its continued responsibility for the full and timely performance of all of its obligations hereunder by such Affiliate.

10.3 Consent of City Required. Unless the proposed Transferee is an Affiliate of a Developer and the parties comply with Section 10.2 hereof, Developer may not assign or otherwise Transfer all or any portion of its rights or obligations under this Agreement to any Person without the prior written consent of the City, which shall not be unreasonably withheld, conditioned or delayed. In addition, and not in limitation of the foregoing, the Developer hereby agrees that, during the period commencing on the Effective Date and concluding on the date upon which Phase III has been completed (as evidenced by a Certificate of Substantial Completion for all Phase III buildings), Developer shall not sell, transfer or otherwise convey its ownership interest in the Phase III to any Person (other than an Affiliate, subject to the provisions of Section 10.2 above) without the express written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed; provided, that the prior consent of the City shall not be required for (a) the granting of a Mortgage on or with respect to any Phase, or (b) the collateral assignment of the Developer's rights under this Agreement in order to finance such development or construction costs with respect to any Phase.

ARTICLE XI  
NOTICES

11.1 Delivery of Notices. All notices, statements, demands, consents and other communications ("Notices") required or permitted to be given by any party to another party pursuant to this Agreement or pursuant to any applicable law or requirement of public authority shall be properly given only if the Notice is: (a) made in writing (whether or not so stated elsewhere in this Agreement); (b) given by one of the methods prescribed in Section 11.2; and (c) sent to the party to which it is addressed at the address set forth below or at such other address as such party may hereafter specify by at least five (5) calendar days' prior written notice:

If to the City:

City of Huntsville  
Attention: Mayor  
308 Fountain Circle  
P.O. Box 308  
Huntsville, Alabama 35804  
Fax: (256) 427-5121

With a copy to the attention of:

City of Huntsville  
Attention: City Attorney  
308 Fountain Circle  
P.O. Box 308  
Huntsville, Alabama 35804

If to Developer:

IMI Huntsville LLC  
c/o Miller Capital Advisory, Inc.  
5750 Old Orchard Road, Suite 400  
Skokie, Illinois 60077  
Attention: Mr. Richard Kobe  
Fax: (847) 966-9628

with a copy to:

Jason M. Toon, Esq.  
Greenberg Traurig, LLP  
77 West Wacker Drive  
Suite 3100  
Chicago, Illinois 60601  
Fax: (312) 899-0427

11.2 Methods of Delivery. Notices may be either: (a) delivered by hand; (b) delivered by a nationally recognized overnight courier which maintains evidence of receipt; or (c) sent by facsimile transmission with a confirmation copy delivered the following day by a nationally recognized overnight courier which maintains evidence of receipt. Notices shall be effective on the date of receipt. If any Notice is not received or cannot be delivered due to a change in address of the receiving party, of which notice was not properly given to the sending party, or

due to a refusal to accept by the receiving party, such Notice shall be effective on the date delivery is attempted.

## ARTICLE XII MISCELLANEOUS

12.1 Negation of Partnership. The parties specifically acknowledge that none of the parties is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership or joint venture between or among any two or more of the parties, or cause them to be considered joint venturers or members of any joint enterprise. This Agreement is not intended and shall not be construed to create any third party beneficiary rights in any Person who is not a party or a Permitted Transferee; and nothing in this Agreement shall limit or waive any rights any one or more of the parties may have or acquire against any third Person with respect to the terms, covenants or conditions of this Agreement.

12.2 Approvals. Unless otherwise provided in this Agreement, whenever approval, consent, satisfaction, or decision (herein collectively referred to as an "Approval"), is required of a party pursuant to this Agreement, it shall not be unreasonably withheld or delayed. If a party shall disapprove, the reasons therefore shall be stated in reasonable detail in writing. Approval by a party to or of any act or request by the other party shall not be deemed to waive or render unnecessary approval to or of any similar or subsequent acts or requests. Whenever, under this Agreement, the term "approve" (or any grammatical variant thereof, such as "approved" or "approval") is used in connection with the right, power or duty of the City, or any representative board, commission, committee or official of the City, to act in connection with any City Approval, such Approval shall be deemed conclusively given if (a) in writing and (b) the approval is made by the Mayor.

12.3 Not A Public Dedication. Except as specifically set forth in Section 2.5(d) hereof, nothing herein contained shall be deemed to be a gift or dedication of any of the real property described or referred to herein, or any buildings or improvements constructed thereon, to the general public, for the general public, or for any public use or purpose whatsoever.

12.4 Severability. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any Person, by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other Person or circumstance and the same shall remain in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

12.5 Exhibits. The Exhibits, to which reference is made herein, are deemed incorporated into this Agreement in their entirety by reference thereto.

12.6 Amendment. Except as expressly provided in this Agreement, this Agreement may be modified or amended only by a written instrument, executed by each of the parties to this Agreement.

12.7 Entire Agreement. This written Agreement and the Exhibits hereto, contain all the representations and the entire agreement among the parties with respect to the subject matter hereof. Except as otherwise specified in this Agreement, any prior correspondence, memoranda, agreements, warranties or representations are superseded in total by this Agreement and Exhibits hereto. Neither the conduct nor actions of the parties, nor the course of dealing or other custom or practice between or among the parties or any of them, shall constitute a waiver or modification of any term or provision of this Agreement. This Agreement may be modified or amended only in the manner specified in this Agreement.

12.8 Construction of Agreement. All of the provisions of this Agreement have been negotiated at arm's-length between the parties and after advice by counsel and other representatives chosen by each party, and the parties are fully informed with respect thereto. Therefore, this Agreement shall not be construed for or against any party by reason of the authorship or alleged authorship of any provisions hereof, or by reason of the status of either party. The provisions of this Agreement and the Exhibits hereto shall be construed as a whole according to their common meaning and not strictly for or against any party and consistent with the provisions hereof, in order to achieve the objectives and purpose of the parties hereunder. The captions preceding the text of each Article and Section are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement.

12.9 Further Assurances; Covenant to Sign Documents. Each party shall take all actions and do all things, and execute, with acknowledgment or affidavit if required, any and all documents and writings, which may be necessary or proper to achieve the purposes and objectives of this Agreement.

12.10 Governing Law. This Agreement, and the rights and obligations of the parties, shall be governed by and interpreted in accordance with the laws of the State of Alabama.

12.11 Counterpart Execution. For convenience, this Agreement may be executed by the parties in multiple counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one and the same Agreement.

12.12 Liabilities of the City. The Developer understands, acknowledges and agrees that the obligations of the City as set forth herein are limited by the limitations imposed on public bodies, municipalities and public corporations by the Constitution of the State of Alabama and laws affecting the use and maintenance of public property. Anything in this Agreement to the contrary notwithstanding, whether express or implied, in the event the City Work, or any portion thereof, is not constructed or otherwise operational by the date set forth in Section 2.5(g) hereof, or is designed or constructed in a manner not suitable to the Developer, the sole and exclusive remedy of the Developer shall be specific performance, and the Developer shall not be entitled to any other damages whatsoever, including, without limitation, incidental or consequential damages, whether arising at law or in equity.

12.13 No Representations or Warranties Concerning City Work. The Developer acknowledges and agrees that the City makes no and disclaims any and all representations and warranties regarding the City Work, including, without limitation, warranties (whether express or implied) regarding the design, construction, functionality, and suitability of the City Work. The

**Developer further acknowledges and agrees that, pursuant to Article II hereof, it is obligated to review and approve the Plans and Specifications and IFBs regarding the City Work and that such review and approval shall forever estop Developer from asserting liability of the City for any claimed representations or warranties regarding the City Work.**



**EXHIBIT A**

**LEGAL DESCRIPTION FOR PHASE III SITE**

[see attached]

The parties acknowledge and agree that the attached legal description for the Phase III Site is subject to change and variation based on final plans and as-built conditions.

Dean D. Exline, PLS

Alabama Registered Surveyor  
311 Judges Road, Suite 3D  
Wilmington, NC 28405

August 3, 2012  
Project No. 12040

**Legal Description**  
**Phase 3**  
**16.50 Acre Lease Area**  
**Research Park Condominium**

A 16.50 acre parcel being inside the Research Park Condominium as recorded in the Madison County, Alabama records;

Said parcel of land being located in Section 6, Township 4 South, Range 1 West, Madison County, Alabama and more particularly described as follows:

Beginning for reference at the southeast corner of said Research Park Condominium, said point also being the intersection of the North Right-of-Way Line of Old Madison Pike and the West Right-of-Way Line of Alabama Highway 255, thence North 57°00'49" West, a distance of 1,062.28 feet to a point on the back of that curb that runs along the north side of the road that runs from Governors West to the north side of the parking decks, said Point Being the **PRINCIPAL PLACE OF BEGINNING** for this survey;

Thence with said with the back of curbing along said road and also along Governors West, the following courses and distances:

North 87°55'22" West a distance of 239.57 feet to a Point;  
North 43°48'38" West a distance of 44.31 feet on the chord of a curve convex to the southwest with a radius of 30.00 feet and an arc length of 49.84 feet, to a Point;  
North 04°45'17" East a distance of 10.07 feet to a Point;  
South 88°32'17" East a distance of 3.37 feet to a Point;  
North 04°37'27" East a distance of 4.23 feet to a Point;  
North 22°55'30" West a distance of 8.14 feet to a Point;  
North 02°03'55" East a distance of 144.24 feet to a Point;  
North 02°53'37" West a distance of 107.37 feet on the chord of a curve convex to the east with a radius of 467.39 feet and an arc length of 107.61 feet, to a Point;  
North 16°42'52" East a distance of 7.36 feet to a Point;  
North 08°39'19" West a distance of 4.74 feet to a Point;  
North 39°21'46" West a distance of 7.34 feet to a Point;  
North 23°27'30" West a distance of 191.12 feet on the chord of a curve convex to the northeast, with a radius of 467.39 feet and an arc length of 192.48 feet, to a Point;  
North 28°44'39" West a distance of 83.72 feet on the chord of a curve convex to the southwest, with a radius of 398.90 feet and an arc length of 83.87 feet, to a Point;  
North 06°38'55" East a distance of 7.06 feet to a Point;  
North 21°55'23" West a distance of 4.98 feet to a Point;  
North 47°08'42" West a distance of 7.56 feet to a Point;  
North 08°17'07" West a distance of 163.77 feet on the chord of a curve convex to the southwest, with a radius of 398.90 feet and an arc length of 164.94 feet, to a Point;  
South 86°26'22" East a distance of 3.70 feet to a Point;  
North 01°29'31" East a distance of 4.61 feet to a Point;  
North 22°27'22" West a distance of 7.68 feet to a Point;  
North 18°40'40" East a distance of 185.76 feet on the chord of a curve convex to the northwest, with a radius of 398.90 feet and an arc length of 187.49 feet, to a Point;

## Dean D. Exline, PLS

Alabama Registered Surveyor  
311 Judges Road, Suite 3D  
Wilmington, NC 28405

North 23°23'30" East a distance of 146.01 feet on the chord of a curve convex to the southeast, with a radius of 466.44 feet and an arc length of 146.62 feet, to a Point;  
 South 75°06'46" East a distance of 3.54 feet to a Point;  
 North 14°53'14" East a distance of 4.47 feet to a Point;  
 North 12°59'26" West a distance of 7.60 feet to a Point;  
 North 07°03'15" East a distance of 103.54 feet on the chord of a curve convex to the southeast, with a radius of 569.73 feet and an arc length of 103.68 feet, to a Point;  
 North 00°15'50" East a distance of 25.29 feet to a Point;  
 South 87°20'45" East a distance of 3.43 feet to a Point;  
 North 02°33'41" East a distance of 4.56 feet to a Point;  
 North 24°48'52" West a distance of 7.61 feet to a Point;  
 North 02°07'47" East a distance of 200.61 feet to a Point;  
 South 89°24'00" East a distance of 3.75 feet to a Point;  
 North 01°46'44" East a distance of 4.93 feet to a Point;  
 North 26°48'35" West a distance of 7.69 feet to a Point;  
 North 02°07'47" East a distance of 142.33 feet to a Point;  
 North 09°41'31" East a distance of 45.33 feet on the chord of a curve convex to the west, with a radius of 147.44 feet and an arc length of 45.51 feet, to a Point;  
 North 43°52'38" East a distance of 69.21 feet on the chord of a curve convex to the northwest, with a radius of 104.34 feet and an arc length of 70.55 feet, to a Point;  
 North 79°35'40" East a distance of 50.54 feet on the chord of a curve convex to the northwest, with a radius of 96.26 feet and an arc length of 51.14 feet, to a Point;  
 South 87°58'06" East a distance of 181.70 feet to a Point;  
 South 60°19'23" East a distance of 7.91 feet to a Point;  
 North 88°35'28" East a distance of 4.64 feet to a Point;  
 North 04°20'08" West a distance of 3.41 feet to a Point;  
 South 87°58'06" East a distance of 66.80 feet to a Point;  
 South 02°02'32" West a distance of 640.92 feet to a Point;  
 South 87°57'43" East a distance of 59.43 feet to a Point;  
 South 07°52'41" East a distance of 78.70 feet to a Point;  
 North 82°06'32" East a distance of 25.48 feet to a Point;  
 South 07°49'22" East a distance of 124.17 feet to a Point;  
 South 82°10'38" West a distance of 54.38 feet to a Point;  
 South 07°51'25" East a distance of 66.74 feet to a Point;  
 North 82°08'35" East a distance of 6.24 feet to a Point;  
 South 07°51'25" East a distance of 30.84 feet to a Point;  
 South 82°08'35" West a distance of 6.24 feet to a Point;  
 South 07°51'25" East a distance of 15.35 feet to a Point;  
 South 66°47'00" East a distance of 30.20 feet to a Point;  
 North 23°13'00" East a distance of 5.75 feet to a Point;  
 South 66°47'00" East a distance of 45.60 feet to a Point;  
 South 23°13'00" West a distance of 5.75 feet to a Point;  
 South 01°39'26" East a distance of 107.32 feet to a Point;  
 South 21°10'01" East a distance of 8.11 feet to a Point;  
 South 68°49'59" West a distance of 60.40 feet to a Point;  
 South 21°10'01" East a distance of 46.71 feet to a Point;  
 North 68°49'59" East a distance of 17.96 feet to a Point;  
 South 21°10'01" East a distance of 107.00 feet to a Point;  
 North 68°49'59" East a distance of 18.02 feet to a Point;  
 South 31°46'40" East a distance of 51.37 feet to a Point;  
 South 58°13'20" West a distance of 52.16 feet to a Point;  
 South 01°35'51" West a distance of 9.30 feet to a Point;

Dean D. Exline, PLS

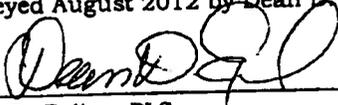
Alabama Registered Surveyor  
311 Judges Road, Suite 3D  
Wilmington, NC 28405

North 87°53'37" West a distance of 37.49 feet to a Point;  
North 02°06'23" East a distance of 1.25 feet to a Point;  
North 87°52'55" West a distance of 126.45 feet to a Point;  
South 02°06'23" West a distance of 145.54 feet to a Point;  
North 87°58'27" West a distance of 58.93 feet to a Point;  
South 02°08'55" West a distance of 206.67 feet to the **PRINCIPAL PLACE OF BEGINNING.**

Said Lease Area containing 718,664 square feet or 16.50 acres.

Basis of Bearing is NAD-83 (CORS96)(EPOCH:2002.000).

Surveyed August 2012 by Dean D. Exline, PLS, Wilmington, NC.



Dean D. Exline, PLS  
Alabama Registered Surveyor



EXHIBIT B

LEGAL DESCRIPTION FOR PHASE IV SITE

That certain real property located in Madison County, Alabama to wit:

Unit 3 of Research Park Condominium, as established by the Declaration of Condominium of Research Park Condominium, recorded as Instrument No. 20060629000430810, as amended by First Amendment to Declaration of Condominium of Research Park Condominium, recorded as Instrument No. 20110809000409430, as amended by Second Amendment to Declaration of Condominium of Research Park Condominium recorded as Instrument No. 20120521000313970 (collectively, the "Declaration"), and by the Condominium Plat of Research Park Condominium recorded as Instrument No. 20060629000430800, as amended by First Amended Condominium Plat of Research Park Condominium recorded as Instrument No. 20110809000409420, as amended by Second Amended Plat of Research Park Condominium recorded as Instrument No. 20120521000313960 (collectively, the "Plat"), all as recorded in the Office of the Judge of Probate of Madison County, Alabama, together with (a) the proportionate undivided interest in and to the Common Elements and Limited Common Elements of said Condominium attributed and belonging to such Unit, as more particularly set out in said Declaration, and (b) all rights, obligations and interest appurtenant thereto, including, but not limited to, those which are (i) created by said Declaration and Plat and by the Bylaws of Research Park Condominium Association, Inc. and (ii) provided for by the Alabama Uniform Condominium Act of 1991 and other applicable law.

EXHIBIT C

CITY WORK DESCRIPTION

The City Work shall consist only of the following:

The development, design, and construction of a box culvert storm piping system serving the Project site and connected to the City's existing storm water collection system (the "Box Culvert System"), including all utility relocations or modifications, any other necessary modifications to public rights-of-way on the Project site, and any related permits, costs, fees and expenses relating to the City Work. The Box Culvert System shall be designed and constructed so as to eliminate the necessity, for storm water management purposes, of all or a portion of the approximately 11-acre lake presently located on the Project site (the "Site Lake").