

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

AGREEMENT FOR PROFESSIONAL SERVICES

This agreement (“Agreement”) is made by and between the City of Allen, Texas (“City”) and Dynamic Engineering Consultants, Pc, a Consultant (“Professional”) (each a “Party” and collectively the “Parties”), acting by and through their authorized representatives.

RECITALS:

WHEREAS, the City desires to engage the services of the Professional as an independent contractor, and not as an employee, to provide the services described in Exhibit “A” (the “Scope of Services”) to assist the City in Alma Drive and Ridgeview Drive Roadway Improvements Project (the “Project”) on the terms and conditions set forth in this Agreement; and

WHEREAS, the Professional desires to render services for the City on the terms and conditions set forth in this Agreement;

NOW THEREFORE, in consideration of the mutual covenants set forth herein, and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

Article I
Term

1.1 This Agreement shall commence on the last date of execution hereof (“Effective Date”) and continue until completion of the services, unless sooner terminated as provided herein.

1.2 Either Party may terminate this Agreement by giving thirty (30) days prior written notice to the other Party. In the event of such termination the Professional shall deliver to City all finished and unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items prepared by the Professional in connection with this Agreement. Professional shall be entitled to compensation for any services completed to the reasonable satisfaction of the City in accordance with this Agreement prior to such termination.

Article II
Scope of Service

2.1 The Professional shall perform the services in connection with the Project as set forth in the Scope of Services. The Professional shall perform the services: (i) with the professional skill and care ordinarily provided by competent engineers or architects, as the case may be, practicing in the same or similar locality and under the same or similar circumstances and professional license; and (ii) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect, as the case may be. If the Professional is not a licensed engineer or registered architect, the Professional shall perform the services: (i) with the

skill and care ordinarily provided by similar consultants practicing in the same or similar locality and under the same circumstances and applicable licenses or certifications; and (ii) as expeditiously as is prudent considering the ordinary skill and care of similar competent consultants.

2.2 The City shall, prior to commencement of services, provide the Professional with the information set forth in the Scope of Services, if any.

2.3 Licenses. Professional represents to City that Professional possesses any and all licenses which may be required by the State of Texas or any other governmental entity having jurisdiction as may be necessary for the performance of Professional's services pursuant to this Agreement.

2.4 The Parties acknowledge and agree that any and all opinions provided by the Professional in connection with the Scope of Services represent the professional judgment of the Professional, in accordance with the standard of care applicable by law to the services performed hereunder.

2.5 Upon execution of this Agreement the City has the right to use the Professional's instruments of service, including but not limited to reports, maps, cost estimates, recommendations or other deliverables for the Project, provided that the City substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The City's employees, agents, contractors and subcontractors may reproduce applicable portions of the instruments of service for use in performing services or construction for the Project. Upon payment of all amounts due Professional hereunder, all deliverables, materials and reports prepared by the Professional in connection with this Agreement shall become the property of the City. The City shall have the right to publish, disclose, distribute and otherwise use such deliverables, materials and reports only for those purposes for which they were intended. Subject to the foregoing, Professional shall, upon completion of the services, or earlier termination, provide the City with the deliverables, drawings, reports, maps, and materials prepared by Professional as set forth in the Scope of Services.

Article III Schedule of Work

The Professional agrees to complete the required services in accordance with the Project Schedule outlined in the Scope of Services.

Article IV Compensation and Method of Payment

4.1 Professional will be compensated in accordance with the payment schedule and amounts set forth in the Scope of Services. Unless otherwise provided herein, payment to the Professional shall be monthly based on the Professional's monthly progress report and detailed monthly itemized statement for services that shows the names of the Professional's employees,

agents, contractors performing the services, the time worked, the actual services performed, the rates charges for such service, reimbursable expenses, and the amount due and payable as of the current statement, in a form reasonably acceptable to the City. Monthly statements shall include authorized non-salary expenses with supporting itemized invoices and documentation. The City shall pay such monthly statements within thirty (30) days after receipt and City verification of the services and expenses unless otherwise provided herein. The final payment of the compensation shall be made after satisfactory completion of the services following the City acceptance of the study, report, recommendation or other work set forth in the Scope of Services, and the submittal of “AS BUILT” drawings, or record drawings, as applicable.

4.2 Unless otherwise provided in the Scope of Services the Professional shall be responsible for all expenses related to the services provided pursuant to this Agreement including, but not limited to, travel, copying and facsimile charges, telephone, internet and email charges.

4.3 The hourly rates set forth in the Scope of Services, if any shall remain in effect during the term of this Agreement. Any changes to established hourly rates shall require the prior written consent of the City.

Article V

Devotion of Time; Personnel; and Equipment

5.1 The Professional shall devote such time as reasonably necessary for the satisfactory performance of the services under this Agreement. Should the City require additional services not included under this Agreement, the Professional shall make reasonable effort to provide such additional services within the time schedule without decreasing the effectiveness of the performance of services required under this Agreement, and shall be compensated for such additional services on a time and materials basis, in accordance with Professional’s standard hourly rate schedule, or as otherwise agreed between the Parties.

5.2 To the extent reasonably necessary for the Professional to perform the services under this Agreement, the Professional shall be authorized to engage the services of any agents, assistants, persons, or corporations that the Professional may deem proper to aid or assist in the performance of the services under this Agreement. The Professional shall provide written notice to and obtain written approval from the City prior to engaging services not referenced in the Scope of Services. The cost of such personnel and assistance shall be included as part of the total compensation to be paid Professional hereunder and shall not otherwise be reimbursed by the City unless otherwise provided herein.

5.3 The Professional shall furnish the facilities, equipment and personnel necessary to perform the services required under this Agreement unless otherwise provided herein.

5.4 The Professional shall submit monthly progress reports and attend monthly progress meetings scheduled by the City or more frequently as may be required by the City from time to time based upon Project demands. Each progress report shall detail the work accomplished

and special problems or delays experienced on the Project during the previous report period, and the planned work activities and special problems or delays anticipated for the next report period.

Article VI Miscellaneous

6.1 Entire Agreement. This Agreement constitutes the sole and only agreement between the Parties and supersedes any prior understandings written or oral agreements between the Parties with respect to this subject matter.

6.2 Assignment. The Professional may not assign this Agreement without the prior written consent of City. In the event of an assignment by the Professional to which the City has consented, the assignee shall agree in writing with the City to personally assume, perform, and be bound by all the covenants, and obligations contained in this Agreement.

6.3 Successors and Assigns. Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors and assigns.

6.4 Governing Law. The laws of the State of Texas shall govern this Agreement without regard to any conflict of law rules; and venue for any action concerning this Agreement shall be in the State District Court of Collin County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

6.5 Amendments. This Agreement may be amended by the mutual written agreement of the Parties.

6.6 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

6.7 Independent Contractor. It is understood and agreed by and between the Parties that the Professional, in satisfying the conditions of this Agreement, is acting independently, and that the City assumes no responsibility or liabilities to any third party in connection with these actions. All services to be performed by Professional pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of the City. Professional shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement.

6.8 Right-of-Access. The Professional shall not enter onto private property without lawful right-of-access to perform the required surveys, or other necessary investigations. The Professional will take reasonable precautions to minimize damage to the private and public

property in the performance of such surveys and investigations. Any right-of-access to public or private property shall be obtained in accordance with the Scope of Services.

6.9 Notice. Any notice required or permitted to be delivered hereunder may be sent by first class mail, courier or by confirmed telefax or facsimile to the address specified below, or to such other Party or address as either Party may designate in writing, and shall be deemed received three (3) days after delivery or on the day actually received if sent by courier or otherwise hand delivered:

If intended for City:

Eric Ellwanger
City Manager
City of Allen, Texas
3rd Floor, Allen City Hall
305 Century Parkway
Allen, Texas 75013
214.509.4110 - telephone
214.509.4118 - fax

With a copy to:

Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Ross Tower
500 North Akard Street
Dallas, Texas 75201
214.965.9900 – telephone
214.965.0010 - fax

If intended for Consultant:

Dynamic Engineering Consultants, PC

Attn: Josh Edge, P.E.
714 S. Greenville Ave
Suite 100
Allen, Texas 75002
972-534-2100 Ext. 4101- telephone

6.10 Insurance.

- (a) Professional shall during the term hereof maintain in full force and effect the following insurance: (i) a commercial general liability policy of insurance for bodily injury, death and property damage including the property of the City, its council, officers, contractors, agents and employees (collectively referred to as the “City”) insuring against all claims, demands or actions relating to the work and services provided by the Professional pursuant to this Agreement with a minimum limit per occurrence for injury to persons (including death), and for property damage and \$2,000,000.00 aggregate including products and completed operations; (ii) automobile liability insurance covering all vehicles owned, non-owned and hired and/or operated by Professional, its officers, agents, independent contractors and employees, and used in the performance of this Agreement with policy limits of not less than \$1,000,000.00 combined single limit for bodily injury, death and

property damage; (iii) statutory Worker's Compensation and Employers Liability covering all of Professional's employees involved in the provision of services under this Agreement with policy limit of not less than \$1,000,000.00; and (iv) Professional Liability with policy limit of not less than \$1,000,000.00 per claim and \$2,000,000.00 in the aggregate, covering negligent acts, errors and omissions by Professional, its contractors, sub-contractors, consultants and employees in the performance of services pursuant to this Agreement. Such professional liability insurance shall be annually renewed and remain in effect for not less than twenty-four (24) months after substantial completion of the services.

- (b) All insurance shall be endorsed to provide the following provisions: (1) name the City, its council, officers, and employees as additional insureds as to all applicable coverage with the exception of Workers Compensation Insurance and Professional Liability; (2) provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance, except for Professional Liability Insurance. A specific endorsement needs to be added to all policies, with a copy of the endorsement provided to the City that indicates the insurance company will provide to the City at least a thirty (30) day prior written notice for cancellation, non-renewal, and/or material changes of the policy. In the event the companies providing the required insurance are prohibited by law to provide any such specific endorsements, the Consultant shall provide at least thirty (30) days prior written notice to the City of any cancellation, non-renewal and/or material changes to any of the policies of insurance. All policies must be written on a primary basis, non-contributory with any insurance coverage and/or self-insurance maintained by the City
- (c) All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service.
- (d) A certificate of insurance and copies of policy endorsements evidencing the required insurance shall be submitted to the City prior to commencement of services. On every date of renewal of the required insurance policies, the Professional shall cause a certificate of insurance and policy endorsements to be issued evidencing the required insurance herein and delivered to the City. In addition, the Professional shall within ten (10) business days after written request provide the City with certificates of insurance and policy endorsements for the insurance required herein. The delivery of the certificates of insurance and policy endorsements to the City is a condition precedent to the payment of any amounts due to Professional by the City. The failure to provide valid certificates of insurance and policy endorsements shall be deemed a default and/or breach of this Agreement.

6.11 Debarment and Suspension.

- (a) In accordance with 2 CFR section 180.300, the principal of this contract as described in 2 CFR section 180.995 being duly sworn or under penalty of perjury under the laws of the United States, certifies that neither this company nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency, the State of Texas or any of its departments or agencies.
- (b) If during the contract period the principal becomes debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation, the principal shall immediately inform the City of Allen.
- (c) For contracts that are financed by Federal or State grants, the principal agrees that this section will be enforced on each of its subcontractors and will inform the City of Allen of any violations of this section by subcontractors to the contract.
- (d) The certification in this section is a material representation of fact relied upon by the City in entering into this contract.

6.12 Indemnification. PROFESSIONAL DOES HEREBY COVENANT AND CONTRACT TO WAIVE ANY AND ALL CLAIMS, RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS CITY COUNCIL, OFFICERS, EMPLOYEES, AND AGENTS, FROM AND AGAINST ALL LIABILITY, CAUSES OF ACTION, CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LOSSES, PENALTIES OR SUITS, CAUSED BY OR RESULTING FROM THE NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY THE PROFESSIONAL, ITS AGENT, ITS CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE PROFESSIONAL EXERCISES CONTROL SUBJECT TO THE LIMITATIONS IN TEXAS LOCAL GOVERNMENT CODE § 271.904 AND TEXAS CIVIL PRACTICE AND REMEDIES CODE, § 130.002 (B).

INDEMNIFIED ITEMS SHALL INCLUDE REASONABLE ATTORNEYS' FEES AND COSTS, COURT COSTS, AND SETTLEMENT COSTS.

THE PROFESSIONAL'S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY PROFESSIONAL UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

6.13 Counterparts. This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist

of any number of copies hereof each signed by less than all, but together signed by all of the Parties hereto.

6.14 Exhibits. The exhibits attached hereto are incorporated herein and made a part hereof for all purposes.

6.15 Prohibition of Boycott Israel. Professional verifies that it does not Boycott Israel and agrees that during the term of this Agreement will not Boycott Israel as that term is defined in Texas Government Code Section 808.001, as amended. This section does not apply if the Professional is a sole proprietor, a non-profit entity or a governmental entity; and only applies if: (i) the Professional has ten (10) or more fulltime employees and (ii) this Agreement has a value of \$100,000.00 or more to be paid under the terms of this Agreement.

(Signature Page to Follow)

EXECUTED this _____ day of _____, 2020.

CITY OF ALLEN, TEXAS

By: _____
Eric Ellwanger, City Manager

ATTEST:

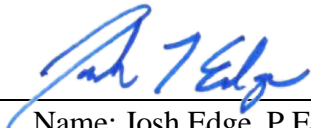
By: _____
Shelley George, City Secretary

APPROVED AS TO FORM:

By: _____
Peter G. Smith, City Attorney

EXECUTED this 27th day of July, 2020.

DYNAMIC ENGINEERING CONSULTANTS, PC

By:  _____
Name: Josh Edge, P.E.
Title: Texas Regional Manager/Principal

**EXHIBIT “A”
SCOPE OF SERVICES
(TO BE ATTACHED)**

July 23, 2020

Via email: jakomer@cityofallen.org

City of Allen
305 Century Parkway
Allen, TX 75013

Attn: Jamie Akomer, PMP, EIT

**RE: Professional Engineering Services
SE Corner of Highway 121 & Alma Drive
City of Allen, Collin County, TX**

Dear Ms. Akomer,

Thank you for this opportunity to present our proposal for Professional Engineering and Land Development Consulting Services to be performed by Dynamic Engineering Consultants, PC in relation to your project in the City of Allen. The project location is specifically identified as Ridgeview Drive and Alma Drive in the City of Allen in Collin County, Texas.

The area is presently developed as existing roadways. We understand that you wish to add additional pavement to widen the road to create more lanes. Additional improvements will include, grading, drainage, and associated items.

In preparation of this proposal we have reviewed the following items:

- City of Allen Zoning Ordinance
- City of Allen Preliminary and Final Site Plan Checklist
- Boundary and Topographical Survey prepared by Dynamic Engineering dated April 16, 2020
- Median improvement project prepared by Lee Engineering dated 01/2018
- Geotechnical Exploration prepared by Alpha Testing dated 12/2013

For the purposes of preparing this proposal at this time, we have made the following assumptions:

- This proposal is for design of the improvements of northbound and southbound outside lanes of Alma Drive including a right turn lane at Ridgeview Drive and improvements of two westbound lanes of Ridgeview Drive including a left and right turn lanes at Alma Drive only.
- The existing lighting plan prepared by Lee Engineering will be utilized for Ridgeview Drive.

Based upon our review of the above listed information and our understanding of the proposed work scope, we have prepared an itemized Summary of Services outlining the scope and fee for services offered at this time followed by a Description of Services defining each scope item.

SUMMARY OF FEES

Section I: Due Diligence	\$ 2,500.00
<ul style="list-style-type: none"> Investigation of Public Records and Local Ordinances Site Visit and Review 	
Section II: Surveying Services	\$ 5,000.00
<ul style="list-style-type: none"> Topographic and Location Survey Metes & Bounds Description (if required) 	\$ 2,000.00
Section III: Geotechnical Services	\$ 5,990.00
<ul style="list-style-type: none"> Geotechnical Investigation (if required) 	
Section IV: Design Document Preparation	\$ 15,000.00
<ul style="list-style-type: none"> 30% Construction Documents 60% Construction Documents 90% Construction Documents 100% Construction Documents 	\$ 25,500.00 \$ 7,500.00 \$ 7,500.00
Section V: Special Civil Engineering Services	
<ul style="list-style-type: none"> Quantities and Engineer's Cost Estimate <ul style="list-style-type: none"> 60% Construction Documents 90% Construction Documents 100% Construction Documents 	\$ 2,500.00 \$ 1,000.00 \$ 1,000.00
Section VI: Traffic Engineering Services (if requested or required)	
<ul style="list-style-type: none"> Contract Plans <ul style="list-style-type: none"> Traffic Signal Layout Plan (Modification) Signing and Pavement Marking Layout Plan 	\$ 14,000.00 \$ 6,000.00
Section VII: Project Meetings, Consultations, and Correspondence	Time and Materials (Not to Exceed \$20,500.00)
Section VIII: Construction	
<ul style="list-style-type: none"> Construction Administration 	Time and Materials (Not to Exceed \$ 8,500.00)
Section IX: Reimbursable Expenses	Time and Materials (Not to Exceed \$ 5,000.00)
Total Contract Price	\$129,490.00

This proposal is limited to the scope of services specifically defined herein. Major plan revisions pursuant to requests by owner, review board, or permitting entities are excluded. Geotechnical Engineering services, Traffic Engineering services, Professional Planner services, off-site roadway improvements/widening, pump station design, retaining wall design, environmental impact statements, architectural/structural design, TxDOT permitting, or other permits or activities not specifically identified herein are excluded. Any additional services or out-of-scope work items that are requested or are determined to be necessary will be confirmed in writing and invoiced generally in accordance with Dynamic Engineering's *Professional Services Rate Schedule* in effect at that time. Reimbursable costs and expenses incurred by Dynamic Engineering Consultants, PC in connection with the engineering work outlined in this proposal, including but not limited to, postage, travel expenses, printing and mileage will be invoiced in accordance with Dynamic Engineering's *Professional Services Rate Schedule*.

Our scope of services and fees are based, at this time, upon our preliminary review of current local regulations as well as County and State jurisdictional requirements. These services are subject to change if the regulations and/or ordinances upon which our scope is currently based are amended or revised during the course of the project. This proposal may be subject to modification should design constraints be recognized during refinement of the development plan. This may include the scope of improvements both on and off-site.

This proposal is limited to the scope of services specifically defined herein. Any additional services or out-of-scope work items that are requested or are determined to be necessary will be confirmed in writing and invoiced generally in accordance with Dynamic Engineering's *Professional Services Rate Schedule* in effect at that time.

DESCRIPTION OF SERVICES

Section I: Due Diligence

- **Investigation of Public Records and Local Ordinances:** Dynamic Engineering Consultants will perform a review of available on-line public information and verify content that may be pertinent to the permitting of the project. Additionally, we will prepare a summary of applicable Ordinance sections as they relate to proposed use(s) and the bulk criteria affecting the site.
- **Site Visit and Review:** Dynamic Engineering Consultants will perform an on-site evaluation of the property. The site visit will be performed by an engineer who will evaluate major visible engineering constraints of the site which may include grading, drainage, circulation or other related issues that may affect the development potential or permitting of the site. Surrounding uses to the site will also be verified.

Section II: Survey Services

- **Topographic and Location Survey:** In accordance with our discussions, the scope of surveying services to be provided for this project will be limited to the area of the proposed development. The previous site information as furnished to Dynamic Engineering Consultants, PC will be utilized and referenced to establish the Boundary of the property and the extent of the overall existing conditions of the site. The scope of services defined under this proposal is limited to preparation of a location and topographic survey with field shot elevations generally on a 50-foot grid and 1-foot contours for the portion of the site that is to be affected by the proposed development project.

We will also locate visible utilities within the noted portion of the tract. Underground (not visible) utility locations will be shown based upon the location of visible structures or utility mark-outs found in the field. We will request mark outs from 811 locates, City of Allen Allen ISD and North Texas Municipal Water District for locations of existing lines. All flagged location will be located. We do not assume any liability for the location of underground piping or underground facilities shown from available records obtained from the City and Franchise Utility Companies. Upon commencement of any future construction, it is to be the contractor's responsibility to locate existing utilities and identify any potential conflicts through coordination with utility providers, requests for mark-outs, and performance of test pits (if deemed necessary).

Boundary survey and setting of property corner markers is not included in this task. The elevations will be based on City of Allen published datum and benchmarks. Should additional traversing, beyond the project boundaries, be needed to gain proper datum in the field an addendum to this proposal will be provided.

Please note that if construction stakeout, legal descriptions for easements or dedications or other boundary related services are required, the original Boundary surveyor must provide these services. If Dynamic Engineering Consultants, PC is to provide these boundary related services, an additional fee will apply and it may be necessary to prepare a new Boundary survey for the tract.

- **Metes & Bounds Description (If Required):** Under this task, a Metes and Bounds Description will be prepared for the right of way dedication required along the north side of Ridgeview Drive from the intersection of Alma Drive to approximately the extension for Creekway Drive.

Section III: Geotechnical Services

Dynamic will use the provided Geotechnical Report for existing site conditions. If additional borings are needed, Dynamic will be provided authorization from the City of Allen before proceeding.

Geotechnical Investigation (If Required): Dynamic's proposed Geotechnical Investigation and summary report will include the following items:

- reviewing geologic maps and our in house database of nearby subsurface conditions in conjunction with overall site reconnaissance relevant to area geotechnical challenges;
- drilling soil borings in truck-accessible areas, sampling and testing subsurface materials, and recording groundwater levels at the time of the investigation;
- identifying pertinent physical and engineering characteristics of the subsurface materials encountered during sampling and testing;
- providing pavement section thickness designs based on estimated California Bearing Ratio (CBR) values, performing Potential Vertical Rise (PVR) calculations in accordance with TXDOT criteria, and issuing recommendations for subgrade preparation;
- issuing site specific recommendations concerning earthwork considerations during construction, including subgrade preparation, structural fill placement, the suitability of existing site soils for use as structural fill/backfill, moisture sensitivity, rock excavation, and possibly problematic soil conditions; and;
- presenting a discussion of groundwater levels and the need for temporary or permanent dewatering.

Dynamic proposes to drill and sample up to six soil borings to evaluate the subsurface conditions in proposed pavement areas. Borings will be drilled to a depth of up to 10 feet below the existing ground surface (or refusal).

The specific number, depth and location of borings may be adjusted as appropriate by Dynamic's on-site engineer to reflect site or project conditions as drilling and testing progresses. Our proposal includes an allotment for up to 120 linear feet of drilling, if necessary (or one long day on-site) to perform the subsurface investigation.

The geotechnical investigation will include a laboratory testing program to determine pertinent engineering characteristics of the soils encountered. Laboratory testing may include engineering classifications of foundation and subgrade soils by ASTM D2487, including washed gradation analyses, one-dimensional swell tests, moisture content determinations, and Atterberg Limits determinations.

The results of Dynamic's geotechnical investigation will be presented in a summary report prepared by a professional engineer. Our summary report will include an evaluation of site conditions with respect to the updated City design criteria. If the existing site conditions are not adequate to support the updated design criteria, our report will provide recommendations for adequate support based on existing site conditions.

Planning Assumptions

Dynamic assumes free access will be granted to the subject property for the duration of the project. The site must be accessible to truck-mounted drilling equipment.

Dynamic will coordinate a mark out of on-site public utilities. Dynamic assumes no responsibility for the location of or damage to public or private underground utilities not clearly marked by 811 prior to commencement of site services.

This proposal assumes that the project can be scheduled once without multiple delays, holds or rescheduling. Cost to reschedule and/or attempt to obtain access multiple times may be invoiced on a unit rate basis. Additional mobilization and field engineering cost may be required for cancellations without sufficient notification (less than two business days).

Test locations will be backfilled once with excavated soil. The owner should anticipate some settlement at test locations, and future maintenance may be required. Excess drill cuttings or excavated soil will remain on site or can be removed at an additional cost, if requested by the client. Dynamic assumes no responsibility for damage resulting from future settlement at backfilled sample locations.

Unless otherwise requested by the client, all soil samples will be disposed 60 days following completion of field investigation efforts.

This proposal is based on the assumption that conditions suitable for foundation and pavement analysis will be encountered within the exploration depths proposed. If marginal or unsuitable conditions are encountered, the exploration program may be revised to include deeper borings and/or additional investigation and analysis may be recommended at an additional cost. If possible, we will attempt to make necessary revisions to the boring program during the site investigation.

Section IV: Design Document Preparation

This section includes the preparation of the site design documents required to define the scope of the improvements for construction purposes. The drawings will be utilized to submit to the City of Allen for review and comment. For the purposes of this proposal, we assume the Plan Submission to the City will be made electronically and occur at specified stages of design as listed below. This submission will allow for review comments to be issued such that they may be addressed during the refinement of the drawings. The cost for the typical technical plan revisions to address the City review comments is included in the listed fees contained herein. Major plan revisions such as layout revisions, additional roadway improvements, and other substantive plan revisions are excluded. Technical construction detail revisions and construction code compliance revisions are included. In the event that excluded revisions are required due to the plan review process, a contract addendum will be required for Dynamic to address those excluded items on a Time and Materials basis in accordance with our Hourly Rate Schedule. Based upon the scope of the subject project, the design drawings will include the following information:

- **30% Construction Documents/Schematic Design/Preliminary Engineering:**
 - Roadway plan and profile layout
 - This will include the review of the eastbound inside curb line as it relates to the westbound curb line of Ridgeview Drive
 - Preliminary roadway plan
 - Preliminary grading and drainage design
 - Review for drainage and existing utility conflicts
- **60% Construction Documents/Design Development**
 - Detailed roadway grading
 - Detailed roadway plan and profiles
 - Finalize drainage design and profiles
 - Develop Erosion control plan
 - Develop roadway striping plan
 - Construction details
 - Typical roadway cross-sections
 - Additional sheets shall include
 - Cover Sheet
 - General Notes
 - Dimensional Control
 - Quantity Sheet
 - Construction Phasing Plan
 - Tree Mitigation Plan (If Required)
- **90% Construction Documents**
 - Coordination with City on any comments related to the 60% review
 - Confirm with Geotechnical Investigation to confirm pavement specifications
- **100% Construction Documents**
 - Coordination with City on any comments related to the 90% review
 - Assisting the City in preparing bid documents to include bid tabs and special specifications not identified with in the plan set

Section V: Special Engineering Services

- **Quantities and Engineer's Cost Estimate:** Dynamic will prepare a construction cost estimate based on 60%, 90%, and final construction plans. This will include a quantity take-off of the various items of construction. It should be noted that this construction cost estimate is only a guide to be used by the Client to establish a general budget for the project. It should not be considered a definitive estimate of the project's true cost. The estimate will be provided in a tabular format on 8.5" x 11" sheets and submitted electronically.

Section VI: Traffic Engineering Services (if required or requested):

For the purposes of preparing this proposal at this time, we have made the following assumptions:

- Design of two (2) westbound lanes of Ridgeview Drive between Alma Drive and Creekway Drive will be widened to a cross section consistent with the existing conditions west of Alma Drive and east of Creekway Drive. Left and right turn lanes will be provided at the intersection of Ridgeview Drive and Alma Drive. The precise limits of the work will be determined with the City prior to conducting any of the scope described below.
 - Alma Drive will be widened to provide one additional lane southbound and northbound by widening to the outside of the existing roadway. The improvements are anticipated to terminate at the intersection with the State Highway 121 southern frontage road. This shall also include a right turn lane for southbound Alma Drive to westbound Ridgeview Drive. This scope specifically excludes the design of any modifications to the existing traffic signal system at the intersection of Alma Drive and the State Highway 121 service road.
 - This scope of work assumes that the existing traffic signal system in place at the intersection of Ridgeview Drive and Alma Drive will be maintained and that only pedestrian facilities are proposed to provide curb ramps and push buttons to accommodate crosswalks across each of the four legs to the intersection. The foundations for traffic signal poles and mast arms are not anticipated.
 - It is understood that this work is proposed in accordance with a master plan on file with the City, and the road geometry, queue lengths, and other information will be derived from existing traffic studies to be provided to Dynamic by the City. As such, a Traffic Study is not included in the scope of this work.
- **Traffic Signal Layout Plan (Modification Only)**

The Traffic Signal Layout Plan will be prepared for the intersection at a scale of 1"=40' or less depicting the proposed signal items located above and below ground necessary to modify the traffic signal. This plan will be prepared to the extent necessary to add curb ramps and push buttons to provide four crosswalks at the intersection of Alma Drive and Ridgeview Drive. Additionally, the proposed lane geometry and will be reviewed, and if needed, additional traffic signal heads will be shown on the existing mast arms to accommodate the geometry. New traffic signal mast arms are not anticipated.

It is anticipated that this plan will be prepared and submitted with the 60% submission after the City's review of the 30% plans depicting the proposed overall improvement.

TxDOT Standard Electrical construction details will be referenced. It is anticipated that any City specific details will be provided to Dynamic for our inclusion within the plans.

- **Signing and Pavement Marking Layout Plan:** We will prepare traffic signing and pavement marking plans in accordance with the agency requirements for the project. The plans will include the width of lanes and shoulders, the width and color of the traffic stripes, and the location and TMUTCD designation of all proposed and relocated signs. Details will be provided for all signs not covered by standard sign designations.

Section VII: Project Meetings, Consultations and Correspondence

- **Project Meetings and Coordination:** The intensity, methods and frequency of communications required for a project varies from client to client and project to project, but is essential to expediting the project successfully. As it is not always possible to determine the scope of work required for this phase prior to the commencement of work, this firm will provide an estimated scope of work as follows:
 - Conference calls (maximum of 4 meetings during design)
 - Meetings and generation of Meeting Memorandums
 - Correspondence and coordination of governmental agencies
 - Coordination with developers on the East and West side of Alma Drive for median openings and right turn lanes into sites
 - Review and address agency review letters
 - Attendance at pre-bid meeting and pre-construction meetings with the city of Allen (assumes 2 meetings)
 - Coordination with the city of McKinney on the improvements at the intersection of Alma Drive and State Highway 121.
 - Coordination and submission to TxDOT for the improvements along State Highway 121.

All meetings, consultations and correspondence as noted above will be billed in accordance with the hourly rate schedule as included herein.

Section VIII: Construction Phase Services (if requested)

- **Construction Administration:** Under this phase, Dynamic Engineering Consultants, P.C. will provide construction administration services for the proposed improvements addressed above. Dynamic will assist the City during the bidding phase to review contractor estimates, reference checks, bid tabulation and provide letter of recommendation. During the construction process, our office will provide services to review shop drawings, answer “requests for information”, conduct periodic site visits to clarify construction issues, and provide the appropriate construction details on an as needed basis. This task will include a final walk-through and punch-list preparation.

Section IX: Reimbursable Expenses

Reimbursable costs and expenses incurred by Dynamic Engineering Consultants, PC in connection with the engineering work outlined in this proposal including but not limited to postage, travel expenses, printing and mileage will be invoiced in accordance with Dynamic Engineering’s *Professional Services Rate Schedule* attached. It is difficult to forecast the exact amount of reimbursable expenses that will be required for a project. Accordingly, we have provided a preliminary budget of estimated expenses as requested.

PROPOSAL AUTHORIZATION

This proposal is limited to the scope of services specifically defined herein. Any additional services or out-of-scope work items that are requested or are determined to be necessary will be confirmed in writing and invoiced generally in accordance with Dynamic Engineering's *Professional Services Rate Schedule* in effect at that time.

Reimbursable costs and expenses incurred by Dynamic Engineering Consultants, PC in connection with the engineering work outlined in this proposal, including but not limited to, postage, travel expenses, printing and mileage will be invoiced in accordance with Dynamic Engineering's *Reimbursable Rate Schedule*.

In order to initiate services please endorse this proposal below and return one (1) copy of the executed document to Dynamic Engineering Consultants.

Invoices for services will be generated on a monthly basis and are payable upon receipt. Attached to this proposal are our 'Terms and Conditions', which are incorporated into this agreement by reference.

This proposal shall be valid for ninety (90) days following completion and issuance by Dynamic Engineering Consultants, PC to the client. If not accepted by the client within this time period, it may be subject to modification due to changes in governing agency requirements, fee schedule modifications, etc. This applies to any section of service within this proposal that has not been previously initiated.

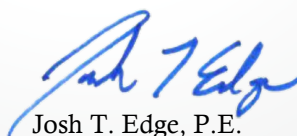
Thank you for the opportunity to be of service in relation to your project. We look forward to working with you toward attaining your development objectives.

Sincerely,

Dynamic Engineering Consultants, PC



Warren P. Hilla, P.E.
Principal



Josh T. Edge, P.E.
Texas Regional Manager/Principal

AUTHORIZED:

Jamie Akomer, City of Allen

Date

2020 PROFESSIONAL SERVICE RATE SCHEDULE

Licensed Professional Engineer – Director	\$240.00/hour
Licensed Professional Engineer – Senior Principal	\$225.00/hour
Environmental Professional – Senior Principal	\$225.00/hour
Senior Geotechnical Engineer – Project Manager	\$225.00/hour
Licensed Professional Engineer – Principal/Branch Manager	\$200.00/hour
Environmental Professional – Senior Principal/Senior Project Manager	\$200.00/hour
Licensed Professional Land Surveyor – Principal	\$200.00/hour
Senior Geotechnical Engineer	\$200.00/hour
Licensed Professional Engineer – Senior Project Manager	\$190.00/hour
Environmental Professional – Project Manager	\$190.00/hour
Licensed Professional Engineer – Project Manager	\$165.00/hour
Licensed Professional Land Surveyor – Project Manager	\$165.00/hour
Environmental Scientist	\$165.00/hour
Environmental Technician	\$155.00/hour
Environmental Professional	\$150.00/hour
Licensed Professional Engineer	\$150.00/hour
Licensed Professional Land Surveyor	\$150.00/hour
Project Manager	\$150.00/hour
Field Survey Crew - Two Man	\$195.00/hour
Field Survey Crew - Three Man	\$250.00/hour
Project Engineer	\$140.00/hour
Licensed Landscape Architect	\$140.00/hour
Construction Services Manager	\$140.00/hour
Construction Materials Testing Supervisor	\$140.00/hour
Geotechnical Engineer/Geologist	\$140.00/hour
Senior Project Surveyor	\$135.00/hour
Survey Party Chief	\$135.00/hour
Senior Technical Professional/Senior Engineering Technician	\$135.00/hour
CAD Manager	\$125.00/hour
Project Surveyor	\$125.00/hour
Senior Design Engineer	\$125.00/hour
Technical Professional	\$125.00/hour
Senior Survey Technician	\$115.00/hour
Design Engineer	\$105.00/hour
Staff Engineer	\$105.00/hour
Staff Engineer (Half-Day Rate)	\$525.00
Project Coordinator	\$105.00/hour
Survey Technician	\$105.00/hour
Senior CAD Designer	\$100.00/hour
Assistant Project Coordinator	\$ 95.00/hour
Engineering Technician	\$ 75.00/hour
Engineering Technician (Half-Day Rate)	\$375.00
CAD Designer	\$ 90.00/hour
Assistant Professional	\$ 85.00/hour
Senior Administrative Assistant	\$ 80.00/hour
Assistant Survey Technician	\$ 75.00/hour
Administrative Assistant	\$ 75.00/hour
Traffic Enumerator	\$ 40.00/hour
Professional Services for the purposes of litigation matters, court appearances and attendance at other legal proceedings shall be billed at 1.5 times the above rates.	

2020 REIMBURSABLE RATES

Outside (pass-thru) Services	cost + 10%
Postage, Federal Express, UPS, DHL	cost + 10%
Travel (meals, tolls, etc.)	cost + 10%
Paper Black/White Copy/Prints – A Size (8.5"x11")	\$ 0.15/sheet
Paper Black/White Copy/Prints – B Size (11"x17")	\$ 0.30/sheet
Paper Color Copy/Prints – A Size	\$ 3.00/sheet
Paper Color Copy/Prints – B Size	\$ 5.50/sheet
Paper Plots and Printing – B Sheet	\$ 2.00/sheet
Paper Plots and Printing – C Sheet (18"x24")	\$ 2.75/sheet
Paper Plots and Printing – D Sheet (24"x36")	\$ 3.50/sheet
Paper Plots and Printing – E Sheet (30"x42")	\$ 4.00/sheet
Signed/Sealed Plots – C Sheet	\$ 4.00/sheet
Signed/Sealed Plots – D Sheet	\$ 4.50/sheet
Signed/Sealed Plots – E Sheet	\$ 5.00/sheet
Mylar Plots	\$ 5.75/sq. ft.
Color Plots – D Sheet	\$ 30.00/sheet
Color Plots – E Sheet	\$ 40.00/sheet
Exhibit Mounting – D Size	\$ 75.00/board
Exhibit Mounting – E Size	\$ 100.00/board
Reports (Size ¼" – ¾")	\$ 10.00 - \$20.00
Reports (Size 1" – 2")	\$ 25.00 - \$50.00
Notary Public Services	\$ 10.00
High Resolution Aerial Imagery	\$ 95.00/image
Digital Signatures (Initial)	\$200.00/each
Digital Signatures (Each Additional)	\$ 50.00/each
CD/DVD Preparation	\$ 30.00/each
USB – Memory Stick/Thumb Drive	\$ 40.00/each
Electronic Document Preparation	\$ 25.00 up to the first 5 sheets Plus \$5.00/sheet over 5 sheets
Tax Maps	\$ 35.00/sheet
FTP Site Usage	\$ 25.00/unit
Mileage	\$ 0.58/mile
Moisture Content Determination	\$ 50.00/each
Moisture Content Determination (as additional test)	\$ 15.00/each
Modified Proctor	\$350.00/each
Washed Gradation	\$ 90.00/each
Atterberg Limits Determinations (Inorganic)	\$100.00/each
Tube Permeameter	\$200.00/each
Organic Content by Loss on Ignition	\$ 75.00/each
Concrete Cylinders (cast or retained) Sample	\$ 20.00/each
Pick up/Delivery to Laboratory	\$ 75.00/hour
Sample Storage (Beyond 60 days)	\$ 50.00/month

On-site inspection services by staff engineer or technician will be invoiced at full day increments for services exceeding 4 hours on site or a minimum ½ day charge for less than 4 hours on-site.

STANDARD TERMS AND CONDITIONS

1. Professional Responsibility:

The Engineer represents that services described in the scope of services contained in the *Letter Proposal* (submitted with and incorporated as part of these *Standard Terms and Conditions*) shall be performed in a manner consistent with that level of care and skill ordinarily exercised by comparable Professional Engineers under similar circumstances at the time the services are performed. No other representation to the Owner, express or implied, and no warranty or guarantee is included or intended hereunder, or in any report, opinion, document or otherwise. The Engineer does not guarantee approval of any plans submitted for review, nor will the Engineer be responsible for the timeliness of the work or acquisition of applicable approvals. The Owner agrees that it has retained the Engineer for professional services in connection with the preparation of documents or plans for project design purposes or for submission to various jurisdictional entities for review, and it accepts the risk associated with the Project. The Engineer shall exercise usual and customary professional care in its efforts to comply with codes, regulations, laws, rules, ordinances, and other such requirements in effect as of the date of the execution of this Agreement.

2. Owner and Engineer Responsibility:

The Owner agrees to provide right of entry for personnel and equipment necessary to complete the work. While the Engineer will take reasonable precautions to minimize any damage to the property, it is understood by the Owner that, in the normal course of work, some damage may occur. The Engineer shall be responsible for the correction of any such material damage to the extent it is caused by the Engineer's negligence, omissions or willful conduct, or those of anyone for whom the Engineer is legally responsible.

The Owner agrees to assist the Engineer by placing at the Engineer's disposal any and all information available pertaining to the Project, such that services may be performed in the most efficient fashion, including existing plans, recorded deeds, correspondence, reports, specifications and any other related items. If preparation of a boundary survey is included in the Engineer's scope of services, the Owner will provide to the Engineer a title search of the property which identifies the description and any limitations or objections to the title of property under the letter proposal.

3. Payment Terms:

The executed letter proposal, (attached to these *Standard Terms and Conditions*) shall act as an additional agreement between the Engineer and the Owner for the provision of professional services. The Engineer agrees to perform services and the Owner agrees to pay the Engineer for services, in accordance with the terms of the letter proposal, without regard to the success or time of completion of the Project. Invoices for professional services and expenses incurred shall be generated on a monthly basis, and are due and payable within Fourteen (14) days of receipt. If an invoice becomes delinquent, the Engineer reserves the right to cease all services and pursue all remedies upon three (3) days prior written notice. In the event that the Engineer prevails in a legal action against the Owner for unpaid invoice amounts, the Engineer shall be entitled to recover attorney fees and court costs from Owner. Further, the Owner agrees that all undisputed and unpaid invoice amounts outstanding for more than thirty (30) days shall accrue interest at a rate of 1.5% per month from the date of the invoice up to and including the time of payment.

In the event a retainer is required by the Engineer, the retainer will be applied to the final invoice generated by the Engineer. Any excess amount will be refunded to the Owner, and in no event later than thirty (30) days after the Owner's payment of the final invoice. The billing rates effective during the time services are provided under this agreement and the letter proposal shall only be modified upon written agreement of the Owner and Engineer.

4. **Termination:**

The Agreement for the Project may be terminated by either party at any time for convenience upon Fourteen (14) days written notice for any or no reason, or immediately upon written notice by either party if the other party becomes insolvent, or is made the subject of bankruptcy, conservatorship, receivership or similar proceedings. In the event of such termination by the Owner, the Engineer shall be compensated for all services performed prior to termination, to include all reimbursable expenses and costs. Upon termination by either party, the Owner's non-exclusive license to use instruments of professional service prepared by the Engineer shall be limited to those instruments of professional service paid for by the Owner. All other non-exclusive licenses shall be deemed terminated.

5. **Ownership of Documents:**

All reports, field data, notes, calculations, estimates, drawings, documents and other items prepared by the Engineer are instruments of service and shall remain the property of the Engineer. The Owner agrees that all reports and other work furnished to the Owner or its agents, which are not paid for, will be returned upon demand and will not be used by the Owner or its agents for any purpose whatsoever. Items prepared by the Engineer are not intended for re-use by the Owner or for use by the Owner on any other Project. Any electronic media and documents on computer disk prepared by the Engineer are subject to use exclusively in accordance with the written permission of the Engineer and shall remain the sole property of the Engineer. In the event that the Owner uses the property of the Engineer without written permission or in a manner not specifically authorized or contemplated by the Engineer or this Agreement, the Owner does so at its own risk and agrees to defend, indemnify and hold the Engineer harmless from all damages or claims arising from such use.

Owner acknowledges that Engineer possesses knowledge and expertise relating to the scope of services, plans and work to be provided ("Engineer Know-How"), which may include intellectual property rights in certain pre-existing methods, formulas and materials used by Engineer in performing the Services. Nothing in this Agreement is intended to transfer to Owner any rights in the Engineer Know-How, which shall remain the property of the Engineer. To the extent that any Engineer Know-How is included in any plans and work provided, Engineer hereby grants to Owner a perpetual non-exclusive right and license to use and reproduce the Engineer Know-How to the extent reasonably necessary to exercise Owner's rights in and to the Services and work-product provided by Engineer.

6. **Revocation of Certification or Statements:**

The Engineer shall have the right to revoke any certification, statements or professionally sealed documents or plans, in the event that the Engineer is made aware of any unauthorized or prohibited use by the Owner. The Owner assumes the risk of any damages arising from such unauthorized or prohibited use of the Engineer's property and agrees to defend, indemnify and hold the Engineer harmless from all damages or claims arising from the Engineer's revocation of certifications, statements, and or seals.

7. **Assignment:**

The Agreement shall be binding upon the parties, their successors and assigns. The Owner shall not assign or transfer this Agreement or any interest herein without the prior written consent of the Engineer. The Engineer may, without the consent of the Owner, assign or transfer this Agreement to any subsidiary or affiliate of the Engineer, or subcontract any portion of the services hereunder, in whole or in part.

8. Exercise of Remedies:

It is agreed by the parties that the exercise by the Engineer of any one or more of the remedies set forth in these *Standard Terms and Conditions* shall create the right of the Engineer to the exercise the same remedy or remedies under any other Agreement with the Owner.

9. Severability:

The provisions of this Agreement shall be severable and, if any provision hereof shall be determined by any court of competent jurisdiction to be invalid, such determination shall not effect or invalidate the remainder hereof.

10. Entire Agreement:

Each party hereto acknowledges its full understanding of this Agreement and the letter proposal, and that there are no verbal promises, understandings or other agreements in connection herewith. All previous negotiations and agreements between the parties are merged into this Agreement and the letter proposal, which, in conjunction, fully and completely express the entire agreement between the parties.

11. Governing Law:

This Agreement and the letter proposal shall be governed by the laws of the State in which the Project is located.

12. Insurance:

The Engineer will furnish appropriate insurance certifications for general and professional liability upon request.

13. Indemnification of Owner:

The Engineer agrees to indemnify and hold the Owner harmless from any and all loss, damages, claims, penalties, causes of action, liabilities and expenses (including, but not limited to, reasonable legal expenses) which may arise or is solely caused by the adjudicated professional negligence of the Engineer, or as a result of the willful misconduct of the Engineer or its Employees with respect to the performance of its services under this Agreement; provided, however, that the foregoing does not in any manner relieve Owner of its obligations under statutory workers' compensation law and other laws regarding employer obligations as to Owner's own employees, and provided Engineer shall not indemnify Indemnatee for such claims caused by the sole negligence or willful misconduct of an Indemnatee.

14. Indemnification of Engineer:

The Owner agrees to indemnify and hold the Engineer harmless from any and all loss, damages, claims, penalties, causes of action, liabilities and expenses (including, but not limited to, reasonable legal expenses) arising out of any injury or damages incurred by the Engineer, or as a result of the injury to or death of any persons, including the Engineer's employees, caused by or resulting from the Owner's own negligence, omissions or willful conduct, or those of anyone for whom the Owner is legally responsible, and except for liability resulting solely from the acts, omissions or negligence of the Engineer, its officers, agents, employees, consultants or subcontractors.

15. Contractor's Insurance:

The Owner shall require the contractor responsible for construction of the work designed by the Engineer to name the Engineer as an additional insured on the contractor's general liability policy.

16. Means and Methods of Construction:

The Engineer is not a guarantor or insurer of the contractor's work. The Engineer shall not be responsible for the means, methods, sequences, or procedures of construction selected by the contractor, the safety precautions and programs incident to the work of the contractor, or compliance with OSHA or other applicable regulations. The Engineer shall not be responsible for the review or observation of the adequacy of the contractor's safety measures, safety conditions on the site Project or the contractor's means or methods of construction.

17. Non-Exclusivity:

Subject to any conflict of interest, nothing in this Agreement shall prohibit or restrict the Engineer and Owner from contracting with or being engaged in any such capacity in promoting, undertaking, providing services to or in any way being involved with another person, firm or entity.

18. Objections to Invoices:

Any objection which the Owner may have to any invoice issued by the Engineer shall be made in writing and delivered to the Engineer within Fourteen (14) days of receipt by the Owner. Nothing herein shall be deemed to alter the statute of limitations applicable to any claim that may arise under this Agreement or the letter proposal.

19. No Third Party Beneficiaries:

Nothing contained in this Agreement or the letter proposal shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or the Engineer.

20. No Consequential Damages:

The Engineer shall not be liable to the Owner for any consequential damages incurred due to the fault of the Engineer, regardless of the nature of the fault or whether it was committed by the Engineer, its employees, agents, sub-consultants or subcontractors. Consequential damages include, but are not limited to, loss of use and loss of profit.