

AGREEMENT
(Revised March 28, 2016)

BOARD OF WATER AND SEWER COMMISSIONERS
OF THE CITY OF MOBILE

AND

THIS AGREEMENT made and entered into by and between the Board of Water and Sewer Commissioners of the City of Mobile (hereinafter called the "Board"), and _____, of (City) _____, (State) _____, (hereinafter sometimes called "Consulting Engineer"), to-wit:

WHEREAS, the Board is desirous of constructing additions and improvements to its domestic water system, industrial water system, and sewer system, including treatment facilities; of having studies and reports made to assist in determining expansion and operating policies and to determine feasibility of various proposed improvements; securing professional assistance necessary to obtain Federal or State grants; and having benefit of other professional engineering service in connection with the operation or expansion of its systems; and

WHEREAS, _____ has an established reputation for its skill and experience in design of water and sewer systems; and

WHEREAS, Consulting Engineer represents to the Board that Consulting Engineer and its employees possess the skill and experience to properly perform the work contemplated by this Agreement; and

WHEREAS, at a regular Board Meeting held January 11, 2016, the Board voted to retain _____ to perform engineering services as set forth above; and,

WITNESSETH, that in consideration of the mutual covenants and agreements herein contained, including but not limited to Consulting Engineer's representations set forth in the foregoing recitals, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do mutually agree as follows:

ARTICLE ONE: ENGAGEMENT OF SERVICES

A. Scope of Engagement. The Board hereby employs Consulting Engineer to perform, and Consulting Engineer agrees to perform for the Board, such necessary professional engineering services as hereinafter set forth in connection with expansion, improvement and operation of the Board's water and sewer system, such engineering work falling in the following general classes:

1. Basic Design Services;
2. Studies, Reports, Special Professional Services;
3. Construction Phase Services;
4. Easements (only as to the surveying and writing of easement descriptions).

B. Work to Be Assigned to Consulting Engineer. Consulting Engineer acknowledges that the Board will be apportioning the engineering workload and needs of the Board and that some assignments may be made to Consulting Engineer while other assignments may be made to other "independent" engineering entities (i.e., engineers who are not in-house employees of the Board) or may be handled in a manner that requires the services of neither Consulting Engineer nor other such entities. With the exception of emergency projects, assignment of projects to Consulting Engineer shall be achieved by means of a completed MAWSS Task Order Form (TOF), which is available from the Board's Project Manager. The Consulting Engineer and Board Project Manager will complete the TOF. The executed TOF by the Board's Project Manager is the Consulting Engineer's authorization to proceed with the project and to invoice the Board. In the event of an emergency, the Consulting

Engineer may be assigned work via email or phone, but the TOF must be completed within seven (7) calendar days of the assignment.

The term of this Agreement shall be from date hereof through December 31, 2018. Projects in progress at the date of termination will continue to completion as previously assigned.

C. Assignment of Design vs. Construction. Notwithstanding any other provisions of this Agreement, the Board reserves the right to award the basic design service and the construction phase service to separate engineering entities or to construct the project using in-house forces.

D. Assignment of Work to Other Independent Engineers. Notwithstanding any other provisions of this Agreement, the Board reserves the right to solicit proposals for additional engineering firms or individuals ("Other Independent Engineers") for such work as the Board in its sole discretion may designate as "Specialty Work". This includes, but is not limited to, Infiltration/Inflow (I/I) measurements, various studies, financial analysis, corrosion control, architectural, or other technical or administrative services. Such services as are assigned to any and/or all Other Independent Engineers as Specialty Work shall not be included in determining the allocation of engineering work to Consulting Engineer under this Agreement.

E. Specific Task Consulting. Notwithstanding any other provision of this Agreement, the Board reserves the right to award certain engineering assignments that are considered to be part of construction phase services on a case-by-case basis. When so assigned, the fee for such services shall be on a negotiated basis and may be on a Cost-Plus Basis as defined in Article Seven, Paragraph C, herein.

F. Limited Engagement for Rehabilitation Work. Notwithstanding any other provision of this Agreement, the Board and Consulting Engineer acknowledge that certain work may be designated by the Board as being "Rehabilitation Work", consisting of work involving the repair or replacement of pipe lining, rehabilitation of old plant and/or other facilities of the Board or such similar work of a rehabilitation nature. With respect to all such Rehabilitation Work, the

engineering services to be provided by Consulting Engineer shall be done on a negotiated basis, which may be a Cost-Plus Basis as defined in Article Seven, Paragraph C, herein, or a Percentage of Construction Cost Basis as defined in Article Two, Paragraph B, herein .

G. Start Up and Prosecution of Work. Consulting Engineer agrees to start work on professional services outlined herein within a reasonable time after notice from the Board to proceed and will prosecute the work diligently to its completion. For all assignments, Consulting Engineer will endeavor to provide professional services free from defects that may cause property damage or injury, project delay, or additional expense to the Board or reduce the effectiveness of the project's intended service to the community.

H. Definitions.

1. Agreement. For purposes of this Agreement, all references herein to "Agreement" shall refer to this contract for consulting engineer services, along with all exhibits and attachments hereto, and any amendments hereto made by written agreement of these parties.

2. Consulting Engineer: The person or entity set forth in the first paragraph of this Agreement as a party hereto, and its employees, officers, agents, and representatives, as may be appropriate for the context of the provision of this Agreement where the term appears.

3. Contractor. For purposes of this Agreement, the term "Contractor" shall mean the individual, firm, corporation, or other entity who functions as a general contractor and enters into a separate contract with the Board to construct a public work, to perform other construction services, or to perform other projects or work set forth in the contract between Contractor and the Board. For purposes of this Agreement, the term "Contractor" shall include that entity and its employees, agents, successors, assigns, and subcontractors.

4. Project. All work to be performed pursuant to contract documents for construction of a public work, any other construction job, or other designated work to be performed pursuant to this Agreement.

I. Right to Termination. The Board reserves the right to terminate this Agreement at any time, with or without cause, upon a thirty (30) day written notice to Consulting Engineer. Consulting Engineer understands and agrees that the Board has the unilateral right to terminate this Agreement at any time, with or without cause, notwithstanding any other provision of this Agreement or any circumstances whatsoever. This paragraph is not intended to limit the Board's right to immediately terminate this Agreement in the event of any circumstance set forth in Article Nineteen of this Agreement.

J. Project Manager. For each project assigned pursuant to this Agreement, Consulting Engineer shall designate a Project Manager, who shall be a professional engineer to maintain consulting engineering oversight over the project. The Project Manager, in addition to supervising the project from an engineering standpoint, shall be available as Consulting Engineer's contact person for the Board, its Director and Assistant Director, and its management personnel. Nothing in this paragraph is intended to alter or limit the duties and responsibilities of the Resident Project Representative ("RPR"), as set forth in this Agreement.

ARTICLE TWO: BASIC DESIGN SERVICES

A. Basic Design Services. Consulting Engineer agrees to furnish and perform professional engineering services for construction projects authorized by the Board and perform the appropriate items as follows:

1. At the time of the assignment of each project, work with the Board's Project Manager to develop and document a preliminary cost estimate, detailed scope of work, and schedule, which will be incorporated into the completed TOF. Unless specifically modified by the Board, this information shall be provided to the Board's staff within two (2) weeks of the assignment and shall include provisions for reviews when the work is 30%, 60%, 90%, and 100% complete.
2. Attend conferences with Board and/or its staff regarding the proposed project at any time requested by the Board, its Director or Assistant Director, or its engineering staff, and no less than those reviews agreed upon under subparagraph 1, above.

3. Establish and maintain communication with the Board for the timely and effective completion of all work so assigned. Immediately notify the Board's Project Manager when it is known that the project will not bid on the date projected by the Consulting Engineer and identified in the completed TOF.
4. Make preliminary layouts and sketches if needed.
5. Immediately advise the Board's staff of any necessary changes in the scope of work or schedule. Should the estimate, scope of work, or schedule change at any time during the prosecution of the work, the Consulting Engineer shall immediately provide written documentation to the Board's Project Manager for such changes.
6. Gather necessary field data for design and layout. This shall include (but is not limited to) such activities as shooting grades, running elevations, and other necessary activities for project design; providing professional surveying services by licensed surveyors where needed; and securing geotechnical information. With the exception of geotechnical testing and surveying for the purpose of determining easement descriptions, all tasks necessary to design the project are included in the designated design percentages in Article Two, Paragraph B, herein. Geotechnical firms are paid directly by the Board for geotechnical testing upon approval of invoices by the Consulting Engineer.
7. Design the work in accordance with the Board's requirements for the project, the Board's Standard Specifications and professional engineering standards and in compliance with all City, County, State, and Federal laws and requirements and applicable court decrees.
8. Prepare detailed Contract Drawings and Specifications for construction. Ensure drawings are comprehensive, explicit and well-coordinated among the Engineering disciplines so as to effectively convey the required work to the contractor and prevent change orders.
9. Make determinations and recommendations to the Board and its staff regarding the constructability of projects, in light of such factors as potential limitations in construction technology and grade issues, and confirm that the contemplated project is reasonably feasible to construct. For projects determined to be reasonably feasible, prepare estimates of quantities and total project cost, including construction costs, engineering costs, allowances for contingencies, acquisition costs of land and easements, compensation for damages to properties, financing costs, and allowances or costs for services of other professional or third parties. It is the sole responsibility of the Design Phase Consulting Engineer to ensure a designed project is feasible to construct.
10. Prepare for contract forms, general conditions and supplementary conditions, bid forms, invitations to bid, and instructions to bidders, and assist in the preparation of other related documents for submission to the Board.
11. Assist the Board in advertising for and obtaining bids or negotiating proposals for contracts for construction, materials, equipment, and services, if applicable, maintain a record of prospective bidders to whom bidding documents have been

- issued; attend pre-bid conferences, and receive and process deposits for bidding documents.
12. Issue addenda as appropriate to interpret, clarify or expand the bidding documents.
 13. Consult with and advise the Board as to the acceptability of subcontractors, suppliers and other persons proposed by the Contractors for those portions of the work to which such acceptability is required by the bidding documents.
 14. Attend the bid opening, prepare bid tabulation sheets and assist the Board in evaluating bids or proposals and in assembling and awarding contracts for construction, materials, equipment and services.
 15. Obtain executed contracts and other required documents from the Contractor.
 16. Review completed contract documents, including insurance certificates, for compliance with the Board's Standard Specifications and provide same to the Board for execution.
 17. Schedule and host pre-construction conference and keep minutes thereof.
 18. Interpret contract documents as required in Construction Phase activity. If Construction Phase services are being performed by a Consulting Engineer that did not perform the design phase, no additional fees shall be charged to the Board by the Design Phase Consulting Engineer for interpreting plans and Specifications or correcting design errors. Any additional fees to be charged to the Board by the Design Phase Consulting Engineer shall be approved by the Board's Project Manager in writing prior to performing the work associated with the additional fees. Such fees will be paid in accordance with Article Seven, Paragraph C, herein.
 19. Determine meeting location, schedule and conduct public meetings required or appropriate for the project.
 20. Prior to beginning any activities for a project, the Consulting Engineer shall become fully familiar with the Board's Standard Specifications and Board policies, procedures, requirements, and standard bid documents relevant to the project. The Consulting Engineer shall ensure all permitting requirements are understood and documented from the appropriate authorities and incorporated into the design of the project. Similarly, all easement requirements must be defined and acquired during the design phase of the project. The Consulting Engineer shall fully understand the criteria for acceptable work prior to bidding of the project. The Consulting Engineer acknowledges and agrees that determining acceptance criteria during construction of a project is not acceptable.
 21. The Consulting Engineer shall have sole responsibility for determining the means and methods by which the Consulting Engineer will determine whether the contractor's work is in compliance with the Board's Standard Specifications and any additional plans and Specifications for the project.

22. If a problem develops during design, construction, or any phase of a project, Consulting Engineer will develop a suggested solution or options for solution, as well as the estimated costs thereof, for submission to and consideration of the Board and its staff.
23. "Substantial Completion" shall be explicitly defined in the project Specifications by the Design Phase Consulting Engineer. Determination of substantial completion during the construction phase is not acceptable.
24. Provide a monthly status report of project(s) to the Board's engineering staff. Use the Board's standard project reporting format for the report. The reports must be submitted by the 7th of each month and convey the status of the project(s) through the preceding month.
25. If construction phase services are provided by a Consulting Engineer that did not design the project, the Construction Phase Consulting Engineer shall provide a certified set of as-built drawings to the Design Phase Consulting Engineer so that the Design Phase Consulting Engineer can update CAD files and produce record drawings to the Board. The Design Phase Consulting Engineer will be paid a reasonable fee under Article Seven, Paragraph C, herein, for updating the CAD files to record drawings.

B. Basis of Payment for Basic Design Services. It is mutually agreed that compensation to Consulting Engineer for Basic Design Services under Article Two shall be based upon a percentage of construction of work designed, according to the following fee schedule:

Cost of Construction:

Fee for Basic Design Services:

Linear Projects

Over \$5,000,001	To Be Negotiated
\$3,000,001 to \$5,000,000	5.2%
\$1,000,001 to \$3,000,000	6.3%
\$500,001 to \$1,000,000	7.2%
\$150,000 to \$500,000	8.7%
Under \$150,000	9.7%

Non-linear Projects

Over \$5,000,001	To Be Negotiated
\$3,000,001 to \$5,000,000	6.0%
\$1,000,001 to \$3,000,000	7.0%
\$500,001 to \$1,000,000	8.0%
\$150,000 to \$500,000	9.5%
Under \$150,000	10.5%

In the above fee schedules, linear projects are projects that consist primarily of installing water distribution and sanitary sewer piping, related appurtenances, and associated property/road restoration. Notwithstanding the above fee schedule, the Board and Consulting Engineer recognize that in some situations Consulting Engineer's fee in the Basic Design Phase as measured by the maximum range of the next lower construction may result in an amount which is more than the fee as measured by the actual fee percentile of the appropriate construction step. In order to avoid a windfall or hardship to either party, the Board and Consulting Engineer agree that, under such circumstances, the fee will be calculated at both the higher percentile and the lower percentile of the respective construction cost ranges, and the resulting fee amounts will be added together and divided by two (2) so as to produce the mean fee amount between the two methods. The resulting mean fee will be the fee for said contract. By way of example: A linear project contract for \$500,001 will result in a fee of \$36,000 based on a fee percentile of 7.2% as set out above. When measured by the rate for the next lower construction step, the fee percentile would be 8.7%, resulting in a fee of \$43,500. The sum of the two fee amounts is \$79,500 and, when divided equally, a fee of \$39,750 is established.

1. Cost of Construction. Cost of Construction as used herein to compute compensation shall be the final cost of the entire construction on each individual contract, including all materials (including but not limited to owner-furnished materials), labor, equipment, and incidentals without deduction on account of penalties, liquidated damages, or other amounts withheld from payments to Contractors. Such cost shall not include cost of land, right of way, or Consulting Engineer's fee. In the event that designed projects are not bid, the fee shall be based upon an agreed fair estimate of construction cost. Work deleted from construction contracts including additive alternates not awarded for construction, will be paid for at bid prices where determinable; otherwise at agreed fair estimates of construction cost. With the intent of paying a fair and just fee for design services, the following exception to this paragraph shall apply: Upon receipt of bids, if the lowest qualified bid is more than 10% below

the second lowest qualified bid, and the latest construction cost estimate, the design services fee will be based on the lesser of: (1) the average of all qualified bids, or (2) the latest construction cost estimate.

2. Changes. For any additional services required of Consulting Engineer by the Board on a project due to changes other than written construction change orders ordered by the Board after approval of preliminary plans and cost estimates, or as a result of fire or flood, or causes beyond the control of Consulting Engineer, the Board shall pay the Consulting Engineer the expense of such additional services based upon time chargeable to the project as hereinafter defined under Article Seven, Paragraph C, Basis of Payment, such payment being in addition to the fee for basic design service. In no event will the Board pay Consulting Engineer for redesign or additional design or construction phase services necessitated by errors or omissions on the part of Consulting Engineer.

3. Time for Payment. Partial payment shall be made on designs, drawings, and Specifications in progress based upon the product of mutually agreed percentage of completion and construction cost. Both partial payments and final payment shall be made within thirty (30) days after receipt of certified invoices from the Consulting Engineer. Invoices shall be submitted by the 26th of each month for all work completed within the previous month.

ARTICLE THREE: CONSTRUCTION PHASE SERVICES

A. Construction Phase Services. Consulting Engineer hereby agrees to provide professional engineering services during construction of individual projects designed under Article Two, if assigned. Consulting Engineer shall consult with and advise the Board and act to protect the Board's interests at all times during the construction phase of a project. Professional services to be provided by Consulting Engineer will include any or all of the following, as required for satisfactory completion of the project:

1. Develop a schedule for all phases/components of construction for the project, track progress of the work, and take appropriate action in accordance with Board's Standard Specifications to avoid or minimize delays. Consulting Engineer shall promptly take all appropriate actions to ensure that the contract is prosecuted to successful completion.
2. Review shop and manufacturers' drawings and other submissions of the Contractors for compliance with the design concepts and Specifications requirements. Shop drawings shall be reviewed and returned to the Contractor within fourteen (14) calendar days of receiving the shop drawings unless otherwise approved by the Board's Project Manager in writing. Shop drawing review stamps shall contain the following language: "Approved," "Approved as Noted" and "Not Approved." All material and equipment submittals must include manufacturers' certifications that material or equipment submitted is suitable for its intended application in the project.
3. Review laboratory, mill and shop tests to assist in monitoring the quality of construction. Consulting Engineer shall, in cooperation with the geotechnical testing contractor, determine the necessity for and evaluate the results of geotechnical tests for the project. Consulting Engineer shall ensure, to the best of Consulting Engineer's ability as a professional engineer, that all tests are conducted as necessary for the project's successful completion. Geotechnical testing during the construction phase will be invoiced to the Board after review and approval of invoices by Consulting Engineer.
4. Provide survey control points for Contractor's use in staking out the project. Consult and advise during construction and clarify or make necessary determinations regarding the meaning of the contract plans and Specifications. Ensure that projects are constructed in the proper location relative to easements and other boundaries. Linear work shall be constructed in the center of easements where feasible.
5. Identify critical components for the project and inspect each such component for compliance with the Board's Standard Specifications and other requirements of the construction contract. In addition, Consulting Engineer shall make visits to the construction sites at intervals appropriate to the various stages of construction to observe as an experienced and qualified design and engineering professional the progress and quality of the various aspects of the Contractor(s) work. Based upon information obtained during such visits and on such observations, Consulting Engineer shall determine if such work is proceeding in accordance with the Contract Documents, and Consulting Engineer shall keep the Board informed of the progress of the work. The Construction Phase Consulting Engineer shall furnish to the project all necessary expertise to effectively inspect the various engineering disciplines of the project. If such expertise is acquired by means of a subcontracted engineer, the cost of the subcontracted engineer is included in the percentage of construction based fee identified in Article Three, Paragraph B. No additional payment will be made for such subcontracted engineering services.
6. Based on these inspections and observations set forth herein, make recommendations for payment as requested by Contractor, in accordance with Contractor's agreement with the Board, for work performed in conformity with the plans and Specifications. Consulting Engineer shall withhold recommendation for

payment for defective or non-conforming work and shall not submit to the Board a pay estimate for defective work by a Contractor.

7. Based on the inspections and observations set forth herein, recommend to the Board that the Board stop Contractor's work on a project or other work if the Contractor fails to correct defective or non-conforming work or persistently fails to carry out work in accordance with plans, Specifications, or other Contract Documents. Consulting Engineer shall comply with all requirements of the Board's Standard Specifications for default and/or termination of the construction contract and shall be responsible for issuing all notices to the Contractor required thereby. This paragraph is not intended to limit in any way the duties of the Resident Project Representative ("RPR") regarding visits to the site, as set for in Article Five.
8. Maintain communication with the Board for the timely and effective completion of all projects and other work assigned.
9. Provide services of Resident Project Representative ("RPR") for on-the-site inspection of construction. The duties, responsibilities and limitations of authority of the RPR are outlined in Article Five.
10. Review periodic and final estimates for payment to Contractors, and make recommendation for payment for conforming work as set forth herein.
11. Assist in checking and tuning up installed equipment.
12. Make final inspection of the construction upon completion.
13. Review construction drawings to show project or work as built, confirming critical dimensions by use of a registered and licensed professional land surveyor, and deliver same to Board within a reasonable time. If the project incorporates easements, see Article Six of this agreement for required verifications. If construction phase services are provided by a Consulting Engineer that did not design the project, the Construction Phase Consulting Engineer shall provide a certified set of as-built drawings to the Design Phase Consulting Engineer so that the Design Phase Consulting Engineer can update CAD files to produce record drawings for the Board.
14. Obtain approval of City, County, and State agencies as appropriate for restoration of public rights-of-way.
15. Present to the Board at Board meetings all issues of liquidated damages, Contractor default, or other such project management related matters as warranted.
16. Provide closeout documents in accordance with project Specifications, including test data, final pay estimate, final summary change order, as-built plans, surveyor certification, etc.
17. Ensure that all significant communication between Consulting Engineer and Contractor is in writing. "Significant" shall include but is not limited to such matters as communications relative to scheduling, change orders, delays, stopping work, default, contract termination, close-out requirements, and payment issues.

B. Basis of Payment for Construction Phase Services. In return for provision of all the above services by Consulting Engineer, the parties hereto agree that payment will be made monthly as work progresses based upon the percentage of construction cost according to the following fee schedule:

Cost of Construction:

Inspection Fee:

Linear Projects

Over \$5,000,001	To Be Negotiated
\$3,000,001 to \$5,000,000	3.0%
\$1,000,001 to \$3,000,000	4.0%
\$500,001 to \$1,000,000	5.3%
\$150,000 to \$500,000	6.0%
Under \$150,000	7.0%

Non-linear Projects

Over \$5,000,001	To Be Negotiated
\$3,000,001 to \$5,000,000	4.0%
\$1,000,001 to \$3,000,000	5.0%
\$500,001 to \$1,000,000	6.0%
\$150,000 to \$500,000	6.5%
Under \$150,000	7.0%

In the above fee schedules, linear projects are projects that consist primarily of installing water distribution and sanitary sewer piping, related appurtenances, and associated property/road restoration. Notwithstanding the above fee schedule, the Board and Consulting Engineer recognize that in some situations the Consulting Engineer's fee in the Construction Phase as measured by the maximum range of the next lower construction step may result in an amount which is more than the fee as measured by the actual fee percentile of the appropriate construction step. In order to avoid a windfall or hardship to either party, the Board and the Consulting Engineer agree that, under such circumstances, the fee will be calculated at both the higher percentile and the lower percentile of the respective construction cost ranges, the resulting fee amounts will be added together and divided by two (2) so as to produce the mean

fee amount between the two methods. The resulting mean fee will be for said contract. By way of example: A contract for \$500,001 will result in the fee of \$26,500 based on a fee percentile of 5.3% as set out above. When measured by the rate for the next lower construction step, the fee percentile would be 6.0%, resulting in a fee of \$30,000. The sum of the two fee amounts is \$56,500 and, when divided equally, a fee of \$28,250 is established.

C. Length of Time for Performance of Services. The length of time covered by the fee for services under the Construction Phase shall be the length of time in calendar days in which construction contractors will have to complete the various contracts and will be agreed upon by the Board and Consulting Engineer prior to issuance of Contract Documents and will be so stated therein. The Board will reimburse Consulting Engineer for Construction Phase Services required in completion of the project beyond the agreed to calendar days due to the delinquency or insolvency of the Contractor, or for any reason beyond the control of Consulting Engineer, other than time extensions granted the Contractor due to an increase in the scope of work. Compensation shall be made on the basis of cost times a multiplier as defined in Article Seven, Paragraph C, Basis of Payment for Studies, Reports, and Special Services.

D. Consulting Services on Projects Inspected by Others. When the Consulting Engineer has designed a project, but is not assigned the Construction Phase Services, the Consulting Engineer may be called on for consultations, new design services or record drawing updates during the construction of the project. Consulting Engineer shall be paid for said consultations according to Article Seven, Paragraph C, of the Agreement when consultations are not interpretations of the plans and Specifications or re-designs to correct design errors. Additional costs as described herein must be approved in writing by the Board's Project Manager prior to incurring the expense.

E. Time for Payment. Payment will be made to Consulting Engineer within thirty (30) days after the Board's receipt of certified invoices submitted by Consulting Engineer.

Invoices shall be submitted by the 26th of each month for all work completed within the previous month.

ARTICLE FOUR: DUTY TO OBSERVE CONSTRUCTION, EVALUATE WORK, AND STOP NON-CONFORMING WORK

A. Duty to Observe, Evaluate, Recommend and Report. Any other provisions of this Agreement notwithstanding, the parties hereto understand and agree that it is the sole responsibility of Consulting Engineer, not the Board, to observe construction of all projects and other work, to make evaluations of all projects and other work to determine conformity with plans and Specifications and all other Contract Documents, to recommend or withhold recommendation for payment, and to determine if and when a project or other work by a Contractor should be stopped. In no event shall the Consulting Engineer submit to the Board a pay estimate for defective work by a Contractor. Consulting Engineer shall not authorize change orders or any work that results in the exceedance of the established construction contract amount without prior notice to, and/or approval of, the Board. The Consulting Engineer shall comply with all requirements of the Board's Standard Specifications for situations involving default and termination of the construction contract. The Consulting Engineer acknowledges and agrees that part of the consideration for the Board's entering into this Agreement is the Consulting Engineer's agreement to perform these inspections and evaluations, and to make these recommendations to the Board, based on the Consulting Engineer's professional engineering expertise.

B. Responsibility for Construction Means, Methods, etc. Consulting Engineer will not be responsible for directing construction means, methods, techniques, sequences or procedures, except to the extent that a particular technique may be set forth in the plans and Specifications to accomplish specified design objectives. Construction means, methods, etc., are the sole responsibility of Contractor. Consulting Engineer's responsibilities and duties as to

observation, evaluation, and subsequent action are to be directed toward examining the work itself, as opposed to directing the means, methods, etc., by which Contractor performs the work.

C. Prosecution of Project. To the best of Consulting Engineer's professional ability, the Consulting Engineer will not allow disputes as to liability of any party or entity for matters arising during construction, payment for work items, or other issues to delay project completion. The Consulting Engineer will take all possible steps, in compliance with the Board's Standard Specifications, construction documents, law and court decrees, and other applicable requirements, to maintain the project schedule and efficiently move the project to completion. These responsibilities will include, but not be limited to, satisfactory handling of all punch list items, property and right-of-way restoration, maintenance period corrections, and contract closeout requirements.

ARTICLE FIVE: DUTIES, RESPONSIBILITIES, AND LIMITATIONS OF AUTHORITY OF RESIDENT PROJECT REPRESENTATIVE

A. General. Consulting Engineer shall name a Resident Project Representative ("RPR") as Consulting Engineer's Agent, who will act as directed by and under the supervision of Consulting Engineer, and who will confer with Consulting Engineer regarding RPR's actions. The RPR's dealings in matters pertaining to the on-site work shall in general be only with Consulting Engineer and Contractor, and dealings with subcontractors shall only be through or with the full knowledge of Contractor. Written communication with Board will be only through or as directed by Consulting Engineer. Notwithstanding any provision contained herein, the appointment of an RPR shall not relieve Consulting Engineer from any duty, responsibility or obligation owed to the Board under this Agreement or applicable law. Further, within five (5) days of written notice by the Board that the Board desires the Consulting Engineer to deselect the RPR and/or name a different person as RPR, the Consulting Engineer shall deselect the

RPR and appoint a different person as RPR and notify the Board in writing of the identity of said designee.

B. Duties and Responsibilities. The Resident Project Representative will perform the duties and have the responsibilities as follows:

1. Schedules: Review the progress schedule, schedule of Shop Drawing submissions and schedule of values prepared by Contractor.
2. Conferences: Attend pre-construction conferences. Attend progress meetings and other job conferences as required in consultation with Consulting Engineer.
3. Liaison:
 - a. Serve as Consulting Engineer's liaison with Contractor, working principally through Contractor's superintendent, and assist him in understanding the intent of the Contract Documents. Assist Consulting Engineer in serving as Board's liaison with Contractor when Contractor's operations affect Board's on-site operations.
 - b. As requested by Consulting Engineer, assist in obtaining from Board additional details or information when required at the job site for proper execution of the work.
 - c. Resolve property owner complaints related to the project to the fullest extent possible while maintaining contract requirements. Advise Consulting Engineer of any such issues which the RPR is unable to resolve.
4. Advise Consulting Engineer and Contractor or its superintendent immediately of the commencement of any work requiring a Shop Drawing or sample submission if the submission has not been approved by Consulting Engineer.
5. Review of Work, Rejection of Defective Work, Inspections and Tests:
 - a. Conduct on-site observations of the work in progress to assist Consulting Engineer in determining if the work is in general proceeding in accordance with the Contract Documents. In addition, ensure proper job site maintenance by the contractor, including reasonable public access.
 - b. Report to Consulting Engineer whenever RPR believes that any work is unsatisfactory, faulty, or defective or does not conform to the Contract Documents, or does not meet the requirements of any inspections, tests, or approval required to be made or has been damaged prior to final payment; and advise Consulting Engineer when RPR believes work should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

- c. Verify that tests, equipment and systems start-ups and operating and maintenance instructions are conducted as required by the Contract instructions and the Contract Documents and in presence of the required personnel, and that Contractor maintains adequate records thereof; observe, record and report to Consulting Engineer appropriate details relative to the test procedures and start-ups.
 - d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the project, record the outcome of these inspections and report to Consulting Engineer.
6. Interpretation of Contract Documents:
- a. Report to Consulting Engineer when clarifications and interpretations of Contract Documents are needed.
 - b. Transmit to Contractor all of Consulting Engineer's clarifications and interpretations of the Contract Documents.
7. Modifications: Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report them with recommendations to Consulting Engineer.
8. Records:
- a. Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and sample submissions, reproductions of original Contract Documents, including all addenda, change orders, field orders, additional Drawings issued subsequent to the execution of the Contract, Consulting Engineer's clarifications and interpretations of the Contract Documents, progress reports, and other project-related documents.
 - b. Keep a diary or log book recording hours on the job site, weather conditions, data relative to questions of extras or deductions, lists of visiting officials and representatives of manufacturers, fabricators, suppliers, and distributors, daily activities, decisions, observations in general and specific observations in more detail as in the case of observing test procedures. Send copies to Consulting Engineer.
 - c. Record names, addresses and telephone numbers of all Contractors, subcontractors and major suppliers of materials and equipment.
9. Reports:
- a. Furnish Consulting Engineer periodic reports as required of the work and Contractor's compliance with the approved progress schedule.
 - b. Consult with Consulting Engineer in advance of schedule of major tests, inspections or start of important phases of work.

- c. Report immediately to Consulting Engineer and the Board occurrence of any accident or incident (i.e., fighting, threats, damage to equipment, materials, or the work) or any other event which causes or could cause harm to persons, equipment, materials, the project or the Board.
10. Payment Requisitions: Review applications for payments with Contractor for compliance with the established procedure for their submission and forward them with recommendations to Consulting Engineer, noting particularly their relation to the schedule of values, work completed and materials and equipment delivered at the site but not incorporated in the work.
11. Certificates, Maintenance, and Operation Manuals: During the course of the work, verify that certificates, maintenance, and operation manuals and other data required to be assembled and furnished by Contractor are applicable to the items actually installed; and deliver this material to Consulting Engineer for his review and forwarding to Board prior to final acceptance of the work.
12. Completion:
 - a. Conduct final inspection in the company of Consulting Engineer, Board and Contractor and prepare a final list of items to be completed or corrected.
 - b. Verify that all items on final list have been completed or corrected and make recommendations to Consulting Engineer concerning acceptance.

C. Limitations of Authority: Except upon written instructions of Consulting Engineer, Resident Project Representative:

1. Shall not authorize any deviation from the Contract Documents or approve any substitute materials or equipment.
2. Shall not exceed limitations on Consulting Engineer's authority as set forth in the Contract Documents.
3. Shall not undertake any of the responsibilities of Contractor, subcontractors or Contractor's superintendent.
4. Shall not advise on or issue directions relative to any aspect of the means, methods, techniques, sequences of procedures of construction.
5. Shall not advise on or issue directions as to safety precautions and programs in connection with the work.
6. Shall not authorize Board to occupy the project in whole or in part.
7. Shall not participate in specialized field or laboratory tests, unless Consulting Engineer's firm is the entity performing the tests.

8. Shall not accept shop drawings or sample submittals, as these shall be made to Consulting Engineer.

ARTICLE SIX: EASEMENTS

A. Services Pertaining to Easements. When requested by the Board, Consulting Engineer shall:

1. Field locate existing easements where construction is required from legal descriptions provided by the Board.
2. Provide legal descriptions for permanent and temporary easements as required for the proposed construction for acquisition by the Board.
3. Appear as witness in condemnation cases as requested.
4. Field locate additional temporary and permanent easements required for the construction and assist the Board in acquisition of the required easements.
5. Provide registered surveyor's letter attesting that the project is within the easements and that the record drawings accurately reflect this.

B. Compensation for Easement Services. For easement services, compensation to Consulting Engineer will be as defined in Article Seven, Paragraph C, Basis for Payment for Studies, Reports, and Special Services.

ARTICLE SEVEN: STUDIES, REPORTS, AND SPECIAL SERVICES

A. Compliance with Indenture of Trust. Consulting Engineer will furnish any information, advice and recommendations the Board may request in order for the Board to comply with the Master Trust Indenture relating to Water and Sewer Revenue Bonds, dated November 1, 2014, and with any duly enacted Amendments or Supplements thereto.

B. Studies, Reports, and Special Services. Consulting Engineer hereby agrees to provide professional services to develop and present special information required and authorized by the Board in operation or in executing construction programs, such as, but not limited to, long range plans, reports, feasibility studies, economic comparisons of alternate

courses, statistical information for public relations reports, out of town inspections, consultations on projects inspected by others, coordination of geotechnical efforts required in the contract between the Board and its assigned geotechnical firm, studies for bond issues, rate studies, preparation and revision of Standard Specifications, and for development of data and special reports by EPA, ADEM, or other Governmental Agencies as a prerequisite for receiving grants, such as Interim Basis Plans, cost effective studies, alternate plans, infiltration data, engineering reports, environmental assessments, environmental statements, preparation of operating manuals, staffing waste treatment plants for operator instruction courses, or other similar requirements.

C. Basis of Payment for Studies, Reports, and Special Services. When called upon and authorized by the Board to provide such service, Consulting Engineer may be paid for such services on the basis of a sum or amount as is approved by the Board, or of Cost Times a Multiplier, ("Cost-Plus Basis"), defined as follows: the cost of salaries of engineers, technicians, drafters, surveyors, office assistants, secretaries and other directly involved employees for time directly chargeable to the project times a multiplier of ____ to cover all other costs, overhead and profit. In addition to compensation computed above, reimbursement will be paid for actual costs of identified and pre-approved extraordinary expenses specifically required by the project.

ARTICLE EIGHT: ASSISTANCE WITH GRANTS

Consulting Engineer shall assist the Board in completing and filing applications for Federal or State grants and preparing for public hearings, if required. Compensation to the Consulting Engineer for such services shall be on the basis of Article Seven, Paragraph C, Basis of Payment.

ARTICLE NINE: WORK NOT INCLUDED

Specialized services such as laboratory testing of materials, subsurface borings and activities of a similar nature, which require specialized equipment and technicians are not part of this Agreement. The performance of property, or boundary surveys, services on calculations of special assessment, or operating manuals and operator training is not included. Consulting Engineer is not responsible under this Agreement to audit Contractor's payrolls or records, or to check payrolls for compliance with wage rates or to act as foreman, superintendent, safety engineer, or for the safety of the Contractor's personnel, or to enforce governmental clauses made part of the construction contract as a consideration of the Board receiving governmental loans or grants.

Title research required for establishing description of property to be acquired for easements of rights-of-way will be completed by others at Board's expense.

ARTICLE TEN: RECORD RETENTION FOR COST-PLUS SERVICES

As to any service provided to Board by Consulting Engineer and compensated on a Cost-Plus Basis, Consulting Engineer shall allow Board and any auditor(s) or other person(s) designated by Board reasonable access to their billing records and invoices pertaining to said service and/or to Board, and such relevant financial records as are reasonably necessary to provide support and documentation to verify billings by Consulting Engineer to Board, payments by Board to Consulting Engineer and the existence and correctness of the charges and payments made pursuant to this Agreement, as well as all documents of whatever type the Board deems helpful in verifying the accuracy of the Cost-Plus amounts billed by Consulting Engineer to Board; provided, however, that Consulting Engineer shall not be required to maintain said records for more than three (3) years following the rendering of the final bill for services on each project conducted by Consulting Engineer under this Agreement.

ARTICLE ELEVEN: ORIGINALS AND COPIES OF REPORTS, PLANS AND SPECIFICATIONS.

A. Consulting Engineer will furnish the Board with a reasonable number of sets of all plans, reports, and Specifications. Additional sets will be furnished at a reasonable cost not to exceed the actual cost to the Consulting Engineer.

B. At or before the end of the Agreement period, and at any time requested by the Board, the original drawings and Specifications and all documents setting forth plan assemblies for projects designed under this Agreement shall be submitted to the Board by Consulting Engineer.

C. Any other provisions of this Agreement notwithstanding, all Drawings, Specifications, Plans, and other documents of any nature whatsoever prepared or generated by Consulting Engineer pursuant to the Agreement shall be the property of the Board.

ARTICLE TWELVE: POST CONTRACT DUTIES

Upon the expiration of the Agreement or any extension thereof, Consulting Engineer agrees to complete those projects for which the Board has made formal application for Federal or State grant assistance and represented therein that Consulting Engineer had been retained for necessary professional engineering service.

A. Construction Phase Services for any construction contract underway at the end of the Agreement period, or extension thereof, will be prosecuted by Consulting Engineer to its completion under terms of this Agreement.

B. Any other work assignments underway at the end of the Agreement period, or extension thereof, will be prosecuted by Consulting Engineer to its completion under terms of this Agreement.

C. All original Drawings and Specifications and all documents setting forth plan assemblies shall be delivered to Board by Consulting Engineer.

ARTICLE THIRTEEN: INDEMNITY

Consulting Engineer agrees to indemnify, defend, and hold harmless the Board and each individual Board member and employee from and against all loss, damage, claims, suits, actions, liability, judgments, orders, decrees, fines, penalties, interest, attorneys' fees, costs, and expenses, of any nature whatsoever, filed or brought by anyone, or by any entity arising in any way from this Agreement, including but not limited to personal injury, bodily injury, wrongful death, and property damage, which said claim, liability, suit, etc. may be made against or incurred by the Board or any individual Board member or employee as a result of any negligent and/or other legally culpable act or omission of Consulting Engineer, its agent(s), employee(s), servant(s), subcontractor(s), successor(s), assign(s), or anyone for whose acts or omissions Consulting Engineer may be legally liable. This responsibility shall include, but not be limited to injuries or death or property damage or other loss caused in whole or in part by any machinery, materials or equipment belonging to Board used by Consulting Engineer in the performance of work pursuant to this Agreement. In the event that legal action is brought against the Board based upon any claim or upon any asserted violation of law or regulation arising out of the services performed by Consulting Engineer, the Consulting Engineer shall reimburse the Board for the Board's reasonable attorneys' fees, costs and expenses incurred in defending against same and for all appeals thereof (including but not limited to cost of bonds and interest in the event of an appeal), whether such appeal is taken by the Board or by another party. Further, in any such litigation, the Consulting Engineer shall use its professional efforts to protect the interests of the Board and its reputation in the community, shall participate in good faith and cooperate fully in mediation efforts and directs its insurance carrier to do likewise, shall assist as necessary in trial preparation, and shall cooperate fully in all related matters. In addition, the parties hereto agree that the Board has the right to file suit in a court of law, or to obtain restraining order, injunctions, and any other equitable remedy, to prevent or terminate any

breach of this Agreement or to otherwise enforce its rights hereunder. Consulting Engineer shall reimburse the Board for all reasonable attorneys' fees, costs, and expenses of every nature associated with any legal efforts of the Board to enforce its rights under this Agreement, at law or in equity, but only if the Board is the prevailing party. Nothing in this Article shall limit any otherwise available right or remedy of the Board at law or in equity.

ARTICLE FOURTEEN: INSURANCE

Consulting Engineer shall secure and maintain in full force and effect insurance that will adequately and effectively protect itself and the Board from claims brought by any person or entity in connection with or arising in any way from this Agreement, including but not limited to claims for workers' compensation, claims for property damage including loss of use, and claims for damages for personal injury and for bodily injury, including sickness or disease, or death. Consulting Engineer shall also secure and maintain in full force and effect Professional Liability Insurance (Errors and Omissions) providing coverage against claims which result from or relate to negligent performance of professional services provided pursuant to this Agreement. The insurance obtained by Consulting Engineer shall contain a provision that said insurance shall not be canceled or limited in any way without the Board and each individual Board member having received in advance thirty (30) days' written notice of said cancellation or modification and further providing that such notification shall be made in the manner provided for notices to a party as set out herein. Consulting Engineer shall at all times during this Agreement maintain the following minimum amounts of liability insurance, or greater amounts as reasonably necessary to provide adequate protection and coverage for very large, complex, and/or expensive projects, from an insurer having a rating of "A" or better:

1. Professional Liability Insurance (Errors and Omissions); Providing coverage against claims for professional services errors and omissions, said policy to be maintained through the term of this Agreement and for a period of two (2) years thereafter.

- a. Combined single limit of \$1,000,000 per each claim, \$1,000,000 aggregate.
2. Commercial Automobile Liability Insurance: providing coverage against claims for bodily injury, including death, and property damage, including owned, non-owned, and hired vehicles.
 - a. Combined single limit of \$1,000,000 per each occurrence, with an aggregate total of \$2,000,000.
3. Commercial General Liability Insurance: providing coverage against claims for personal injury, bodily injury, including death, advertising injury, blanket contractual liability, products/completed operations, and property damage.
 - a. Combined single limit of \$1,000,000 per each occurrence, with an aggregate total of \$2,000,000.
4. Worker's Compensation and Employers Liability Insurance: providing coverage as required by law of the state in which work is performed.
 - a. Worker's Compensation – Statutory Amount of State.
 - b. Employer's Liability – single limit of at least \$1,000,000 per each occurrence.
5. Umbrella Policy for Commercial General Liability Coverage: \$5,000,000 per each occurrence.
6. Excess Policy for Professional Liability Coverage: \$5,000,000 per claim.

The Commercial General Liability Policy and the Umbrella Liability Policy obtained and/or maintained by Consulting Engineer shall be endorsed to include the Board, its Commissioners, members, officers, and employees as additional Insureds.

Consulting Engineer shall provide proof of the above listed insurance policies to the Board by furnishing:

- **Certificates of insurance;**
- **Declaration sheets;** and
- **All endorsements,** including but not limited to an additional insured endorsement for the Commercial General Liability (CGL) Policy naming the Board, its Commissioners, members, officers, and employees as additional insureds, and endorsements stating that the policies will not be cancelled, limited, or changed without thirty (30) calendar days' prior written notice to the Board.

All of these documents shall be provided to the Board or the Board's designee prior to beginning any work under this Agreement by Consulting Engineer, and thereafter at any time requested by the Board, any individual Board member, or the Board's designee. **In addition, Consulting Engineer shall provide copies of the actual policies** upon request of the Board or its designee. Consulting Engineer shall provide the policies within fifteen (15) business days of the request. In the event that the policies are requested, Consulting Engineer may redact the following:

- The dollar amount of the premiums charged by the insurance provider;
- Any information pertaining solely to other clients of Consulting Engineer, if the policy affords coverage relative to work of Consulting Engineer for other clients;
- The application and supporting materials provided by Consulting Engineer to its insurance provider in order to obtain the policy, which are made a part of the policy.

Consulting Engineer shall not redact any information pertaining in any way to coverages required by this Agreement and/or to descriptions of or limitations on any such coverages.

It shall be a material breach of this Agreement by Consulting Engineer if the certificates of insurance, declarations sheets, and all endorsements are not provided to the Board prior to Consulting Engineer's performance of any work under this Agreement, or if Consulting Engineer fails to provide copies of the actual insurance policies upon request, within the above time limit. If Consulting Engineer does perform any work under this Agreement without providing the above required insurance coverage documentation, or if Consulting Engineer fails to provide copies of the actual policies upon request within the time specified, this Agreement shall be subject to immediate termination by the Board. Further, if Consulting Engineer fails to provide a complete copy of each requested policy upon request, within the time limit set forth above, and the Board enlists the services of legal counsel in an effort to obtain them, Consulting Engineer shall reimburse the Board all reasonable attorneys' fees, costs, and expenses incurred by the Board for these legal services.

ARTICLE FIFTEEN: INDEPENDENT CONTRACTOR

Notwithstanding any conflicting provisions in the Board's Standard Specifications, policies, procedures, construction contract documents, or elsewhere, Consulting Engineer, in the performance of its duties and obligations hereunder, shall not be deemed to be the agent or employee or joint venturer of Board, but shall be deemed to be an independent contractor in every aspect and shall take all steps at its own expense, as the Board may from time to time request, to indicate that it is an independent contractor. The Board does not and will not assume any responsibility for the means by which, or manner in which the Consulting Engineer's services provided herein are performed, but, on the contrary, Consulting Engineer shall be wholly responsible therefor.

ARTICLE SIXTEEN: CONFIDENTIALITY

All matters pertaining to work performed under this Agreement are privileged and confidential between Consulting Engineer and the Board. Consulting Engineer expressly agrees to keep all data, including GIS data files, findings, progress of work, conclusions or any other matter privileged and confidential and not to divulge any material information to anyone outside the Board unless (1) the Board consents in writing; (2) the information is or becomes part of the public domain; (3) applicable law, regulation, court order or an agency of competent jurisdiction requires its disclosure; or (4) failure to disclose the information would pose an imminent and substantial threat to human health or the environment. Consulting Engineer further acknowledges that all such documents reflecting these confidential matters are the exclusive properties of the Board.

ARTICLE SEVENTEEN: CONFLICT OF INTEREST

Consulting Engineer represents that it presently has no interest and shall not acquire any interest in any legal entity, directly or indirectly, that may conflict in any manner with the performance of its services and responsibilities under this Agreement. Consulting Engineer represents that it presently is not performing and will not undertake any project or work for any other entity which may, directly or indirectly, conflict in any manner with the performance of its services and responsibilities under this Agreement. Furthermore, Consulting Engineer represents that it presently has no interest and shall not acquire any interest in any legal entity, directly or indirectly, that may adversely impact in any manner with the operation of the Board's water and/or sewer system, and/or any of the Board's facilities and operations. Consulting Engineer agrees that if it performs work for another client and said work will impact the Board's facilities, Consulting Engineer shall immediately notify the Board of such impacts. Consulting Engineers who have agreements with the Board are expected to always protect the Board's assets when performing projects for other clients.

ARTICLE EIGHTEEN: COMPLIANCE WITH LAWS AND PROGRAMS

Consulting Engineer shall comply with all applicable Federal, State, Municipal, and local laws, and executive orders, and all applicable rules, orders, regulations, and requirements of all governmental agencies, departments, and bureaus. Consulting Engineer agrees that it will comply with Title VII of the Civil Rights Act of 1964 assuring that no person will be subjected to discrimination on the grounds of race, sex, color, national origin, or disability.

The Consulting Engineer agrees to become familiar with and participate in the Board's Disadvantaged Business Enterprise program and to keep records and annually report to the Board performance of the Consulting Engineer's efforts to exceed a 10% goal of business with disadvantaged businesses as measured by expenses for outside services and supplies. Consulting Engineer also agrees to make a good faith effort to encourage Contractors who work for the Board to likewise achieve this end.

ARTICLE NINETEEN: FAILURE OF PERFORMANCE BY CONSULTING ENGINEER

During the progress of the work on any project or work assignment, if Consulting Engineer should become bankrupt, refuse or neglect to supply necessary services, or cause any unreasonable neglect or suspension of work or fail to refuse to follow the plans and Specifications or fail to comply with any part of this Agreement, or if the Board receives information raising concerns as to lack of proficiency or errors or omissions on the part of Consulting Engineer, in work for the Board or work for any other entity, or if Consulting Engineer fails to maintain in full force and effect all insurance coverage required by this Agreement, the Board shall have the right to immediately terminate this Agreement, and make settlement with the Consulting Engineer on an equitable basis for the amount of work satisfactorily completed. All claims of Consulting Engineer for work beyond this time shall cease and Board shall take any necessary steps to complete Consulting Engineer's work on said project or assignment, after giving forty-eight (48) hours notice directed to Consulting Engineer at the address stated in the Agreement. Should the Board incur fees for professional services in excess of those which the Board would have incurred had Consulting Engineer properly performed, Consulting Engineer shall be responsible for all reasonable excess engineering fees, costs and expenses.

ARTICLE TWENTY: CONTROLLING LAW

The law of the State of Alabama shall be controlling and determinative concerning any legal or equitable dispute that arises between the parties, and it is expressly agreed and stipulated that this Agreement shall be deemed to have been executed and performable by all parties in Mobile County, Alabama. Venue and jurisdiction for any actions arising under this

Agreement shall be proper only in the Federal and State courts located in Mobile County, Alabama.

ARTICLE TWENTY-ONE: MISCELLANEOUS PROVISIONS

A. Entire Agreement. This Agreement is a complete integration of and supersedes all previous understandings, writings, proposals, representations, contracts or agreements, whether written or oral, between the parties with respect to the same subject matter and does constitute the entire Agreement between the parties hereto.

B. Waiver of Breach. The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as, nor be construed to be, waiver of any subsequent breach thereof.

C. Severability. In the event that any provision hereof or part thereof is found invalid or unenforceable pursuant to judicial decree or decision, the remainder of this Agreement shall remain valid and enforceable according to its terms.

D. Amendments. This Agreement may be amended only by an instrument in writing signed by the authorized representatives of the parties hereto.

E. Force Majeure. Neither party shall be liable or be deemed in default of this Agreement for any delay or failure to perform caused by Acts of God, war, disasters, strikes, or any similar cause beyond the control of either party.

F. Headings. Headings of the sections of this Agreement have been inserted for convenience only, and they shall be of no effect in the construction of the Agreement, with the exception of those headings set forth under Article One, Paragraph H.

G. Successors & Assigns. The Board and Consulting Engineer each are hereby bound, and the successors and assigns of the Board and Consulting Engineer are hereby bound, to the other party to this Agreement in respect to all covenants, agreements and obligations of this Agreement. Neither the Board nor Consulting Engineer shall assign or

transfer any right under or interest in this Agreement (including but not limited to monies that may become due or monies that are due) without consent of the other, except to the extent that any assignment or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor of any duty or responsibility under this Agreement.

H. Third Parties. Nothing in this Agreement shall be construed to create in any third party any rights, licenses, powers, privileges or remedies. Nothing in this Agreement shall be construed to create, impose or give rise to any duty of a party hereto to a non-party to this Agreement.

I. Rule of Construction; Review by Legal Counsel. The parties acknowledge that the normal rule of construction to the effect that any ambiguities in this Agreement are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement. The parties affirm that they have had the opportunity to review this Agreement thoroughly and to discuss it with legal counsel, and that they enter into this Agreement freely and with full knowledge of its provisions.

J. Continuing Obligations. The parties acknowledge and agree that all obligations set forth in this Agreement which by their nature are continuing, including but not limited to indemnifications, insurance, and confidentiality, shall survive the expiration or termination of this Agreement for any reason, and the performance of services contemplated by this Agreement, for the maximum period allowed by law.

K. Authority. In order to induce the Board to execute this Agreement, Consulting Engineer represents and warrants to the Board that: 1) it is a corporation or other legal entity duly organized, validly existing and in good standing under the laws of the State of _____; 2) the person executing this Agreement on behalf of Consulting Engineer has full power and authority to execute and deliver this Agreement to the Board; and

3) this Agreement constitutes the valid and legally binding obligation of Consulting Engineer, enforceable in accordance with its terms and conditions.

L. No Limitation on Immunity or Other Defenses. Notwithstanding any of the foregoing or following provisions, nothing in this Agreement shall be construed to limit in any way any immunity or limitations on damages afforded to the Board, its Board Members, officers, employees and agents, pursuant to federal or state constitutional, statutory or common law, and nothing in this Agreement may be construed to limit any defense available to the Board, its Board Members, officers, employees and agents at law or in equity.

M. Time of the Essence. Time is of the essence in the performance of all of the terms and conditions of this Agreement.

N. Limitation on Damages. In no event shall the Board or any of its Board Members, officers, employees or agents be liable to Consulting Engineer for any indirect, consequential or incidental damages, or lost profits or punitive damages, arising out of or related to this Agreement, or to the performance of or breach of any provision hereof. Any damages, if otherwise recoverable, shall be limited to the amount then due pursuant to the provisions of this Agreement.

ARTICLE TWENTY-TWO: NOTICE

Any notice given hereunder shall be conclusively deemed given when actually received if sent by overnight carrier or hand delivery, or as indicated by certified mail return receipt when posted in the United States mail, addressed as set forth below, or to such other address as may be designated in writing by a party hereto.

Notice to the Board should be addressed as follows:

Office of the Director
Board of Water & Sewer Commissioners
of the City of Mobile
P.O. Box 180249
Mobile, Alabama 36618-0249

Notice to Consulting Engineers shall be addressed as follows:

ARTICLE TWENTY-THREE: EXECUTION OF AGREEMENT

The parties hereto for themselves, their successors and their assigns, do hereby agree to the full performance of all covenants and provisions of the Agreement, and execute this Agreement by signatures of their duly authorized representatives, who sign below as the act of each party. This Agreement may be executed in multiple counterpart, with each counterpart taken together to constitute a single document.

IN WITNESS WHEREOF, this instrument is executed in duplicate, one copy being held by each party, on the ____ day of _____, 20____.

BOARD OF WATER AND SEWER COMMISSIONERS
OF THE CITY OF MOBILE

BY: _____
_____, AS ITS CHAIR

ATTEST:

_____, AS ITS SECRETARY/TREASURER

CONSULTING ENGINEER: _____

BY: _____

Print Name: _____

AS ITS: _____

ATTEST:

BY: _____

Print Name: _____

AS ITS: _____

STATE OF ALABAMA
COUNTY OF MOBILE

I, the undersigned Notary Public in and for said County and in said State, hereby certify that _____, whose name as Chair of the BOARD OF WATER AND SEWER COMMISSIONERS OF THE CITY OF MOBILE, is signed to the above and foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of this instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said Board on the day the same bears date.

Given under my hand and official seal of office on this the ____ day of _____, 20__.

NOTARY PUBLIC
My Commission Expires: _____

STATE OF ALABAMA
COUNTY OF MOBILE

I, the undersigned Notary Public in and for said County and in said State, hereby certify that _____, whose name as Secretary/Treasurer of the BOARD OF WATER AND SEWER COMMISSIONERS OF THE CITY OF MOBILE, is signed to the above and foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of this instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said Board on the day the same bears date.

Given under my hand and official seal of office on this the ____ day of _____, 20__.

NOTARY PUBLIC
My Commission Expires: _____

STATE OF _____

COUNTY OF _____

I, the undersigned Notary Public in and for said County and in said State, hereby certify that _____ whose name as _____ of _____ (Consulting Engineer), is signed to the above and foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of this instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said _____ (Consulting Engineer) _____ on the day the same bears date.

Given under my hand and official seal of office on this the ____ day of _____, 20__.

NOTARY PUBLIC
My Commission Expires: _____

STATE OF _____

COUNTY OF _____

I, the undersigned Notary Public in and for said County and in said State, hereby certify that _____, whose name as _____ of _____ (Consulting Engineer) foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of this instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said _____ (Consulting Engineer) _____ on the day the same bears date.

Given under my hand and official seal of office on this the _____ day of _____, 20__.

NOTARY PUBLIC
My Commission Expires: _____