



**ENGINEERED EXTERIORS, LLC**  
ARCHITECTURAL ENGINEERING & CONSULTING  
www.engexteriors.com  
TBPE Firm Registration No. F-12811

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Austin, Texas 78750  
Office (512) 571-3530

January 5, 2024

Patrick Martin, Project Manager  
Facilities Department  
City of Killeen  
101 N College Street  
Killeen, TX 76541

**Re: Proposal for Professional Engineering/Roof Consulting Services**  
City of Killeen Community Center Reroof  
2201 E Veterans Memorial Blvd.  
Killeen, Texas 76543

Dear Mr. Martin,

Engineered Exteriors, LLC (EE) is pleased to submit this proposal to The City of Killeen to provide consulting services for the subject project. This proposal is based on information provided by you via phone and email, and our experience with similar projects. This proposal is valid for acceptance within ninety (90) days of the date issued.

## **PROJECT DESCRIPTION**

It is our understanding that the City of Killeen (referred to herein as the City) has requested that EE provide a proposal for the following services:

- Existing Roof Areas: Design, bidding, and construction phase services for the replacement of the existing membrane roofs at the subject project. The scope of this proposal does not include evaluation of waterproofing, exterior walls, or glazing systems at the subject building, except where these components interface with roofs.
- New Addition Roof Areas: Peer review of the current renovation project's new addition roofing scope as specified in the Issue for Construction set of drawings and specifications dated September 16, 2023 by Randall Scott Architects.



*Overview of City of Killeen Community Center (image courtesy of Google Earth)*

## **BASIC SCOPE OF SERVICES:**

EE proposes the following scope of services for the subject project:

### **DESIGN PHASE**

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EE will provide Construction Documents for bidding/construction purposes that fully describe the roof replacement scope, including City of Killeen contracting and bidding requirements:

#### ***Design Survey and Cost Estimate Report***

- EE will perform one (1) site visit to confirm existing conditions at all existing membrane roofs.
  - The intent of this roof survey is to document the condition and configuration of the existing roof and roof substrates and the effect of these on the design the new roof system.
- Specific assessment scope items will include:
  - Document Review: EE will collect and review all available drawings and specifications associated with the roof installation and maintenance history.
  - Observations:
    - i. Interior locations of current roof related leaks
    - ii. Height and clearances of existing roof mounted mechanical equipment
    - iii. Height and clearances of roof flashings at penetrations and walls
    - iv. Field dimensions of all roof areas, drainage elements, and roof penetrations.
  - Roofing Test Cuts: EE will enlist a local roofing contractor approved by the City to perform test cuts at the existing roofs. The purpose of these test cuts is to verify the type and condition of the roof decks, confirm moisture in the roof assembly, and document concealed roofing materials. Test cut scope will include the removal, observation, and replacement of materials to match existing, or with new materials approved by the City.
- Reporting:
  - EE will provide a brief report of the estimated cost of the proposed repairs and reconfiguration associated with the roof replacement work.
  - Please note, our report may recommend inclusion of MEP design services associated with raising or relocating rooftop equipment. In this scenario, EE will provide a proposal for additional services associated with MEP engineering design and construction site visits for review and approval prior to proceeding to the Construction Documents phase.

#### ***Construction Documents (Bid Package)***

- EE will generate drawings and specifications associated with the approved roof replacement and repairs.
- EE will generate Drawings and a Project Manual that will be submitted to the City for review at 90% completion.
- EE will attend one (1) meeting with the City to discuss the 90% review set, and any comments

or questions that the City may have regarding the specified scope.

- EE will provide final drawings and specifications sealed by an engineer registered in the State of Texas that incorporate the City's comments on the review set.
- The Project Manual will include administrative documents related to the bidding and contracting process for the project.

***Peer Reviews (New Addition Design documents by others)***

- EE will provide one (1) peer review of the Issue for Construction documents that affect the roofing scope of work. Comments will be submitted electronically in the form of PDF drawing redlines to the project team for review and resolution.
- EE will attend one (1) meeting with the project team virtually to discuss our recommendations and coordinate with other members of the design team.

**BIDDING (Roof Replacement Scope Only)**

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- Pre-Bid Meeting and Review:
  - EE will attend the pre-bid meeting in person, with invited contractors and City personnel. EE will provide a presentation for this meeting to attendees regarding the technical aspects of the roof replacement scope.
  - EE will review bidder questions and as necessary provide recommendations to the City in response to these questions.
  - EE will review acceptable bids for the project and assist the City with evaluations and recommendations for award.

**CONSTRUCTION ADMINISTRATION**

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- Submittals and Requests for Information (RFIs):
  - EE will provide reviews of each roofing submittal for both the new addition roof scope and roof replacement scope of work. Comments and recommendations on submitted products will be issued electronically to the project team.
  - EE will review and provide recommendations as needed to RFIs as they arise during the course of the work for both the new addition and existing roof replacement work scope.
- Meetings:
  - EE will provide one (1) pre-installation meeting for the roof replacement work and attend the roofing preinstallation meeting for the new additions virtually.
  - EE will provide an agenda and minutes of the topics discussed at the roof replacement pre-installation meeting for distribution to all attendees.
  - EE will provide virtual attendance at new addition project meetings upon request. EE will provide onsite attendance at project meetings for the roof replacement project in conjunction with the included site visits during installation as described below.

- **Site Visits:**
  - EE will provide up to twenty (20) site visits during roofing installation for both the addition project and the roof replacement project.
  - Site visits will be scheduled more frequently at the beginning of each scope area to identify potential issues before installation has progressed too far.
  - Our site visit observations will document if the work is in compliance with the Contract Documents and industry recognized standards.
  - Reports of our observations will be issued with photographs within 48 hours of each site visit.
- **Substantial and Final Completion:**
  - EE will perform one (1) combined Substantial Completion site visit at the new addition scope and the roof replacement areas to document deficiencies in building envelope components for correction by the Contractor. Deficiencies will be documented in a comprehensive punchlist report for the City.
  - EE will perform one (1) combined Final Completion site visit at the new addition scope and the roof replacement areas to document that deficiencies in the Substantial Completion punchlist have been satisfactorily addressed.
    - Deficiencies will be documented in a comprehensive final punchlist report for the City.
    - Any unresolved items requiring further repair will be documented as complete by photographs submitted by the Contractor for EE review.
- **Closeout:**
  - EE will review all closeout submittals for the roof replacement scope of work.
- **Warranty Inspection:**
  - EE will perform one (1) warranty walk at the new addition and roof replacement areas with the contractor and manufacturer, to review warranty items in need of repair prior to expiration of the installer's warranty term.
  - EE will issue a report noting items requiring repair by the Contractor and will review photographs submitted by the Contractor documenting completion.

## **PROPOSED FEES: BASIC SCOPE OF SERVICES**

EE proposes the following lump sum fees, broken down by phase, to provide the above scope of professional roof consulting services.

### **Design/Bid<sup>1</sup>**

New Addition - Peer Review & Meeting .....	\$ 3,500
Roof Replacement – Design Survey and Test Cuts .....	\$ 5,500
Roof Replacement - Construction Documents .....	\$ 13,400
Roof Replacement - Bidding .....	<u>\$ 3,800</u>
<b>Subtotal .....</b>	<b>\$ 26,200</b>

**Construction/Closeout<sup>1</sup>**

Construction Administration, Roofing (not including site visits) .....	\$ 11,800
Site Visits (20).....	\$ 30,000
Warranty Inspection.....	\$ 1,600

**Subtotal ..... \$ 40,800**

**TOTAL LUMP SUM FEE ..... \$ 69,600**

<sup>1</sup>Please note, the current proposed fees do not include potentially required MEP design and construction administration scope items that may be identified during the design survey. In the event this scope is required to properly complete the roof replacement scope of work, EE will submit a proposal for additional services for City review.

**CLOSING**

We sincerely appreciate your consideration for this project. Please indicate your acceptance of this proposal by one of the following methods:

- Sending us an email Notice to Proceed and issuing an executed consultant agreement for our review, with this proposal as an attachment.
- Executing the attached Authorization incorporating the attached Terms and Conditions.

Return receipt of an email Notice to Proceed or signed Authorization shall provide authorization for Engineered Exteriors, LLC to proceed.

Sincerely,

**ENGINEERED EXTERIORS, LLC**



Carole Calhoun, BECxP, CxP+BE  
Senior Project Manager



Jennifer Doyle, P.E. (TX), RRC, REWC, LEED AP  
Principal Engineer

Attachments: A – Authorization  
B – Terms and Conditions

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**ATTACHMENT A**

**AUTHORIZATION**

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Agreed:

By: \_\_\_\_\_  
*Signature* *Date*

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*Name and Title, Typed or Printed*

For: City of Killeen  
101 N College Street  
Killeen, TX 76541

[ End of Attachment A ]

## ATTACHMENT B TERMS AND CONDITIONS

### I. DEFINITION OF TERMS

- A. The Project – The completed installation defined by the Contract Documents including the design, all as described in the Agreement Letter.
- B. This Part of The Project – That portion of The Project for which the Engineer is to provide its professional engineering services.
- C. Client – The entity named in the Agreement Letter.
- D. Engineer – Engineered Exteriors, LLC
- E. Work – All work performed in connection with The Project other than services performed by the Engineer. Work is the portion of The Project that is the responsibility of the Contractor and its subcontractors.
- F. Services – Those professional engineering services provided by the Engineer to the Client in connection with The Project. Such Services consist of both Basic Services and Additional Services as described in the Agreement Letter. It is clearly understood the Engineer is providing professional services only and is not providing nor participating in the provision of any product(s).
- G. Agreement – The Agreement Letter, these Terms and Conditions, the Hourly Rate Schedule, and any other attachments will be referred collectively as the “Agreement” between the Client and the Engineer.
- H. Contract Documents – The drawings, specifications, addenda, and change orders that define The Project.
- I. Special Consultants – Consultants or firms in specialized fields outside of Engineer’s area of expertise who are retained through the Engineer to provide various services. The use of Special Consultants is subject to the acceptance by the Engineer to provide the services of such Special Consultants, and to the Client’s written approval.
- J. Hazardous Materials – Any substances, including but not limited to asbestos; toxic materials; toxic or hazardous waste; PCBs; pollutants including any solid, liquid, gaseous, thermal irritant or contaminant including smoke, vapor, soot, fumes, acid, alkalis, chemicals, and waste; mold, mildew, or other microbial growth; combustible gases and materials; petroleum or radioactive materials (as each of these is defined in applicable federal statutes); or any other substances under any conditions and in such quantities as would pose a substantial danger to persons or property exposed to such substances at or near the Project site.

### II. ENGINEER’S RESPONSIBILITIES

- A. Standard of Care – Engineer will render Services under this Agreement in accordance with generally accepted professional practices using reasonable care and skill consistent with that ordinarily exercised by members of their profession under similar conditions of time and locale. Except as expressly provided for in this Paragraph II.A., Engineer makes no expressed or implied warranties as to its Services rendered under this Agreement, and any other expressed or implied warranties are expressly disclaimed and waived.
- B. Accounting Records – Engineer will maintain adequate accounting records pertaining to The Project and shall make them available to Client upon Client’s request and at mutually convenient times.
- C. Excluded Services – Engineer will not obligate itself to provide any Services which, in the Engineer’s professional opinion, are outside its area of expertise or are in violation of applicable codes or regulations.
- D. Insurance – For the period of design and construction of the Project until substantial completion, during which time the Engineer is providing Services to the Client, Engineer will secure and maintain in force policies of insurance in connection with Engineer’s Services of The Project with limits of not less than those listed below:
1. Professional Liability (Negligent Errors and Omissions) – Limits of \$1,000,000 per claim and \$1,000,000 aggregate. The Engineer agrees to maintain this professional liability coverage for the period of design and construction of the Project, and for a period of one (1) year following substantial completion, if such coverage is reasonably available at commercially affordable premiums. For the purposes of this Agreement “reasonably available” and “commercially affordable” shall mean that more than half the Engineers practicing the same professional discipline in the state where the project is located are able to obtain such coverage.
  2. Commercial Umbrella Liability - \$1,000,000 combined, single limit.
  3. Non-Owned Automobile Liability - \$500,000 combined, single limit.
  4. Worker’s Compensation – as required by statutory amount.
    - a. The indicated coverages shall be subject to all of the terms, exclusions and conditions of the policies.
    - b. If requested, Engineer will furnish Client a certificate evidencing that the required insurance is in effect.
    - c. Insurance carried by Special Consultants will be subject to the approval of both Engineer and Client.
- E. Job Site Visits – Engineer will visit the project site as described in the Agreement Letter as Engineer determines is appropriate to the stage of construction for This Part of The Project to become generally familiar with the progress and quality of Work completed for This Part of The Project and to determine, in general, if the Work is consistent with the Contract Documents. However, the Engineer shall not be required to make exhaustive or continuous on-site visits to check the quality or quantity of the Work for This Part of The Project. Engineer will provide written reports of observed defects and deficiencies, if any, to the Client following each Job Site Visit.

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

The Engineer shall have the authority to recommend to the Client rejection of any Work that is not, in the judgment of the Engineer, in conformance with the Contract Documents. Neither this authority nor the Engineer’s good-faith judgment to recommend rejection or not recommend rejection any Work shall subject the Engineer to any liability or cause of action to the Contractor, subcontractors or other suppliers or persons performing work on The Project.

F. Coordination with Special Consultants – Engineer will coordinate the Services provided by Special Consultants with the Engineer and with other Special Consultants.

### III. **CLIENT'S RESPONSIBILITIES**

A. Access to Site – Client will furnish or obtain full and free access to all property as necessary for the performance of Engineer's Services under this Agreement.

B. Permits and Approvals – Client will furnish permits and approvals from all governmental authorities having jurisdiction over This Part of The Project and from others as may be necessary for completion of The Project.

C. Design Criteria – Client will timely furnish detailed information, design criteria, drawings, specifications, construction standards, and full information as to Client's requirements for The Project. Failure to provide the information or documentation when requested may result in the delay of the Project.

D. Reviews and Authorizations – Client shall receive and examine documents submitted by Engineer, interpret and define Client's policies and promptly render decisions and authorizations in writing to prevent unreasonable delay in the progress of Engineer's Services.

E. Client's Consultants – It is understood and agreed that the Client shall contract directly with other consultants to provide other services for The Project. The Client agrees that Engineer shall have no responsibility for any portion of The Project designed by other consultants engaged by the Client. The Engineer shall not be required to check or verify or consultants' contract documents or reports and shall be entitled to rely on the accuracy and completeness thereof, as well as the compliance of such documents or reports with applicable laws, codes, statutes, ordinances and regulations.

The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Engineer from any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising out of or connected in any way with the services performed by other consultants engaged by the Client.

F. Insurance – Client represents and warrants that all other design professionals will be required to have or obtain professional liability and general liability insurance in amounts that at least equal the minimum amounts required of the Engineer (see section II.D.).

### IV. **PAYMENTS TO ENGINEER**

A. Time of Payment – Payments to the Engineer shall be made within 30 days following receipt of Engineer's invoice. The invoice will be based upon the proportion of the Engineer's Services completed during the invoice period, or upon time spent when fees are on an hourly basis, but shall not be due to the Engineer before and unless payments are received by the Client from the Owner (as applicable) for the portion of the Services completed by the Engineer. If Client is not the Owner, Client shall promptly forward Engineer's invoices to Owner for payment and shall then exert all reasonable and diligent effort to collect prompt payment from the Owner. Payments received from the Owner, if insufficient to cover all of the invoices of the Client and Engineer shall be apportioned by the Client between the Engineer and any other subconsultant firm(s) in proportion to the unpaid amounts that are not the subject of a bona fide dispute by the Owner.

B. Late Payment – Client agrees to pay Engineer interest on all amounts past due at a rate of 1.5% per month, subject to maximum legal limits. Any amount paid in excess of maximum legal limits shall be automatically applied to reduce the principal owed by Client. In addition to amount due and interest, Client agrees to pay Engineer all reasonable collection and attorney's fees, court costs and other expenses including reasonable value of the Engineer's time and expenses spent in connection with such collection action, computed according to the Engineer's prevailing fee schedule and expense policies.

C. Reimbursable Expenses – Engineer will be reimbursed for expenses incurred by Engineer in addition to compensation for Services and will provide documentation of expenses at Client's request. Reimbursable Expenses are defined in the Agreement Letter.

### V. **DOCUMENTS**

A. Ownership – All documents, including Drawings, Specifications, computer files, electronic media, field data, engineering calculations, notes, and other documents and instruments prepared or furnished by Engineer to Client pursuant to this Agreement are the property of Engineer. Engineer shall retain all common law, statutory and other reserved rights, including copyright thereto.

Whether or not the Project is completed, but subject to the provisions of this Article all such documents are instruments of professional service only and Engineer is not providing any product. Upon completion of the Services and payment in full of all monies due to Engineer, Client may retain copies of all such documents as its property. Such documents are not intended or represented to be suitable for reuse on extensions of the Project or on any other project. Any reuse of such documents without written verification or adaptation by Engineer for the specific purpose intended (for which Client shall pay Engineer compensation at rates mutually agreed upon) will be at Client's sole risk and without liability or legal exposure to Engineer, or to Engineer's independent professional associates or consultants, and Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Engineer, its officers, directors, employees, and Special Consultants against all claims, damages, losses, and expenses (including reasonable attorneys' fees, defense costs, and court costs) arising from or allegedly arising from or in any way connect with the unauthorized reuse or modification of the documents by the Client or any person or entity that acquires or obtains the documents from or through the Client without the written authorization of the Engineer.

B. Unauthorized Changes – The Engineer shall have no liability to the Client or others for changes made to the Engineer's documents or to the Project by the Client without the Engineer's prior written approval.

### VI. **LIABILITY LIMITATION**

Engineer shall have no liability to Client or to others for acts or omissions of the Contractor or any other persons performing Work on The Project; or for construction means, methods, techniques, sequences or procedures, time of performance, programs or for any safety precautions, in connection with the Work; or for Contractor's failure to carry out the Work in accordance with Drawings



and Specifications prepared by Engineer; or for acceptance by the Client, its agents, subcontractors, or employees, of materials, equipment and/or workmanship over the objection of Engineer, its agents or employees if such materials, equipment or workmanship in question have been rejected in writing by Engineer, prior to the inclusion of same in The Project and Client shall fully notify Engineer in writing before Client, its agents, subcontractors, or employees accept anything without prior written approval of Engineer so that Engineer may timely object to such acceptance; or for any other reason beyond warranty of the use of reasonable professional skills in execution of the assignments covered by this Agreement. Furthermore, Engineer shall not be responsible for the defects or omissions in the Project or Work resulting from any deviation from Engineer's Services; or of the Contractors or subcontractors, or any of the contractors' or subcontractors' employee's, or that of any other persons or entities responsible for performing any of the Work result as contained in the construction contract for This Part of The Project.

To the maximum extent permitted by law, the Client agrees to limit the Engineer's entire liability for Client's damages, failure to perform Engineer's Services according to the terms and conditions of this Agreement, or otherwise in connection with the Project to the fee received by the Engineer for the authorized Services. This limitation shall apply regardless of the cause of action or legal theory pled or asserted.

Engineer will not be responsible for accuracy, completeness, errors, or omissions contained in the services provided by Special Consultants. Such Special Consultants are provided for the Client's benefit only, and are only retained through the Engineer for the Client's convenience. Engineer may rely on the services provided by Special Consultants to be accurate, complete, and free of errors and omissions.

This Agreement is made for the benefit of Client and Engineer only. Accordingly, no third party shall have any claim against either Client or Engineer by virtue of this Agreement of the Services rendered hereunder.

## **VII. HAZARDOUS MATERIALS**

It is understood and agreed that in seeking the professional services of the Engineer under this Agreement, the Client is requesting the Engineer to perform Engineering Services for the Client's benefit. Both parties agree that the Engineer has not been retained or compensated to provide any services (including but not limited to design or construction review services in the abatement, replacement, detection, identification, or removal of hazardous materials) related to the presence of any hazardous materials.

The Client agrees, notwithstanding any other provision of this Agreement, to the fullest extent permitted by law, to indemnify and hold the Engineer, its officers, partners, employees, and Special Consultants harmless from and against all claims, suit actions, demands, liabilities, losses, damages and expenses, including reasonable attorneys' fees and defense costs arising out of or in any way connected with the detection, presence, handling, removal, abatement or disposal of any hazardous materials in the Project, in materials used in the construction or modification of the Project, and arising from the presence of pollutants that exist on, about, or adjacent to the Project site, whether liability arises under breach of contract or warranty, tort, including negligence, strict liability or statutory liability or any other cause of action, except for the sole negligence or willful misconduct of the Engineer.

## **VIII. TERMINATION**

This Agreement may be terminated by either party for any reason by sending written notice to the other party. Such termination shall be effective seven (7) days after notice is received. Within seven (7) days of termination of the Agreement, Engineer will send a statement of account and final invoice to Client for Engineer's Services rendered. Client shall pay Engineer the amount set forth in the final invoice which will be equal to the sum of (i) Basic Compensation for Basic Services performed for any Phase or Phases and not yet paid; plus (ii) Additional Compensation not yet paid for Additional Services rendered; plus (iii) reimbursement for Reimbursable Expenses incurred by Engineer and not yet paid; plus (iv) Special Consultant Fees and Reimbursable Expenses not yet paid.

## **IX. MISCELLANEOUS PROVISIONS**

A. Assignment of Rights – Neither Client nor Engineer shall assign, sublet, or transfer all or any portion of its interest in this Agreement without the prior written consent of the other. Subject to the preceding sentence, this Agreement shall inure to the benefit of and shall be binding upon the successors, assigns and legal representative of each party. Subcontracting to Special Consultants normally contemplated by the Engineer shall not be considered an assignment for purposes of this Agreement.

B. Entire Agreement – This Agreement represents the entire and integrated Agreement between Client and Engineer and supersedes all prior negotiations, representations or agreements either written or oral. This Agreement may be amended only by written instrument signed by both Client and Engineer.

C. Betterment – If, due to the Engineer's negligence, a required item or component of the Project is omitted from the Consultant's contract documents, the Engineer shall not be responsible for paying the cost required to add such item or component to the extent that such item or component would have been required and included in the original contract documents. In no event will the Engineer be responsible for any cost or expense that provides betterment or upgrades or enhances the value of the Project.

D. Dispute Resolution – In the event of a dispute arising out of or relating to this Agreement or the Services rendered hereunder, the Client and Engineer agree to attempt to resolve such disputes in the following manner: First, the parties agree to attempt to resolve such disputes through direct negotiations between the appropriate representatives of each part. Second, if such negotiations are not fully successful, the parties agree to attempt to resolve any remaining dispute by formal nonbonding mediation conducted in accordance with rules and procedure to be agreed upon by the parties.

If the steps indicated above cannot resolve any disputes, and arbitration or litigation is necessary, such action will be held in Austin, Travis County, Texas, without regard to its conflict of law provisions. The prevailing party to any dispute, including payment disputes, arising from this Agreement will be entitled to recover from the non-prevailing party all reasonable costs incurred including

staff time, litigation or arbitration expenses, collection expenses, witness fees, court costs, attorneys' fees, and all other related expenses in such litigation.

In the event of a non-adjudicative settlement of litigation between the parties or a resolution of a dispute by arbitration, the term "prevailing party" shall be determined by that process.

It is intended by the parties to this Agreement that the Engineer's services in connection with the Project shall not subject the Engineer's individual employees, officers or directors to any personal legal exposure for the risks associated with this Project. Therefore, and notwithstanding anything to the contrary contained herein, the Client agrees that as the Client's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against the Engineer, a Texas corporation, and not against any on the Engineer's individual employees, officers, or directors.

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

E. Interpretation – Limitations on liability, waivers and indemnities this Agreement are business understandings between the parties and shall apply to all legal theories or recovery, including breach of contract or warranty, breach of fiduciary duty, tort (including negligence), strict or statutory liability, or any other cause of action, provided that these limitations on liability, waivers and indemnities will not apply to any losses or damages that may be found by a trier of fact to have been caused by the Engineer's sole or gross negligence or the Engineer's willful misconduct. The parties also agree that the Client will not seek damages in excess of the contractually agreed-upon limitations directly or indirectly through suits against other parties who may join the Consultant as a third-party defendant. "Parties" means the Client and the Engineer, and their officers, directors, partners, employees, subcontractors, and Special Consultants.

F. Force Majeure – Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, fires, riots, war, natural disasters, strikes, lockouts, accidents or any other events beyond the reasonable control of the other party, its employees or agents.

G. Severability – In the event any provision of this Agreement shall be held to be invalid or unenforceable, that provision shall be struck and the remaining provisions shall be valid and binding upon the parties.

H. Survival – Notwithstanding completion or termination of this Agreement for any reason, all rights, duties and obligations of the parties, including all limitations of liability, indemnifications, warranties, and representations, shall survive such completion or termination and remain in full force and effect until fulfilled.

I. Safety – Engineer has not been retained or compensated to provide design and construction review services relating to the Contractor's safety precautions or to means, methods, techniques, sequences, or procedures required for the Contractor to perform his work in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. Omitted services include but are not limited to shoring, scaffolding, underpinning, temporary retainment of excavations and any erection methods or temporary bracing. The Engineer and its personnel have no authority to exercise any control over any construction contractor or its employees in connection with their work or any health or safety programs or procedures. The Client agrees that the General Contractor shall be solely responsible for jobsite safety, and warrants that this intent shall be carried out in the Client's contract with the General Contractor. The Client also agrees that the Client, the Engineer, and any Special Consultants shall be indemnified by the General Contractor and shall be made additional insured under the General Contractor's policies of general liability insurance.

J. Cost Estimates – Any opinion of the construction cost prepared by Engineer represents its best judgment as a design professional familiar with mechanical and electrical work and is supplied for the general guidance of Client. Since Engineer has no control over cost of labor and materials, over competitive bidding, or other market conditions, Engineer makes no warranty, express or implied, that the bids or the negotiated cost of the Work will not vary from the Engineer's opinion of probable construction cost.

K. Value Engineering – If the Client retains the services of a Value Engineer (VE) to review the Contract Documents prepared by the Engineer, it shall be at the Client's sole expense and shall be performed in a timely manner so as not to delay the orderly progress of the Engineer's Services. The Client shall promptly notify the Engineer of the identity of the VE and shall define the VE's scope of services and responsibilities for the Engineer. All recommendations of the VE shall be given to the Engineer for review, and adequate time shall be provided for the Engineer to respond to the recommendations.

If the Engineer objects to any recommendations made by the VE, it shall so state in writing to the Client, along with the reasons for objecting. If the Client requires the incorporation of changes in the Contract Documents to which the Engineer has objected, the Client agrees, to the fullest extent permitted by law, to waive all claims against the Engineer and to indemnify and hold harmless the Engineer from any and all damages, liabilities or costs, including reasonable attorney's fees and costs of defense, which arise in connection with or as a result of the incorporation of such design changes required by the Client.

In addition, the Engineer shall be compensated for services necessary to incorporate recommended value engineering changes into reports, drawings, specifications, bidding, contract or other documents. The Engineer shall be compensated as Additional Service for all time spent to prepare for, review and respond to the recommendations of the VE. The Engineer's time for performance of its services shall be equitably adjusted.

L. Instructions to Contractor – Engineer's instructions to the Contractors shall be issued in writing through the Client unless otherwise mutually agreed.

M. Titles – The paragraph titles used in this Agreement are for general reference only and are not part of the Agreement.

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

O. Renegotiation – Lump sum and not-to-exceed Agreements will be subject to renegotiation at the Engineer's discretion if the duration of The Project is more than twenty-four (24) months.

P. Contingency - The Owner and the Engineer agree that certain increased costs and changes may be required because of possible omissions, ambiguities or inconsistencies in the Contract Documents prepared by the Engineer and therefore, that the final construction cost of the Project may exceed the estimated construction cost. The Owner agrees to set aside a reserve in the amount as a contingency to be used, as required, to pay for any such increased costs and changes. The Owner further agrees to make no claim by way of direct or third-party action against the Engineer or its Special Consultants with respect to any increased costs within the contingency because of such changes or because of any claims made by the Contractor relating to such changes.

Q. Verification of Existing Conditions – Inasmuch as the remodeling and/or rehabilitation of the site requires that certain assumptions be made by the Engineer regarding existing conditions, and because some of these assumptions may not be verifiable without the Client's expending substantial sums of money or destroying otherwise adequate or serviceable portions of the facilities, the Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Engineer, its officers, directors, employees, and Special Consultants against all damages, liabilities or costs, including reasonable attorney's fees and defense costs, arising out of or in any way connected with this Project, excepting only those damages, liabilities or costs attributable to the sole negligence and willful misconduct by the Engineer. In addition, the Client agrees to bear all costs, losses and expenses, including the cost of the Engineer's Additional Services, arising from the discovery of concealed or unknown conditions in the existing site, or from any deficiencies or inaccuracies in any information or documentation furnished to the Engineer by the Client.

R. Defects in Service – The Client shall promptly report to the Engineer any defects or suspected defects in the Engineer's services of which the Client becomes aware, so that the Engineer may take measures to minimize the consequences of such a defect. The Client further agrees to impose a similar notification requirement on all contractors in its Client/Contractor contract and shall require all subcontracts at any level to contain a like requirement. Failure by the Client and the Client's contractors or subcontractors to notify the Engineer shall relieve the Engineer of the costs of remedying the defects above the sum such remedy would have cost had prompt notification been given when such defects were first discovered.

[ END OF ATTACHMENT B ]