

WORK RELEASE NO. 2011-1 COVER SHEET

SANTAQUIN CITY EAST SIDE BOOSTER PUMP STATION

SANTAQUIN CITY
275 WEST MAIN STREET
SANTAQUIN, UT 84655

EXECUTION AND EFFECTIVE DATE

This Work Release No.2011-1 has been executed by the duly authorized representatives of the parties and shall be effective as of the date of execution by CLIENT.

ENGINEER

SUNRISE ENGINEERING, INC.

By: 

Name: Mark A. Huatman

Title: Vice President

Date: 10-11-11

CLIENT

SANTAQUIN CITY

By: 

Name: James E. DeGraffenried

Title: Mayor

Date: 10-13-11



WORK RELEASE NO. 2011-1

This Work Release is entered into by and between SANTAQUIN CITY (CLIENT) and SUNRISE ENGINEERING, INC. (ENGINEER).

RECITAL

Pursuant to Article 1 of the Agreement for Engineering and Technical Services, dated 5 October, 2011, hereinafter referred to as the "Agreement", CLIENT and ENGINEER desire to identify certain work and service to be performed by ENGINEER pursuant to the Agreement. CLIENT intends to retain general engineering services hereinafter referred to as "Project" and for which ENGINEER agrees to perform various professional engineering services.

ARTICLES

It is agreed that ENGINEER will perform the following:

ARTICLE 1. SCOPE OF WORK

1) DESIGN PHASE SERVICES

1.1 Project Management, Coordination, and Communication:

- a. Manage the project, coordinate with CLIENT, Division of Drinking Water (DDW), and the Utah County CDBG Program, and communicate the progress of the project through status reports and updates to CLIENT and the other stakeholders.
- b. Perform quality control on all work performed, and will execute the administrative activities related to the project.

1.2 Topographic Survey and Mapping of Existing System:

- a. A topographic survey of the project site and surrounding areas will be completed by ENGINEER to identify water lines, structures, utilities (only those that can be identified by Blue Stakes), and other features that will be connected to or impacted by the designed improvements.

1.3 ENGINEER will perform the full project design, to include:

- a. Modifications to the Well House related to the conversion to a booster pump station. It is assumed that the appropriate electrical panel will be specified and provided by the selected pump manufacturer for use with the existing electrical service at the Well House. Any modifications to the existing electrical service are not included in this scope of work and would be considered additional work if it is needed.
- b. Connections from the existing water system to the booster pump station.
- c. Connections from the booster pump station to the dedicated East Side Tank pipeline locate in Oh Henry Street.

1.4 A preliminary design and technical report will be prepared and presented to CLIENT that will include the following items:

- a. ENGINEER's assessment of the adequacy of the project concept provided by CLIENT.
- b. An assessment of the adequacy of existing CLIENT utility drawings and documentation from administrative and/or system operation and maintenance agencies.
- c. Hydraulic calculations, including assumptions and evaluation results that verify system sizing and design parameters.
- d. Preliminary opinion of probable construction costs for the project.
- e. Summary of construction and operational permit requirements.
- f. Description of potential problems or concerns related to the project.
- g. Additional information and recommendations related to the overall project requirements.

1.5 Design Drawings, Specifications, Contract Documents and Engineer's Opinion of Probable Construction Costs:

- a. Prepare and provide final design plans, technical specifications, contract documents, and a final engineer's opinion of probable costs.
- b. Submit (4) sets to CLIENT and (1) set to the DDW for review, comment, and plan approval. Changes will be incorporated based on comments from CLIENT and DDW. ENGINEER will utilize CLIENT's standard specifications and drawings for the project. Design drawings will be provided on 11" x 17" sheets. Construction contract documents will be those prepared by the

Engineers' Joint Contract Document Committee (EJCDC). All project design drawings, specifications and pertinent records will be reviewed and approved, and stamped by Robert Worley, P.E.

2. BIDDING PHASE SERVICES

2.1 During the Bidding Phase, ENGINEER will provide the following services:

- a. Prepare the advertisement for bid.
- b. Submit advertisement to CLIENT for bidding.
- c. Prepare copies of the bidding/contract documents and distribute to plan holders.
- d. Conduct a pre-bid meeting.
- e. Address Contractor inquiries.
- f. Prepare addendums as required.
- g. Attend bid opening, prepare bid tabs, and provide a recommendation to CLIENT for the award of the contract.

3. CONSTRUCTION PHASE SERVICES

3.1 Provide the following services during the Construction Phase:

- a. Administer the contract between CLIENT and Contractor.
- b. Conduct a pre-construction meeting.
- c. Perform (3) site visits to observe the quality and progress of the work. Additional site visits made at the request of CLIENT shall constitute additional work at additional cost in accordance with the attached fee schedule
- d. Address questions or concerns that arise during construction.
- e. Prepare field orders, work change directives, and change orders as needed.
- f. Review shop drawings and samples.
- g. Review applications for payment and make recommendations to CLIENT for payment.
- h. Review test results.
- i. Participate in system startup operations.
- j. Participate in the final review and issue a certificate of substantial completion.
- k. Prepare record drawings.

1. Estimated duration for construction is two (2) months.

ENGINEER's design will meet generally accepted engineering standards. Any redesigns caused by an Engineering omission or error shall be provided by ENGINEER at no additional cost to CLIENT.

ENGINEER will complete Design Phase Services and submit for approval from CLIENT and DDW within 42 calendar days from the date of authorization to proceed on the Design Phase unless otherwise agreed to by both parties.

CLIENT will extend the time for completion for a reasonable time if completion is delayed due to unforeseeable causes beyond the control and without the fault or negligence of ENGINEER.

ARTICLE 2. COMPENSATION

CLIENT agrees to compensate ENGINEER for his services under Work Release No.2011-1 as follows and which payments shall be considered complete compensation for all engineering services outlined in the respective articles of this agreement.

1. DESIGN PHASE SERVICES (ARTICLE 1.1)

CLIENT agrees to compensate ENGINEER for all services as outlined in Article 1.1.1 for the total lump sum price of One Thousand Dollars (\$1,000).

CLIENT agrees to compensate ENGINEER for all services as outlined in Article 1.1.2 for the total lump sum price of One Thousand, Nine Hundred Dollars (\$1,900).

CLIENT agrees to compensate ENGINEER for all services as outlined in Article 1.1.3, 1.1.4, 1.1.5 for the total lump sum price of Two Thousand, Five Hundred Ninety-Five Dollars (\$2,595).

2. BIDDING PHASE SERVICES (ARTICLE 1.2)

CLIENT agrees to compensate ENGINEER for all services as outlined in Article 1.2.1 for the total lump sum price of One Thousand, Five Hundred Dollars (\$1,500).

3. CONSTRUCTION PHASE (ARTICLE 1.3)

CLIENT agrees to compensate ENGINEER for actual charges at hourly rates plus direct expenses shown on Exhibits A for all construction phase work as outlined under the Article 1.3.1.

The total amount budgeted for construction phase work is not to exceed Eight Thousand, Two Hundred Ninty-Two Dollars (\$8,292) without amendment to this work release. This budget does not include additional services beyond the construction contract time period. In the event that

services extend beyond the construction contract time period, it is understood that an extension of cost and services may be granted.

Any additional services requested in writing by CLIENT and concurred by ENGINEER, either that are not listed above in this work release, will be performed at the rates and fees shown in the attached Exhibit A.

ARTICLE 3. INVOICING

Instructions and invoices submitted pursuant to this Work Release shall be sent to:

SANTAQUIN CITY
275 WEST MAIN STREET
SANTAQUIN, UT 84655

Invoices shall be submitted monthly based on the prior month's effort, accompanied with supporting documents and proof of expenditure, and are due and payable within (30) thirty days.

ARTICLE 4. DESIGNATED REPRESENTATIVES

Pursuant to Section 13.1 of the Agreement, designated representatives for the relevant project shall be, unless otherwise notified; notices shall be given as follows:

CLIENT

Dennis Marker, Community Development Director
Santaquin City
275 West Main Street
Santaquin, UT 84655
801.754.3211

ENGINEER

Robert W. Worley, P.E.
Sunrise Engineering, Inc.
25 East 500 North
Fillmore, UT 84631
435.743.6151

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EXHIBIT A
SUNRISE ENGINEERING
FEE SCHEDULE

WORK CODE	WORK CLASSIFICATION	HOURLY RATE	WORK CODE	WORK CLASSIFICATION	HOURLY RATE
110	Engineer Intern (E.I.T.) I	70	550	Building Official	115
120	Engineer Intern (E.I.T.) II	94	610	GIS Tech I	62
130	Engineer III	102	620	GIS Tech II	65
140	Engineer IV	114	630	GIS Tech III	72
150	Engineer V	132	640	GIS Tech IV	74
160	Principal Engineer	142	650	GIS Specialist I	84
210	Principal Geologist	152	660	GIS Specialist II	92
310	Engineering Tech I	45	670	GIS Project Manager	130
320	Engineering Tech II	55	710	Administrative I	37
330	Engineering Tech III	65	720	Administrative II	48
340	Engineering Tech IV	96	730	Administrative III	54
360	Electrical Tech I	70	760	Planner III	85
365	Electrical Tech II	80	765	Planner IV	96
370	Electrical Tech III	90	770	Planner V	104
380	Electrical Tech IV	99	780	Water Rights Specialist I	65
390	Electrical Tech V	110	785	Water Rights Specialist II	75
410	CAD Drafter I	44	790	Water Rights Specialist III	90
420	CAD Drafter II	62	810	Construction Observer I	42
430	CAD Drafter III	80	820	Construction Observer II	54
440	CAD Drafter IV	84	830	Construction Observer III	68
450	Training Specialist I	66	840	Construction Observer IV	78
460	Training Specialist II	78	902	HDS - Tech	64
470	Training Supervisor	94	904	HDS-Crew Chief	336
480	Training Manager	106	920	Survey Tech	55
490	Training Director	132	931	Survey CAD Tech	90
500	Funding Specialist	105	940	Survey Crew Chief	110
510	Plan Reviewer	104	950	Survey Manager	115
520	Building Inspector I	55	951	Registered Surveyor	125
530	Building Inspector II	80	960	Principal Surveyor	145
540	Building Inspector III	94			

Reimbursable Expense Schedule

Expense	Rate	Mark-Up
Mileage	IRS Standard Rate	10%
Field Vehicle (on site)	\$50 per day	N/A
Per Diem Meals	\$27 per day	N/A
Troxler Nuclear Density Gauge	\$40 per day	N/A
Lodging	Actual Cost	10%
Material Testing Lab Work	Actual Cost	10%
Outside Consultants, Aerial Photography, etc.	Actual Cost	10%
Other Expenses incurred	Actual Cost	10%

Schedule will automatically change once per year every January, and could be subject to change on other occasions. Base 0111.1

AGREEMENT
FOR
ENGINEERING AND
TECHNICAL SERVICES

SANTAQUIN CITY
AND
SUNRISE ENGINEERING, INC.



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**SANTAQUIN CITY
AND
SUNRISE ENGINEERING, INC.**

**AGREEMENT
FOR
ENGINEERING AND TECHNICAL SERVICES**

This Agreement for Engineering and Technical Services (this "Agreement") is entered into by and between SANTAQUIN CITY (CLIENT) and SUNRISE ENGINEERING, INC. (ENGINEER) to be effective as of the 5th day of October, 2011.

CLIENT and ENGINEER agree as follows:

ARTICLE 1. PURPOSE AND EFFECT OF THIS AGREEMENT.

1.1 Work Releases. It is the intention of CLIENT to award to ENGINEER projects for the performance of engineering and/or technical services (a "Relevant Project") through the execution by CLIENT and ENGINEER of Work Releases substantially in the form that reference this Agreement and incorporate into the Work Release for the Relevant Project the terms, conditions, promises and obligations of this Agreement. It is understood and agreed that CLIENT shall have no legal obligation or duty created by the execution of this Agreement to award any Relevant Project to ENGINEER or to execute any Work Release with ENGINEER. Nothing in this Agreement is to be construed as granting to ENGINEER exclusive rights to perform any or all of CLIENT's requirements for engineering and/or technical services. It is understood and agreed that ENGINEER shall have no legal obligation or duty created by the execution of this Agreement to accept the award of any Relevant Project offered to ENGINEER by CLIENT or to execute any Work Release with CLIENT.

1.2 The Engineering Contract for the Services. If CLIENT and ENGINEER execute a Work Release for a Relevant Project that incorporates by reference this Agreement, this Agreement and the Work Release and any modifications made to this Agreement and/or the Work Release made by CLIENT and ENGINEER in writing (collectively, this Agreement, the Work Release and any written modifications to this Agreement and/or the Work Release with respect to the Relevant Project are collectively referred to as the "Engineering Contract") shall form the entire and integrated agreement between CLIENT and ENGINEER for ENGINEER's engineering and/or technical services for the Relevant Project as described in the Engineering Contract (the "Services").

1.3 Conflicts Between Agreement and Work Release. In the event of any direct conflict between the terms, conditions, promises and/or obligations of this Agreement and the terms, conditions, promises and/or obligations of a Work Release for a Relevant Project that incorporates this Agreement by reference, the terms, conditions, promises and obligations of the Work Release for the Relevant Project shall supersede and replace the directly conflicting terms, conditions, promises and obligations of this Agreement, but only with regard to the Relevant Project.

1.4 Term of Agreement. The term of this Agreement shall be for the period of the effective date of this Agreement to the completions of Work Release 2011-1 East Side Booster Pump.

1.5 Effect of Termination of Work Release. The termination of a Work Release as to a Relevant Project shall not terminate this Agreement or the Engineering Contract in respect to any Relevant Project the subject of a Work Release that has not been terminated.

1.6 Effect of Termination of this Agreement. This Agreement and the Engineering Contract shall remain in effect and binding upon CLIENT and ENGINEER after the effective date of the termination of this Agreement as to any Relevant Project for which ENGINEER is performing Services after the effective date of the termination of this Agreement. The Engineering Contract for a Relevant Project shall remain in effect and binding upon CLIENT and ENGINEER after the effective date of the termination of this Agreement and/or the Engineering Contract for a Relevant Project as to any and all terms, conditions, promises or obligations of this Agreement and

the Engineering Contract for a Relevant Project that are intended by the parties to survive the completion of the Services with respect to the Relevant Project and/or are intended to survive the termination of the Engineering Contract for a Relevant Project.

1.7 Execution of New Agreement for Engineering and Technical Services. This Agreement shall not be binding on CLIENT or ENGINEER as to any project for which a Work Release has been executed by CLIENT and ENGINEER which Work Release incorporates by reference another agreement between CLIENT and ENGINEER, even if this Agreement has not been terminated.

1.8 Prior Services Intentionally Deleted

ARTICLE 2. ENGINEER'S RESPONSIBILITIES.

2.1 Engineer's Services. ENGINEER shall perform the Services for each Relevant Project as are described in the Work Release for that Relevant Project. This Agreement shall be incorporated by reference into each Work Release for a Relevant Project to be governed by the terms, conditions, promises and obligations of this Agreement.

2.2 Right to Retain Subconsultants. ENGINEER may use the services of subconsultants in the performance of the Services ("ENGINEER's Consultants") when, in the ENGINEER's sole opinion, it is appropriate to do so. Such persons and entities include, but are not limited to, specialized consultants and testing laboratories. ENGINEER's use of subconsultants in the performance of a Change in Services (defined in Section 6.1 of this Agreement) shall not be unreasonably restricted by CLIENT. ENGINEER will engage the services of the subconsultants, if any, required to be engaged by ENGINEER in the Work Release for the Relevant Project to perform the Services. CLIENT shall furnish the services of all other consultants reasonably required for the Relevant Project (but not required to perform ENGINEER's Services), unless CLIENT and ENGINEER mutually agree that ENGINEER shall engage such additional consultants as a Change in Services. Nothing in this Section 2.2 shall be construed to require that ENGINEER agree to engage any additional consultants as a Change in Services.

2.3 Standard of Skill and Care. The Services (whether performed by ENGINEER or ENGINEER's Consultants) shall be performed in a diligent, efficient and trustworthy manner and consistent with the standard of skill and care ordinarily exercised by licensed professionals of the same discipline in the state in which the Relevant Project is located on projects of similar size and scope and under like circumstances. ENGINEER represents and warrants that the Services and Work Product provided under this Agreement and each Engineering Contract will not infringe upon or violate any patent, copyright, trade secret or other proprietary right of any third party. ENGINEER represents and warrants that it and ENGINEER Consultants shall, in the performance of this Agreement, comply with all applicable federal, state, and local laws, rules, regulations, orders, and ordinances. ENGINEER shall be responsible for all services provided under the Engineering Contract, whether such services are provided directly by ENGINEER or by ENGINEER's Consultants. Except as expressly herein, ENGINEER disclaims and makes no other warranties, expressed or implied, and no further warranties are made or intended by ENGINEER regarding the ENGINEER'S Services or the Work Product or regarding any other matter.

2.4 Compliance with Laws. ENGINEER and/or ENGINEER's Consultants shall review laws, codes and regulations applicable to the Services and shall exercise the standard of skill and care required by Section 2.3 of this Agreement to comply with the laws, codes and regulations applicable to the Services. ENGINEER specifically disclaims any express warranty or warranty implied by operation of law that the design of the Relevant Project complies with applicable laws, codes and regulations as these laws, codes and regulations are interpreted by governmental authorities with jurisdiction of the Relevant Project or by finders of fact in dispute resolution proceedings. ENGINEER and/or ENGINEER's Consultants shall respond in the design of the Relevant Project to any requirements communicated to ENGINEER by government authorities having jurisdiction over the Relevant Project.

2.5 Reliance on Owner Furnished Information. Unless otherwise notified by CLIENT, ENGINEER and ENGINEER's Consultants shall be entitled to rely upon the accuracy and completeness of services and information furnished by CLIENT and CLIENT's consultants, agents and representatives, and ENGINEER and ENGINEER's Consultants shall have no duty to investigate the accuracy or completeness of such services or information. ENGINEER shall provide notice to CLIENT if ENGINEER or ENGINEER's Consultants become aware of any errors, omissions or inconsistencies in the services or information furnished by CLIENT.

2.6 Non-Negligent Errors. If the Services require the preparation by ENGINEER and/or ENGINEER's Consultants of drawings, specifications or other design documents for construction of improvements to real property, CLIENT acknowledges that there is no perfect set of construction drawings, specifications or other design documents and that inconsistencies, conflicts, errors and omissions in the construction drawings, specifications and other design documents will occur despite the exercise by ENGINEER and ENGINEER's Consultants of the standard of skill and care required by Section 2.3 of this Agreement in the performance of the Services. CLIENT acknowledges and agrees that subject to the limitations and conditions of Article 10 of this Agreement, ENGINEER is liable to CLIENT only for those damages suffered by CLIENT caused by inconsistencies, conflicts, errors or omissions in the construction drawings, specifications and other design documents caused by the negligence or intentionally wrongful conduct of ENGINEER or ENGINEER's Consultants. Notwithstanding the foregoing, all errors, defects and omissions in the Services shall be immediately corrected by ENGINEER at its sole cost and expense and without prejudice to any other rights that CLIENT may have against ENGINEER for damages, losses, costs or expenses arising out of or relating to such errors, defects or omissions.

2.7 Construction Phase Services. When the Services for a Relevant Project include contract or construction administration services, the terms and conditions of any construction contract (the "Construction Contract") between CLIENT and a contractor ("Contractor") constructing the improvements for the Relevant Project shall be consistent with the Engineering Contract regarding ENGINEER's obligations to perform contract or construction administration services, and shall not purport to require services of ENGINEER different than or in addition to the Services required of ENGINEER by the Engineering Contract. ENGINEER is not a party to the Construction Contract, and the Engineering Contract shall be the sole and exclusive description of ENGINEER's Services and ENGINEER's duties and obligations with respect to ENGINEER's Services.

2.8 Observations of the Work. If ENGINEER is required by the Engineering Contract to make any observations or inspections of the work or services performed by Contractor (the "Work") to construct any of the improvements of the Relevant Project, ENGINEER agrees to perform such observations or inspections using the skill and care required by Section 2.3 of this Agreement solely for the purpose of endeavoring to ascertain if the Work is being constructed in accordance with CLIENT's Construction Contract with Contractor. By performing such observations or inspections, ENGINEER does not warrant or guarantee to CLIENT that the Work conforms to the requirements of the Construction Contract, ENGINEER does not accept or assume any responsibility or liability for any acts or omissions of Contractor or accept or assume any duties or liabilities to Contractor with respect to the Work not performed in accordance with the Construction Contract, and Contractor is not relieved of Contractor's obligations to perform the Work in accordance with the Construction Contract. ENGINEER shall have no duty or responsibility to CLIENT, Contractor or any other person or entity to observe or inspect Contractor's means, methods, techniques or sequences of construction, or Contractor's safety programs or procedures, all of which shall be the exclusive responsibility of Contractor. ENGINEER shall have no power or authority to stop the Work. The power and authority to stop the Work is possessed exclusively by CLIENT. ENGINEER shall have no responsibility or liability for injuries to persons (including death), damage to property or economic loss caused by Contractor's operations under the Construction Contract, whether at the site of the Relevant Project or off the Site of the Relevant Project.

2.9 Site Operations. If a Contractor is involved with the Relevant Project, CLIENT agrees that Contractor shall be solely and completely responsible for the conditions at all locations where the Work is performed and at all times that the Work is performed (including Work performed outside of normal business or working hours), including the safety of all persons and property during performance of the Work, and compliance with any applicable health and safety laws or regulations, including the laws and regulations of the United States Occupational Safety and Health Administration ("OSHA") and any similar state or local governmental agencies. It

is understood and agreed that ENGINEER shall not be responsible for jobsite safety, and that ENGINEER shall not be responsible for the health or safety of any persons other than ENGINEER's own employees.

2.10 Soils Conditions. Unless the Services specifically require ENGINEER to perform or to engage a subconsultant to perform a soils investigation, to provide or to engage a subconsultant to provide a soils report, or to perform or to engage a subconsultant to perform soils testing, ENGINEER makes no representations concerning soils conditions and ENGINEER shall have no responsibility or liability for the making or failure to make soils investigations or reports, or to the performance or failure to perform any soils testing.

2.11 Interpretations and Decisions. If ENGINEER is required by the Construction Contract between CLIENT and Contractor to evaluate whether Contractor's Work conforms to the requirements of the Construction Contract or to evaluate claims by Contractor or CLIENT to adjustments of the contract price to be paid to Contractor for the Work (the "Contract Price") or the contract time afforded to Contractor to perform the Contractor's Work (the "Contract Time") or any other claims by Contractor or CLIENT for relief under the Construction Contract, or if ENGINEER is required by CLIENT or Contractor to evaluate any Work or claims, or if ENGINEER agrees to evaluate any Work or claims, then ENGINEER shall evaluate such Work or claims as an unbiased neutral party, and such evaluations and decisions made by ENGINEER shall be rendered in good faith and with impartiality. CLIENT agrees that ENGINEER shall not be liable to CLIENT or Contractor for any evaluations or decisions of such Work or claims made by ENGINEER in good faith. Subject to the limitations and conditions of Article 10 of this Agreement, to the fullest extent permitted by law CLIENT shall indemnify, defend and hold harmless ENGINEER and ENGINEER's past and current officers, directors, partners, members, employees and agents, and each of them, from and against any claims, liabilities, damages, costs and expenses (including reasonable attorneys' fees and costs and expenses of dispute resolution) arising out of or based in whole or in part upon any such evaluation or decision made by ENGINEER pursuant to this Section 2.11, provided, however, CLIENT shall not be required to indemnify, defend or hold harmless such indemnified parties from or against any claims or liabilities if ENGINEER's evaluation and/or decision was allegedly negligent or made in bad faith. CLIENT and ENGINEER agree that the obligations set forth in this Section 2.11 shall survive completion of ENGINEER's Services for a Relevant Project, termination of this Agreement and/or a Work Release incorporating by reference this Agreement, and/or final payment for ENGINEER's Services for a Relevant Project.

2.12 Opinions of Probable Construction Costs. If ENGINEER's Services include the evaluation of CLIENT's budgets for construction costs or include providing ENGINEER's opinions of probable construction costs, CLIENT understands that ENGINEER has no control over the costs or the prices of labor, equipment or materials, or over Contractor's methods of pricing, and that the evaluations of CLIENT's budgets and/or the opinions of probable construction costs provided by ENGINEER are ENGINEER's professional judgment as a design professional familiar with the construction industry in accordance with the exercise by ENGINEER and ENGINEER's Consultants of the standard of skill and care required by Section 2.3 of this Agreement. ENGINEER makes no further warranty, expressed or implied, as to the accuracy of such opinions as compared to bids or negotiated prices or actual construction costs, and ENGINEER does not represent or warrant that bids or negotiated prices will not vary from CLIENT's budget for the Relevant Project or from opinions of probable construction costs or from evaluations of CLIENT's budgets prepared or agreed to by ENGINEER.

2.13 Unknown Conditions. Conditions or occurrences may be encountered during the performance of the Services and/or the Work that require changes in the Services or impose bodily risks to ENGINEER and/or ENGINEER's Consultants, or their employees or agents, in the performance of the Services not known to ENGINEER when the Work Release for the Relevant Project was executed ("Unknown Conditions"). If Unknown Conditions are encountered, ENGINEER shall promptly notify CLIENT of the Unknown Conditions and the probable impact of the Unknown Conditions on the Services and the Work, and ENGINEER shall consult with CLIENT regarding possible actions, including: (i) suspend the Services and/or the Work until the Unknown Conditions are further studied by CLIENT, and the additional risks imposed by the Unknown Conditions are eliminated by CLIENT or are reduced by CLIENT to levels acceptable to both ENGINEER and CLIENT; (ii) complete the Services in accordance with the scope of Services described in the Work Release, if to do so is agreed by both ENGINEER and CLIENT to be practical; (iii) agree to a Change in Services (defined in Section 6.1 of this Agreement); or (iv) agree to a termination of the Work Release for CLIENT's convenience.

2.14 Hazardous Materials. Unless otherwise provided in the Engineering Contract, ENGINEER and ENGINEER's Consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials or toxic substances in any form at the Relevant Project site, unless the hazardous materials or toxic substances were brought to the Relevant Project site by ENGINEER or ENGINEER's Consultants. ENGINEER shall have the duty and responsibility to report to CLIENT the presence and location of any hazardous materials or toxic substances at the Relevant Project site which ENGINEER or ENGINEER's Consultants discover, or of which it (they) become(s) aware. In the event ENGINEER or any other party encounters hazardous materials or toxic substances at the Relevant Project site, or should it become known that such materials or substances are present at the Relevant Project site or its adjacent areas that may affect the performance of ENGINEER's Services, ENGINEER may, at its option, and without liability for consequential or other damages, suspend performance of the Services until CLIENT retains appropriate specialist consultants or contractors to identify, abate and/or remove the hazardous materials or toxic substances and such consultants represent that such hazardous materials or toxic substances have been rendered harmless. CLIENT shall indemnify ENGINEER from and against all claims arising out of or based in whole or in part upon any hazardous materials existing at the Relevant Project site.

2.15 Certificates. ENGINEER shall not be required in the performance of the Services to execute certificates that would require knowledge, services or responsibilities beyond the scope of the Engineering Contract. Any certificate or certification provided by ENGINEER pursuant to the Engineering Contract is a statement of professional opinion based on ENGINEER's knowledge, information and belief exercising that degree of skill and care required in accordance with Section 2.3 and is not an affirmation or warranty of any existing fact or condition.

2.16 Confidentiality. Except for disclosures reasonably necessary to perform the Services of a Relevant Project, ENGINEER shall maintain the confidentiality of any information obtained from or through CLIENT in relation to the Relevant Project, unless withholding such information would violate the law, create the risk of significant harm to the public, or prevent ENGINEER from establishing a claim or defense in an adjudicatory proceeding. ENGINEER shall require of ENGINEER's Consultants similar agreements to maintain the confidentiality of information obtained from or through CLIENT in relation to the Relevant Project.

2.17 Conflicts of Interest. Except with CLIENT's knowledge and consent, ENGINEER shall not engage in any activity, or accept any employment, interest or contribution that will compromise ENGINEER's professional judgment with respect to the Relevant Project.

2.18 Promotional Materials. Upon the approval of CLIENT, not to be unreasonably withheld, ENGINEER shall have the right to include photographic or artistic representations of the Relevant Project and of the Services among ENGINEER's promotional and professional materials. ENGINEER shall be given reasonable access to the completed Relevant Project to make such photographs and artistic representations. However, ENGINEER's photographic or artistic representations shall not include CLIENT's confidential or proprietary information.

2.19 Independent Contractor. ENGINEER shall perform the Services as an independent contractor, and all persons employed by ENGINEER as ENGINEER's employees shall be employees of ENGINEER, not employees of CLIENT in any respect. ENGINEER may not bind CLIENT except as specifically authorized by CLIENT in the Engineering Contract or in another writing. Nothing in this Agreement is intended to, nor shall it be construed to, create a fiduciary relationship between CLIENT and ENGINEER or to impose any fiduciary duties or obligations on ENGINEER with respect to the performance of the Services.

ARTICLE 3. SCHEDULE FOR SERVICES.

The schedule for the performance by ENGINEER of the Services for a Relevant Project shall be stipulated in the Work Release for the Relevant Project. ENGINEER shall periodically update this schedule as the Relevant Project proceeds. The updated schedule shall reflect adjustments to the Relevant Project milestone dates, including the time for performance of the Services, due to Changes in Services (defined in Section 6.1 of this Agreement) and Relevant Project delays not within the control of ENGINEER. The updated schedule shall be submitted to the CLIENT for approval, which approval shall not be unreasonably withheld. Time limits established by this schedule approved by CLIENT shall not, except for reasonable cause, be exceeded by ENGINEER or CLIENT. ENGINEER shall not be responsible for delays in the schedules caused by CLIENT (including changes in the Relevant Project

time parameters, Changes in Services, changes in the Work or changes in the Relevant Project budgets), CLIENT's other consultants, Contractor, or governmental authorities with jurisdiction over the Relevant Project.

ARTICLE 4. CONSIDERATION AND PAYMENT.

4.1 Consideration. For satisfactory performance of the Services of a Relevant Project, CLIENT shall pay ENGINEER consideration in the form of fees and expenses in the amounts and using the methods of calculation described in the Work Release for the Relevant Project. Compensation for the Services of a Relevant Project shall be made in accordance with one of three methods, as follows: (i) a negotiated lump sum; (ii) on the basis of hourly rates and reimbursable expenses as described in the Work Release for the time and expenses incurred in the performance of the Services; or (iii) some other mutually agreed upon compensation method described in the Work Release. The specific method of compensation shall be agreed in the Work Release for the Relevant Project.

4.2 Invoices. All invoices submitted to CLIENT for Services performed for a Relevant Project shall contain references to the date of this Agreement and the number of the Work Release issued for the Services. Invoices shall be submitted for the Services of a Relevant Project as required by the Work Release for that Relevant Project. Unless otherwise provided by the Work Release, invoices shall contain copies of supporting documents and proof of expenditures on behalf of CLIENT. Unless otherwise required by the Work Release for a Relevant Project, payments for undisputed amounts due on account of Services rendered and for reimbursable expenses incurred shall be made monthly within thirty (30) calendar days of the presentation of ENGINEER's invoice for Services. No deduction shall be made from ENGINEER's compensation on account of penalty, liquidated damages or other sums withheld from payments to Contractors or on account of the cost of changes in the Work not the responsibility of ENGINEER.

4.3 Over Due Payments. CLIENT agrees to pay to ENGINEER interest at the rate of eighteen percent (18%) per annum on the unpaid balance of undisputed amounts due for Services from and after the date payment is due pursuant to the terms of the Engineering Contract. Collection fees and/or attorney fees that are required to collect unpaid, undisputed invoices shall be paid by the CLIENT, if within ten (10) calendar days after receipt of a written notice after the date payment is due, CLIENT does not pay the undisputed invoices.

4.4 Audit. CLIENT shall have access to all records of ENGINEER, including all supporting documentation, for the purpose of verifying any and all fees and charges billed to CLIENT under this Agreement. ENGINEER shall cooperate with CLIENT by providing CLIENT with access to ENGINEER's records within seven (7) days of CLIENT's request. The examination of such records shall be conducted at a mutually agreeable time and place.

ARTICLE 5. OWNERSHIP AND RIGHTS IN WORK PRODUCT.

5.1 Work Product. Drawings, specifications and other documents, including those in electronic form, prepared by ENGINEER and ENGINEER's consultants for a Relevant Project shall be the work product for use solely with respect to the Relevant Project ("Work Product"). Work Product prepared by ENGINEER or ENGINEER's Consultants pursuant to the Agreement shall be "works for hire," and all rights, title and interest to the Work Product, including, but not limited to, any and all copyrights in the Work Product, shall be owned by CLIENT irrespective of any copyright notices or confidentiality legends to the contrary which may have been placed in or on such Work Product by ENGINEER or others. Upon execution of this Agreement, and if for any reason any part of or all of the Work Product is not considered work for hire for CLIENT or if ownership of all right, title and interest in the Work Product shall not otherwise vest in CLIENT, ENGINEER grants to CLIENT a nonexclusive license to reproduce ENGINEER's Work Product solely for purposes of constructing, using and maintaining the Relevant Project, provided that CLIENT shall comply with all obligations, including prompt payment to ENGINEER of all undisputed consideration when due, under the Engineering Contract. Except for the license granted in this Section 5.1, no other license or right shall be deemed granted or implied under this Agreement or the Engineering Contract.

5.2 Authorized Use. CLIENT shall be permitted to authorize Contractor, subcontractors, sub-subcontractors and material or equipment suppliers to reproduce applicable portions of the Work Product appropriate to and for use in their execution of the Work by the license granted to CLIENT in Section 5.1 of this Agreement.

5.3 Restrictions on Use. Any unauthorized use or modification of the Work Product shall be at CLIENT's sole risk and without liability to ENGINEER or ENGINEER's Consultants.

5.4 Electronic Data Protocols. *Intentionally Deleted*

5.5 Indemnity for Unauthorized Use. Subject to the limitations and conditions of Article 10 of this Agreement, to the fullest extent permitted by law CLIENT shall indemnify, defend and hold harmless ENGINEER and ENGINEER's Consultants and their past and current officers, directors, partners, members, employees and agents, and each of them, from and against any and all claims, liabilities, damages, costs and expenses (including reasonable attorneys' fees and costs and expenses of dispute resolution) arising out of or based in whole or in part upon any unauthorized use or modification of the Work Product by CLIENT or any person or entity that obtained the Work Product from or through CLIENT or CLIENT's agents or representatives.

5.6 Survival of Obligations. CLIENT and ENGINEER agree that the obligations set forth in this Article 5 shall survive completion of ENGINEER's Services for a Relevant Project, termination of this Agreement or a Work Release incorporating by reference this Agreement and/or final payment for ENGINEER's Services for a Relevant Project.

ARTICLE 6. CHANGE IN SERVICES.

6.1 Accomplishing Changes in Services. A change in ENGINEER's Services for a Relevant Project (a "Change in Services") may be accomplished after the execution of this Agreement and the Work Release for the Relevant Project without invalidating the Engineering Contract (i) if the Change in Services is mutually agreed in writing by CLIENT and ENGINEER, or (ii) if the Change in Services is caused by one of the circumstances described in Section 6.2 of this Agreement, ENGINEER gives CLIENT prompt written notice of the circumstance and the Change in Services required thereby, and CLIENT agrees by providing written notice to ENGINEER that CLIENT has determined that all or a part of the Change in Services is required. If CLIENT gives ENGINEER written notice that a Change in Services is not required due to one or more of the circumstances described in Section 6.2 of this Agreement, ENGINEER shall have no obligation to provide those services, provided that such services in question are not part of the original Services under the Engineering Contract. For a Change in Services as set forth in Section 6.2 below, a Change in Services shall entitle ENGINEER to: (a) an equitable adjustment in ENGINEER's compensation described in the Work Release for the Relevant Project (including fees and reimbursable expenses), as such compensation has been modified by previous Changes in Services, if the Change in Services affects ENGINEER's costs for performance of the Services, as modified by the Change in Services; and/or (b) an equitable adjustment in the schedule described in the Work Release for the Relevant Project, as such schedule has been modified by previous Changes in Services, if the Change in Services affects ENGINEER's time for performance of the Services, as modified by the Change in Services.

6.2 Circumstances Justifying a Change in Services. If any of the following circumstances affect ENGINEER's Services for the Relevant Project, ENGINEER shall be entitled to an adjustment in ENGINEER's schedule and compensation as provided in Section 6.1 of this Agreement.

- .1 A change in the instructions or approvals given by CLIENT that necessitate revisions in Work Product;
- .2 Enactment or revision of codes, laws or regulations or official interpretations which necessitate changes to previously prepared Work Product;
- .3 Decisions of CLIENT not rendered in a timely manner;
- .4 Significant change in the Relevant Project including, but not limited to, size, quality, complexity, CLIENT's schedule or budget, or the delivery or procurement method; and
- .5 Preparation for and attendance at a public hearing, a dispute resolution proceeding or a legal proceeding except where ENGINEER is a party thereto.

6.3 Providing Evidence. If ENGINEER or an employee of ENGINEER is requested by CLIENT or is compelled by subpoena or other legal process by CLIENT or a third party to provide testimony, documents or evidence in relation to the Services and in connection with any public hearing, dispute resolution proceeding or legal proceeding in which ENGINEER is not a party, CLIENT agrees to compensate ENGINEER on the basis of hourly rates and reimbursable expenses according to ENGINEER's Rate Schedule then in effect for the time and expenses reasonably incurred by ENGINEER in providing such evidence, provided that ENGINEER is not compensated in full for such reasonable time and expenses by the party compelling or requesting the evidence. This obligation shall survive the completion of ENGINEER's Services for the relevant Project.

ARTICLE 7. CLIENT'S RESPONSIBILITIES.

7.1 Obligation to Make Payment. CLIENT shall make timely payment of undisputed compensation, including fees and reimbursable expenses, to ENGINEER for the Services.

7.2 Obligation to Provide Information. CLIENT shall provide to ENGINEER full information in a timely manner regarding requirements for and limitations on the Relevant Project.

7.3 Obligation to Provide Professional Services. CLIENT shall furnish the Services of the Consultants, if any, reasonably required for the Relevant Project that ENGINEER is not required to engage in the performance of the Services. CLIENT shall also furnish all legal, insurance and accounting services, including auditing services that may be reasonably necessary at any time for the Relevant Project to meet CLIENT's needs and interests.

7.4 Obligation to Give Notice of Fault or Defect. CLIENT shall provide prompt written notice to ENGINEER if CLIENT becomes aware of any fault or defect in the ENGINEER's Services for the Relevant Project, including any errors, omissions or inconsistencies in the Work Product.

7.5 Obligation to Give Evidence of Financial Arrangements. At the written request of ENGINEER, CLIENT shall promptly furnish to ENGINEER reasonable evidence that financial arrangements have been made by CLIENT to fulfill CLIENT's obligations to ENGINEER under the Engineering Contract.

7.6 Obligation to Provide Access. ENGINEER shall have access to the Relevant Project site and to all areas where the Work is performed or located. CLIENT shall procure all permits, licenses, rights-of-entry and access for ENGINEER to enter upon and to perform Services at any public or private property required for ENGINEER to perform the Services.

7.7 Other Obligations of the Engineering Contract. CLIENT shall perform all other obligations of CLIENT with respect to the Relevant Project described elsewhere in this Agreement or in the Work Release.

ARTICLE 8. INDEMNIFICATION.

8.1 ENGINEER's General Agreement to Indemnify. Subject to the limitations and conditions of Sections 2.8 and 2.11 and Article 10 of this Agreement, to the fullest extent permitted by law ENGINEER agrees to indemnify, defend, and hold harmless CLIENT and CLIENT's consultants, and their past and current officers, directors, partners, members, employees and agents, and each of them, from and against any and all claims, demands, suits, losses, costs and damages for injuries to persons (including bodily injury and death), damage to tangible property and economic loss caused by any negligent act, error or omission or intentionally wrongful conduct of ENGINEER or ENGINEER's Consultants or their employees or agents in the performance of the Services.

8.2 CLIENT's General Agreement to Indemnify. Subject to the limitations and conditions of Article 10 of this Agreement, to the fullest extent permitted by law CLIENT agrees to indemnify, defend, and hold harmless ENGINEER and ENGINEER's Consultants, and their past and current officers, directors, partners, members, employees and agents, and each of them, from and against any and all claims, demands, suits, losses, costs and damages for injuries to persons (including bodily injury and death), damage to tangible property and economic loss

caused by any negligent act, error or omission or intentionally wrongful conduct of CLIENT or CLIENT's employees.

8.3 ENGINEER's Agreement to Indemnify for Infringement. Subject to the limitations and conditions of Sections 2.8 and 2.11 and Article 10 of this Agreement, to the fullest extent permitted by law ENGINEER agrees to indemnify, defend, and hold harmless CLIENT and CLIENT's consultants, and their present and current officers, directors, partners, members, employees and agents, and each of them, from and against any and all claims, demands, suits, losses, costs and damages caused by the alleged or actual infringement or violation of any patent or copyright arising from ENGINEER's services.

8.4 CLIENT's Agreement to Indemnify for Infringement. CLIENT represents and warrants to ENGINEER and ENGINEER's Consultants that CLIENT has ownership of, or the legal authorization or license to use any drawings, specifications, design details or other documents delivered by CLIENT or CLIENT's agents or representatives to ENGINEER or ENGINEER's Consultants for use in connection with the Relevant Project. Notwithstanding anything in Section 8.3 of this Agreement to the contrary, ENGINEER shall not be required to indemnify, defend, or hold harmless CLIENT or CLIENT's consultants, or their past or current officers, directors, partners, members, employees or agents, or each of them, from or against any claims, demands, suits, losses, costs or damages caused by infringement or violation of a patent or copyright (i) arising from a particular drawing or specification or to a particular design, product, or system required by CLIENT to be included in the Relevant Project and/or the Work Product; (ii) arising from modifications to the Work Product by CLIENT or CLIENT's consultants, agents or employees without authorization of such modifications by ENGINEER, or (iii) arising from modifications to the Relevant Project by CLIENT or CLIENT's consultants, agents or employees after acceptance of the Relevant Project constructed in substantial accordance with the Work Product. If any suit, claim or proceeding for infringement or violation of a patent or copyright is based in whole or in part upon any of the events set forth in the preceding sentence, subject to the limitations and conditions of Article 10 of this Agreement, to the fullest extent permitted by law CLIENT shall indemnify, defend and hold harmless ENGINEER and ENGINEER's Consultants, and their past and current officers, directors, partners, members, employees and agents, and each of them, from and against any and all claims, demands, suits, losses, costs and damages caused by the alleged infringement or violation of the patent or copyright.

8.5 Survival of Obligations. CLIENT and ENGINEER agree that the obligations set forth in this Article 8 shall survive completion of ENGINEER's Services for a Relevant Project, termination of this Agreement or a Work Release incorporating by reference this Agreement and/or final payment for ENGINEER's Services for a Relevant Project.

ARTICLE 9. INSURANCE.

9.1 ENGINEER's Insurance Coverage's. ENGINEER agrees to procure prior to commencing the Services of Relevant Project insurance policies with insurance coverage's and insurance limits as specified below.

.1	Commercial General Liability Insurance	
	Combined Single Limits per occurrence (covering bodily injury liability and property damage liability)	\$1,000,000
	Annual Aggregate	\$2,000,000
.2	Comprehensive Automobile Liability Insurance	
	Combined Single Limits per occurrence (including bodily injury liability and property damage liability)	\$1,000,000
.3	Worker's Compensation Insurance	Statutory Requirement

.4	Employer's Liability Insurance	\$1,000,000
.5	Professional Liability Insurance	\$1,000,000 per claim; \$2,000,000 annual aggregate

9.2 Professional Liability Insurance. ENGINEER's professional liability insurance is procured on a claims-made basis, expense within limits. The policy of insurance is not project specific. ENGINEER agrees to continue its Professional Liability Insurance in place without interruption for a period of not less than two (2) years from the date final payment is due to ENGINEER for the Services of a Relevant Project. The available insurance limits of the Professional Liability Insurance at any given time are dependent on the payment by the insurance carrier of claims and claim expenses during the applicable policy year.

ARTICLE 10. CLAIMS AND LIABILITIES.

10.1 Consequential Damages Waiver. ENGINEER and CLIENT mutually waive as to one another and as to the present and current officers, directors, partners, members, employees, agents and consultants of one another, any and all consequential damages for claims, disputes or other matters in question arising out of relating to the Engineering Contract or the performance or non-performance of the Services, as well as any special, indirect, or incidental losses or damages, including but not limited to loss of profits, loss of investments, loss of product or business interruption, use, opportunity, revenues, or damages or losses for principal office expenses including compensation of personnel stationed there; provided that, the waiver of liability set forth in this Section 10.1 shall not apply to ENGINEER's indemnification obligations under this Agreement with respect to claims brought by any third party other than ENGINEER or CLIENT. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination or suspension of services in accordance with Article 12 of this Agreement.

10.2 Limitation of Liability. ENGINEER shall procure and maintain the insurance coverage's required by Article 9 of this Agreement. Notwithstanding any other provisions of this Agreement to the contrary, the total liability in the aggregate of ENGINEER and ENGINEER's past and current officers, directors, partners, members, employees, agents and consultants to CLIENT and anyone claiming by, through or under CLIENT, for any and all claims, losses, costs or damages whatsoever arising out of, resulting from or in any way relating to a Relevant Project, the Work Release for a Relevant Project or the Services of a Relevant Project, from any cause or causes, including, but not limited to, negligence, professional errors or omissions, strict liability, or breach of contract or warranty (whether express or implied) of ENGINEER or ENGINEER's Consultants or their respective past or current officers, directors, partners, members, employees or agents, or any of them (hereinafter collectively, "Claims"), shall not exceed Fifty Thousand Dollars (\$50,000), or the total fee paid to ENGINEER for the Services of the Relevant Project, whichever is greater (the "Limitation of Liability"); provided that, notwithstanding the foregoing, the limitation of liability set forth in this Section 10.2 shall not (i) apply to ENGINEER's indemnification obligations under this Agreement with respect to claims brought by any third party other than ENGINEER or CLIENT; (ii) include the payment of proceeds under insurance coverage's maintained and provided by ENGINEER and ENGINEER Consultants to the extent of the scope and limits of insurance coverage required under this Agreement; or (iii) apply in the event of the fraud or willful misconduct of ENGINEER.

10.3 Indemnity for Claims Exceeding Limitation of Liability. *Intentionally Deleted*

10.4 Certificate of Merit. CLIENT shall make no claim (directly or in the form of a third-party claim) against ENGINEER for an alleged act, error or omission in the performance of the Services for a Relevant Project, unless CLIENT has first provided to ENGINEER a written certificate executed by a licensed independent engineer, or other design professional of the appropriate discipline, specifying the acts, errors or omissions of ENGINEER and/or ENGINEER's Consultants claimed by CLIENT and opining that the acts, errors, or omissions of ENGINEER and/or ENGINEER's Consultants claimed by CLIENT violate the standard of skill and care required by Section 2.3 of this Agreement applicable on the date of such alleged acts, errors or omissions of ENGINEER and/or ENGINEER's Consultants. Such certificate shall be provided to ENGINEER not less than thirty (30) calendar days prior to the institution of any legal or equitable proceedings against ENGINEER by CLIENT for such alleged acts, errors or omissions.

10.5 Survival of Obligations. CLIENT and ENGINEER agree that the obligations set forth in this Article 10 shall survive completion of ENGINEER's Services for a Relevant Project, termination of this Agreement or a Work Release incorporating by reference this Agreement and/or final payment for ENGINEER's services for a Relevant Project.

ARTICLE 11. DISPUTE RESOLUTION.

11.1 Non-Binding Mediation. Any claim, dispute or other matter in question arising out of or relating to this Agreement or the Engineering Contract shall be subject to non-binding mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of a lien arising out of ENGINEER's Services, ENGINEER may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation, by arbitration or by litigation in courts of proper jurisdiction. CLIENT and ENGINEER shall endeavor to resolve claims, disputes and other matters in question between them by non-binding mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association then in effect. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the applicable Relevant Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. In the event either party to the dispute has need of material information in the possession of the other party in order to prepare for mediation, CLIENT and ENGINEER shall attempt in good faith to agree on procedures for the expedited exchange of information, with the help of the mediator, if required.

11.2 Binding Dispute Resolution. Unless otherwise provided in the Work Release, all claims, counterclaims, disputes and other matters in question between CLIENT and ENGINEER arising out of or related to this Agreement or the Engineering Contract, or the breach of this Agreement or the Engineering Contract, or the Services performed pursuant thereto, shall be decided in such binding dispute resolution proceedings as CLIENT and ENGINEER shall mutually agree upon in writing after the dispute arises or, in the absence of mutual agreement, in a court of competent jurisdiction within the State in which the applicable Relevant Project is located. Prior to engaging in arbitration (if the parties mutually agree to arbitration after the dispute arises) or litigation, the parties shall endeavor to resolve the dispute by non-binding mediation in accordance with the provisions of Section 11.1 of this Agreement.

11.3 Continued Performance of Services. If ENGINEER elects to continue to perform the Services of the Relevant Project pending the resolution of a dispute, CLIENT shall continue to make payments to ENGINEER of all amounts due ENGINEER under the Engineering Contract that are not in dispute.

ARTICLE 12. SUSPENSION AND TERMINATION.

12.1 ENGINEER's Termination/Suspension of Services for Non-Payment. If CLIENT fails to make payments of undisputed amounts due to ENGINEER for the Services of a Relevant Project in accordance with the Engineering Contract, such failure shall be considered substantial nonperformance and cause for termination of the Work Release for the Relevant Project pursuant to Section 12.4 of this Agreement or, at ENGINEER's option, cause for suspension by ENGINEER of performance of the Services for the Relevant Project. If ENGINEER elects to suspend the Services for the Relevant Project, prior to suspension of the Services, ENGINEER shall give seven (7) calendar days' prior written notice to CLIENT. If the default is not cured by CLIENT in such seven (7) day period after the receipt by CLIENT of such written notice, ENGINEER may suspend the Services for the Relevant Project until the default is cured, or until ENGINEER terminates the applicable Work Release for cause pursuant to Section 12.4 of this Agreement. In the event of a suspension of the Services for a Relevant Project in accordance with this Section 12.1, ENGINEER shall have no liability to CLIENT for delays or damages caused CLIENT because of such suspension of the Services. Before resuming the Services, ENGINEER shall be paid all undisputed sums due prior to the suspension of the Services, and any expenses incurred in the interruption and resumption of ENGINEER's Services. ENGINEER's fees and expenses for resuming the Services and the time schedules for the performance of the Services shall be equitably adjusted.

12.2 Suspension of Services for CLIENT's Convenience. CLIENT may, by written notice to ENGINEER, direct ENGINEER to suspend performance of any or all of the Services of a Relevant Project for a period of time specified in the written notice. If such suspension is not occasioned by the fault or negligence of ENGINEER, then ENGINEER shall be compensated for extra fees and costs incurred due to such suspension of ENGINEER's Services of the Relevant Project. Upon receipt of a written notice from CLIENT directing ENGINEER to suspend the performance of the Services of a Relevant Project, ENGINEER shall (i) discontinue the Services in accordance with CLIENT's notice, (ii) unless otherwise provided in CLIENT's notice, enter into no further subcontracts, and (iii) unless otherwise provided in CLIENT's notice, suspend all ENGINEER's existing subcontracts. If CLIENT suspends all or any portion of the Services of a Relevant Project, whether by a single notice for a consecutive period of suspension or by multiple notices for non-consecutive periods of suspension, for a period of time exceeding in the aggregate 120 calendar days, ENGINEER may, at ENGINEER's sole option, terminate the Engineering Contract for the Relevant Project for cause pursuant to Section 12.4 of this Agreement.

12.3 Termination for Convenience. This Agreement and any Work Release may be terminated by CLIENT for CLIENT's convenience and without cause upon delivery to ENGINEER of a written notice of such termination for convenience. This Agreement (but not any Work Release) may be terminated by ENGINEER for ENGINEER's convenience and without cause upon delivery to CLIENT of a written notice of such termination for convenience. Notwithstanding the provisions of Article 1.4, either party may terminate this Agreement or any Work Release as provided in this Article 12.3 at any time.

12.4 Termination for Cause. A Work Release for a Relevant Project may be terminated by either party for cause should the other party fail substantially to perform in accordance with the terms of the Engineering Contract through no fault of the party initiating the termination, if within ten (10) calendar days after the receipt of a written notice of default from the party initiating the termination, the party in default does not cure the defaults.

12.5 Compensation Due Upon Termination. In the event of the termination of this Agreement or a Work Release not the fault of ENGINEER, ENGINEER shall be compensated for all undisputed amounts owed for the Services performed prior to termination, together with reimbursable expenses then due and all expenses directly attributable to the termination of ENGINEER; provided that in no event shall CLIENT be liable to ENGINEER for any anticipated fees or profits on account of terminated Services not performed. In the event of a termination of this Agreement or a Work Release by CLIENT for CLIENT's convenience, and without cause, ENGINEER waives any claim for anticipated fees or profit on the value of the Services not performed by ENGINEER. In the event of a termination of a Work Release by either party for cause, the terminating party shall be entitled to recover from the defaulting party all damages caused by the defaulting party's breach of this Agreement and/or the Engineering Contract and the termination of the Work Release, excluding ENGINEER's anticipated fees or profit on the value of the Services not performed by ENGINEER.

ARTICLE 13. MISCELLANEOUS PROVISIONS.

13.1 Notices. All notices given pursuant to this Agreement and the Engineering Contract shall be in writing and shall be given by personal service, or by United States mail. If notice is given by personal service, written notice must be delivered in person to the individual or to a managing agent of the corporate office of a corporation for which notice is intended. If notice is given by United States mail, it must be sent by United States certified mail, return receipt requested, postage prepaid, and it must be addressed to the person or corporate office of a corporation for which notice is intended. All notices pursuant to this Agreement and the Engineering Contract shall be deemed given upon the earlier of the following: (i) the date of personal delivery of the notice to the person or managing agent of the corporate office for which the notice is intended, as evidenced by a sworn statement of the person personally delivering the notice, stating the name of the person to whom the notice was delivered and the date of delivery; or (ii) the date the notice is postmarked, if the notice is sent by United States certified mail. If the last day for giving any notice or taking any action required or permitted under this Agreement or the Engineering Contract falls on a Saturday, Sunday or legal holiday (in the state where the Relevant Project is located), the last day for giving such notice or taking such action shall be the next legal business day. Except as modified by a party by giving the other party written notice of a change, notices shall be given as follows:

.1 Notice to CLIENT shall be delivered or addressed to:

(a) CLIENT's Designated Representative for the Relevant Project identified in the Work Release at the address for such CLIENT's Designated Representative as set forth in the Work Release.

.2 Notice to ENGINEER shall be delivered or addressed to:

(a) ENGINEER's Designated Representative for the Relevant Project identified in the Work Release, at the address for such ENGINEER's Designated Representative as set forth in the Work Release.

13.2 Assignments. Neither CLIENT nor ENGINEER shall assign this Agreement or the Engineering Contract or any right, interest or claim for damages arising under this Agreement or the Engineering Contract without the written consent of the other, except that CLIENT may (a) without the consent of ENGINEER assign or transfer this Agreement or the Engineering Contract or any work product, right, interest or obligation hereunder or thereunder to any of its affiliates or subsidiaries and (b) make a conditional collateral assignment of this Agreement and the Engineering Contract to an institutional lender providing financing for the Relevant Project, conditioned on CLIENT's default in its obligations to such lender regarding the financing for the Relevant Project. In the event the condition of such collateral assignment is satisfied, the lender shall assume CLIENT's rights and obligations under this Agreement and the Engineering Contract. If ENGINEER's Services are affected or delayed by CLIENT's default or the assignment of this Agreement or the Engineering Contract to the lender, ENGINEER's fees for the remaining Services of the Relevant Project and the time schedules for the performance of the remaining Services of the Relevant Project shall be equitably adjusted.

13.3 Persons Bound. CLIENT and ENGINEER, respectively, bind themselves, their partners, members, successors, assigns and legal representatives to the other party to this Agreement with respect to all terms, conditions, promises and obligations of this Agreement and the Engineering Contract.

13.4 Third Party Beneficiaries. Nothing contained in this Agreement or the Engineering Contract shall create a contractual relationship with or a cause of action in favor of a third party against either CLIENT or ENGINEER. ENGINEER's Services under this Agreement and the Engineering Contract are being performed solely for CLIENT's benefit, and no other person or entity shall have any claim against ENGINEER arising under this Agreement or the Engineering Contract or arising from the performance or non-performance of the Services.

13.5 Nonwaiver. The failure of either party to insist upon or enforce strict performance by the other party of any of the terms, conditions, promises or obligations of this Agreement or the Engineering Contract or to exercise any rights under this Agreement or the Engineering Contract shall not be construed as a waiver or relinquishment to any extent of that party's right to assert or rely upon such terms, conditions, promises, obligations or rights on any future occasion.

13.6 Severability. Any provisions of this Agreement or the Engineering Contract prohibited, or rendered unenforceable, by any local, state or federal law shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement and the Engineering Contract.

13.7 Employment Fees. Unless approved by ENGINEER, in the event CLIENT hires directly any employee of ENGINEER within one (1) year after final payment is due to ENGINEER for the Services of a Relevant Project, CLIENT agrees to reimburse ENGINEER a monetary amount equal to six (6) months' wages for the employee so hired by CLIENT as an employment fee. The employment fee shall be calculated as six (6) times the gross monthly full-time wages of the employee immediately prior to the hiring.

13.8 Governing Law. This Agreement and the Engineering Contract shall be governed by the laws of the state in which the Relevant Project is located, exclusive of its conflict of laws rules.

13.9 Execution. This Agreement and each Work Release shall be executed by duly authorized representatives of the parties. Those persons executing this Agreement and the Work Releases which incorporate by reference this Agreement represent and warrant to the other party that they are duly authorized to execute this Agreement and the Work Releases and to bind the party for whom they have signed to the terms, conditions, promises and obligations of this Agreement and the Work Releases.

IN WITNESS WHEREOF, the parties hereto have executed or caused to be executed by their duly authorized representatives, this Agreement in duplicate on the respective dates indicated below.

SANTAQUIN CITY:

ATTEST: _____

Name: _____

Title: _____

By: _____

Print Name: _____

Title: _____

Date: _____

ATTEST: _____

Name: _____

Title: _____

By: _____

Print Name: _____

Title: _____

Date: _____

SUNRISE ENGINEERING, INC.

