

## **AGREEMENT FOR ENGINEERING AND INSPECTION SERVICES**

THIS AGREEMENT made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the **City of Gulf Shores**, hereinafter referred to as the **City**, and **DMD Engineers, Inc.**, hereinafter referred to as the **Consultant**.

WHEREAS, the City desires to have professional engineering services and inspection performed consisting of construction engineering and inspection for the construction of **Project No. STPTE-TE13(908), TAPNU-TA13(923), AND TAPOA-TA15(935) Sidewalk Improvements**.

WHEREAS, not having engaged any other consultants or engineers for the Project, the City desires to retain the Consultant as its sole and exclusive consulting engineering and inspection firm for the Project;

NOW THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the City and Consultant do agree, each with the other, as follows:

### **ARTICLE 1. BASIC SERVICES**

The Consultant shall provide the City the following basic professional engineering services and inspection services:

1.1 The Consultant will check and approve any necessary shop and working drawings furnished by the contractors.

1.2 The Consultant will interpret the intent of the drawings and specifications to protect the City against defects and deficiencies in construction on the part of the contractor(s). The Consultant will not, however, guarantee the performance by any contractor.

1.3 The Consultant will provide construction inspection, testing, and documentation of the work of the Contractor(s) as construction progresses in accordance with ALDOT's specifications, special provisions and standard drawings (latest edition at time of bid letting) as well as any regulations required by FHWA. The requirements by ALDOT and FHWA shall take precedence over plans and all other requirements. The Consultant does not guarantee the performance of the contractor(s) by the Consultant's performance of such detailed construction inspection. The Consultant's undertaking hereunder shall not relieve the contractor of his obligation to perform the work in conformity with the drawings and specifications and in a workmanlike manner; shall not make the Consultant an insurer of the contractor's performance; and shall not impose upon the Consultant any obligation to see that the work is performed in a safe manner. The Consultant will provide an inspector(s) that meets all Alabama Department of Transportation and FHWA requirements and certifications.

1.4 The Consultant will complete estimates for progress and final payments and provide the completed estimates to the City for payment.

1.5 The Consultant will make final inspections of the completed improvements and make the necessary recommendations to the City.

### **ARTICLE 2. RESPONSIBILITIES OF THE CITY**

The City shall provide for the Consultant the following information and shall do the following:

2.1 The City shall provide all criteria and full information as to the City's requirements for the project and shall furnish all design and construction standards which the City will require to be adhered to by the Contractor.

2.2 The City will assist the Consultant by placing at the Consultant's disposal all available information pertinent to the project.

2.3 The City shall arrange for access to and make all provisions for the Consultant to enter upon public and private property and perform surveying and other data collection as required for Consultant to perform services under this Agreement.

2.4 The City shall designate in writing a person to act as the City's representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions and receive information.

2.5 The City shall provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, as well as such legal services as the City may require or the Consultant may reasonably request with regard to legal issues pertaining to the Project. It is expressly understood and agreed that the Consultant itself shall not furnish or render any legal opinions or legal interpretations as to matters of law or application of law.

**ARTICLE 3. PERIOD OF SERVICE**

3.1 Consultant's obligation to provide services as contained in Article I, and attachments thereto, will extend for the actual life of the construction project to include all final estimate documentation.

**ARTICLE 4. COMPENSATION**

4.1 The City agrees to pay the Consultant, in cash, compensation on a cost plus fixed fee basis for construction engineering and inspection services. An estimate of the maximum construction engineering and inspection services cost is provided below:

<u>Labor:</u>				
Senior Engineer	104 hrs	@	\$56.25	\$5,850.00
Engineer III	332 hrs	@	\$35.00	\$11,620.00
Administration	64 hrs	@	\$21.88	\$1,400.32
Technician III	50 hrs	@	\$29.38	\$1,469.00
Technician I	1,282 hrs	@	\$15.60	\$19,999.20
			Total Labor	\$40,338.52
			Overhead factor: 131.39% (including payroll additives)	<u>\$53,000.78</u>
Transportation:	13,020 miles	@	\$ 0.54	\$7,030.80
Per Diem:	170 days	@	\$70.00	\$11,900.00
			Subtotal	\$112,270.10
			Fixed Fee for Profit (9.91%)	\$11,129.90
			<b>MAXIMUM TOTAL COST OF ENGINEERING AND INSPECTION SERVICES</b>	<b>\$123,400.00</b>

4.2 The actual cost for work accomplished will include all costs related to salaries of employees for time directly chargeable to the project work and salary additives, such as the Consultant's expenses and overhead, to the extent they are properly allocable to the work of the project.

4.3 The Consultant will perform the necessary construction engineering and inspection work and unless substantial change is made in the plans or scope of work, the maximum payment shall not exceed **\$123,400.00**.

4.4 The Consultant will keep separate records of engineering costs on each phase of work, including hours worked by each employee classifications, payroll additives, expenses, transportation and subsistence which are directly allocable to this contract. Overhead will be based on the latest available information and will be supported by the Consultant's records. All records will be made available, if requested, for inspection by representatives of the City and the Alabama Department of Transportation, and copies thereof will be furnished by the Consultant if requested. All records necessary to substantiate charges under this contract will be retained by the Consultant for a period of at least three years after final reimbursement payment to the City by the State on the project.

4.5 The City may, from time to time, request changes in the scope of the services of the Consultant to be performed hereunder. Such changes, including any increase or decrease in the amount of Consultant's compensation, that are mutually agreed upon by the City and the Consultant, shall be incorporated in written amendments to this Agreement. Any increase in the amount of Consultant's compensation above the maximum amount specified in Article 4.3 will not be reimbursed by the State.

#### **ARTICLE 5. RELATIONSHIP OF THE PARTIES**

5.1 The parties intend that this Agreement create an independent contractor relationship between them. The Consultant is a professional company and is not an agent or employee of City for any purpose. The Consultant cannot and will not represent that he has the authority to bind City in any contractual manner.

5.2 Neither party is to represent to others that the relationship between them is other than as stated above.

5.3 Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than the City and the Consultant, and all duties and responsibilities undertaken in pursuant to this Agreement will be for the sole and exclusive benefit of the City and the Consultant and not for the benefit of any other party.

5.4 The City and the Consultant each is hereby bound and the partners, successors, executors, administrators, legal representatives and assigns (to the extent permitted by Paragraph 5.5 below) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrations, legal representatives and said assigns of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

5.5 Neither the City nor the Consultant shall assign, sublet or transfer any rights under or interest in this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent the Consultant from employing such independent professional associates, consultants, subcontractors, and vendors as the Consultant may deem appropriate to assist in the performance of services hereunder.

#### **ARTICLE 6. LIABILITY AND INDEMNITY**

6.1 The Consultant will not be responsible for delays or obstacles attributable to acts of God, acts of third parties, weather, intervention of public authorities, work stoppages, changes in the applicable laws or regulations after the date of commencement of performance hereunder and any other acts or omissions or events which are beyond the control of the Consultant.

6.2 Estimates of cost, approvals, recommendations, opinions and decisions by the Consultant are made on the basis of the Consultant's experience, qualifications, and professional judgment and are not to be construed as warranties or guarantees.

6.3 Notwithstanding any other provision of this Agreement, the Consultant's total liability to the City for any loss or damages from claims arising out of or in connection with this Agreement from any cause including the Consultant's strict liability, breach of contract, or professional negligence, errors and omissions (whether claimed in tort, contract, strict liability, nuisance, by statute or otherwise) shall not exceed the lesser of the total contract value of this Agreement or the limits of the Consultant's liability insurance in effect at the time such claims are made. The City hereby releases the Consultant from any liability exceeding such amount. In no event shall either party to this Agreement be liable to the other for special, indirect, incidental or consequential damages, whether or not such damages were foreseeable at the time of the commencement of the work under this Agreement.

6.4 Any and all liability resulting from conditions not created or caused to be created by the Consultant shall be the liability of the City. Any and all liability that may arise from the construction, ownership and/or operation of the improvements is solely the responsibility of the City, and the City hereby agrees to indemnify and hold the Consultant harmless from such liability, claims, actions, loss or damage, including but not limited to attorney's fees, arising therefrom.

#### **ARTICLE 7. TERMINATION**

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This Agreement shall be subject to termination by either party hereto, with or without cause, upon 20 days advance notice in writing. Payment due at such time shall be computed upon applicable terms of Article 4 and amount of work complete as of the termination date.

#### **ARTICLE 8. MISCELLANEOUS**

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8.1 This Agreement represents the entire and integrated Agreement between the City and Consultant and supersedes all prior negotiations, representations or agreements, whether written or oral. This Agreement may only be amended, supplemented or modified by written instrument executed by both the City and the Consultant and approved by the State.

8.2 It is understood and agreed by the parties hereto, that any part, term or provision of this Agreement is held by any court of competent jurisdiction to be illegal or in conflict with any applicable law, the validity of the remaining portion or portions of this Agreement shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

8.3 It is expressly understood and agreed that the indemnity and insurance obligations of this Agreement, as well as the Consultant's proprietary interest in its engineering drawings, and specifications, shall survive the termination of this Agreement under Article 7 above.

IN TESTIMONY to all of which said the **City of Gulf Shores**, Alabama has caused this instrument to be executed by its Mayor, and its seal affixed, for and as the act of the City; and said **DMD Engineers, Inc.** has caused this instrument to be executed by its President on the date first written above.

Seal:

Attest:

**City of Gulf Shores, Alabama**

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Wanda Parris  
City Clerk

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Robert Craft  
Mayor

Attest:

**DMD Engineers, Inc.**

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Paul Darnell  
Senior Principal

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Troy M. Hudson  
President