ROSENBERG ASSOCIATES
CIVIL ENGINEERS • LAND SURVEYORS

# AGREEMENT
## FOR PROFESSIONAL SERVICES

CLIENT **Ivins City**
85 North Main Street
Ivins, UT 84738

ENGINEER **Rosenberg Associates**
352 East Riverside Drive, Suite A-2
St. George, UT 84790

PROJECT **15252-26**
Ivins Fire Station Addition Structural Design
Ivins, UT

EFFECTIVE DATE Project Effective Date

THIS IS AN AGREEMENT between the above-named Client and Engineer. The Client's project, of which the Engineer's services are a part, is generally described as follows:

> *Provide structural engineering for design of an addition to the Ivins City fire station located on Center Street and 100 West Street, in Ivins, Utah. The addition is anticipated to include the construction of one large apparatus bay adjoining the east side of the four existing bays (approximately 1,200 square feet), two large apparatus bays to adjoin the north side of the existing building (approximately 3,900 square feet), and the addition of an upstairs area to accommodate new dormitory rooms (approximately 900 square feet), totaling approximately 6,000 square feet. Work also to include structural analysis for remodel of the existing interior.*

The Client and the Engineer agree as follows:

### ARTICLE 1 – ENGINEER'S SERVICES

1.1 Work Plan: The Engineer shall provide services outlined in the following Work Plan:

**WORK PLAN**

**262 STRUCTURAL CONSTRUCTION PLANS:** Perform structural design and prepare drawings for building foundation, shear walls, headers, beams, floor joists, columns, and associated connections. Furnish sets of plan drawings and bound calculations to the City and the Architect. Review the structural construction plans with the City building department and finalize. Furnish pdf copies of the completed and reviewed civil construction plans to the City for project construction. *Cost assumes the architect will furnish the architectural drawings in electronic, AutoCAD format, and that the truss company shall furnish the truss design.*

**420 CONSTRUCTION ENGINEERING SUPPORT:** Provide engineering support during construction to consist of coordination meetings, responding to requests for information (RFI), additional evaluations, field changes, submittal and shop drawing reviews, and other field support as requested by the Client or the builder/contractor. *This work will be invoiced on a time and materials basis.*

### ARTICLE 2 – FEES AND INVOICING

2.1 Fees: The Client shall pay the Engineer for the Engineer's services on a Lump Sum basis, except for work specifically noted in the Work Plan as being provided on an hourly-rate basis.

**BREAKOUT OF LUMP SUM FEE**

| | |
|---|---|
| **262 STRUCTURAL CONSTRUCTION PLANS** | **$23,800** |
| **420 CONSTRUCTION ENGINEERING SUPPORT** | **$2,400** |
| **PROJECT TOTAL** | ***$26,200*** |

2.1.1 *Breakout of Lump Sum Fee:* If a Breakout of Lump Sum Fee is included in this Agreement, the Engineer and the Client agree that the Breakout of Lump Sum Fee is an estimate only, and is not a guaranteed maximum fee or a billing

cap; however, the Engineer shall not exceed the total estimated compensation amount of the Breakout of Lump Sum Fee unless agreed to by the Client. The Engineer may alter the estimated distribution of compensation in breakdown by phases and tasks set forth in the Breakout of Lump Sum Fee to be consistent with services actually rendered.

2.1.2 *Fee Exclusions:* The Client shall pay fees charged by governing agencies or others not specifically listed in the Cost Estimate or the Breakout of Lump Sum Fee that are required to complete the project services, such as government submittal fees, review fees, permit fees, title company charges, etc.

2.2 Fee Schedule: The Engineer's rates shall be set forth in the following Fee Schedule. The Fee Schedule rates may be adjusted annually to reflect equitable changes in the compensation payable to the Engineer.

**FEE SCHEDULE**

| | | |
|---|---|---|
| **ENGINEERING** | | |
| Principal Engineer 1 | hour | $185 |
| Project Engineer 3 | hour | $175 |
| Project Engineer 2 | hour | $155 |
| Project Engineer 1 | hour | $145 |
| Staff Engineer 2 | hour | $105 |
| Staff Engineer 1 | hour | $75 |
| **DESIGN** | | |
| Designer 4 | hour | $155 |
| Designer 3 | hour | $145 |
| Designer 2 | hour | $115 |
| Designer 1 | hour | $105 |
| Drafter 3 | hour | $95 |
| Drafter 2 | hour | $85 |
| Drafter 1 | hour | $65 |

2.3 Invoicing: The Engineer will generally prepare and submit its invoices to the Client on a monthly basis, or when the Engineer's services are complete if all services take place within one month or less.

2.3.1 *Time and Materials Invoicing:* Invoices prepared in a time and materials format shall be an amount equal to the cumulative hours multiplied by the hourly rates for each applicable staff type for services performed on the project, plus any applicable reimbursable expenses and outside consultant charges accumulated during the billing period.

2.3.2 *Lump Sum Invoicing:* Invoices prepared for Lump Sum billing shall be on a percent completion basis and shall be based on the allocation of the lump sum fee as set forth in the Breakout of Lump Sum Fee, if included in this Agreement. The portion of the amount billed will be based upon the Engineer's estimate of the percentage of services completed during the billing period.

2.3.3 *Reimbursable Expenses or Outside Consultant Services Invoicing:* The amounts payable to the Engineer for reimbursable expenses or outside consultant services allocable to the project may be multiplied by a factor of 10% to account for the administration of such expenses and services.

2.4 Invoices Due: Invoices are due and payable within 30 days of receipt, or when work is complete if all work takes place within one month or less. Payment will be credited first to any interest owed to the Engineer and then to the principal. If the Client fails to make any payment due the Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:

2.4.1 Amounts due the Engineer will be increased at the rate of 1.5% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and

2.4.2 The Engineer may, after giving a seven-day written notice to the Client, suspend services under this agreement until the Client has paid in full all amounts due for services, expenses, and other related charges. The Client waives any and all claims against Engineer for any such suspension.

2.5 Disputed Invoices: If the Client contests an invoice, the Client shall promptly advise the Engineer of the specific basis for doing so, may withhold only that portion so contested, and must pay the undisputed portion.

**ARTICLE 3 – TIME SCHEDULE**

3.1 The Engineer is authorized to begin rendering services as of the Effective Date and shall complete its obligations within a reasonable time.

3.1.1 The Client understands and acknowledges that elements outside the control of the Engineer may lengthen the estimated schedule, such as longer than anticipated staff reviews, scheduling conflicts with public hearings, extensions made by the public body, etc.

3.1.2 If, through no fault of the Engineer, such periods of time or dates are changed, or the orderly and continuous progress of the Engineer's services is impaired, or the Engineer's services are delayed or suspended, then the time for completion of the Engineer's services, and the rates and amounts of the Engineer's compensation, shall be adjusted equitably.

3.1.3 If the Client authorizes changes in the scope, extent, or character of the project, then the time for completion of Engineer's services, and the rates and amounts of the Engineer's compensation, shall be adjusted equitably.

3.1.4 If the Engineer fails, through its own fault, to complete the performance required in this agreement within the time set forth, as duly adjusted, then the Client shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

3.2 The Client shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.

**ARTICLE 4 – ADDITIONAL PROVISIONS**

4.1 General Conditions: The General Conditions, attached to this Agreement, include additional terms and conditions which are incorporated into this Agreement including limitation of the Engineer's liability for the services.

4.2 Total Agreement: This Agreement, (together with the General Conditions) constitutes the entire agreement between the Client and the Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

4.3 Designated Representatives: With the execution of this Agreement, the Engineer and the Client shall designate specific individuals to act as representatives with respect to the services to be performed or furnished by the Engineer and responsibilities of the Client under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of the respective party whom the individual represents.

4.4 Engineer's Certifications: The Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

| **CLIENT** | **ENGINEER** |
|---|---|
| |  |
| By: | By: Michael Robinson, SE |
| Title: | Title: Principal |
| Date Signed: | Date Signed: February 17, 2026 |

ROSENBERG ASSOCIATES
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# GENERAL CONDITIONS

CLIENT **Ivins City**
85 North Main Street
Ivins, UT 84738

PROJECT **15252-26**
Ivins Fire Station Addition Structural Design
Ivins, UT

**ARTICLE 1 – ADDITIONAL CLIENT RESPONSIBILITIES**

1.1 In addition to other responsibilities of the Client as set forth in this Agreement, the Client shall at its expense:

1.1.1 *Client Project Requirements:* Provide the Engineer with all criteria and full information as to the Client's requirements for the project, including design objectives, constraints, performance requirements, and any budgetary limitations.

1.1.2 *Available Site and Project Information:* Furnish to the Engineer any other available information pertinent to the project including data relative to previous designs, or investigation at or adjacent to the project site. The Client shall be responsible for, and the Engineer may rely upon, the accuracy and completeness of furnished information pursuant to this Agreement, and the Engineer may use such information in performing services under this Agreement.

1.1.3 *Site Access:* Arrange for safe access to the project property for the Engineer to perform services under the Agreement.

1.1.4 *Client Furnished Information*. If Client furnishes to Engineer designs, drawings or specifications for use, reproduction, modification or completion by Engineer in the performance of the Engineer's services, then (i) Client represents and warrants to Engineer that Client possesses the rights, licenses and/or authorizations including, without limitation, all intellectual property rights, licenses and authorizations, required for Engineer to use, reproduce, modify and complete such designs, drawings and/or specifications in the performance of the Engineer's services; and (ii) Client agrees to indemnify, defend and hold harmless Engineer and the Consultants and their past and current owners, officers, directors, employees and agents, and each of them, from and against all claims, liabilities, damages, costs and expenses (including reasonable attorneys' fees and costs and expenses of dispute resolution) caused by, arising out of or based in whole or in part upon any claim alleging that the Engineer and/or the Consultants were not authorized to use, reproduce, modify or complete such designs, drawings or specifications delivered to Engineer for the performance of Engineer's services.

**ARTICLE 2 – STANDARDS OF PERFORMANCE**

2.1 Standard of Care: The standard of care for all professional engineering and related services performed or furnished by the Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. The Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with the Engineer's services.

2.2 Technical Accuracy: The Client shall not be responsible for discovering deficiencies in the technical accuracy of the Engineer's services. The Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in the Client-furnished information.

2.3 Consultants: The Engineer may employ consultants to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by the Client. The Engineer's consultants may employ subconsultants. As used in these General Conditions, the term "Consultant" shall mean collectively the Engineer's consultants, and the subconsultants of any tier engaged directly or indirectly by or under the Engineer's consultants.

2.4 Reliance on Others: Subject to the standard of care set forth in Paragraph 2,1, the Engineer and the Consultants may use or rely upon information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

2.5 Compliance with Laws and Regulations, and Policies and Procedures: The Engineer and the Client shall comply with applicable laws and regulations. This Agreement is based on laws and regulations and the Client-provided written policies and procedures as of the effective date. Changes after the effective date to these laws and regulations, or to the Client-provided written policies and procedures, may be the basis for modifications to the Client's responsibilities or the Engineer's scope of services.

2.6 The Engineer shall not be required to sign any documents that would result in the Engineer having to certify, guarantee, or warrant conditions whose existence the Engineer cannot ascertain. The Client agrees not to make resolution of any dispute with the Engineer or payment to the Engineer contingent upon the Engineer signing any such documents.

2.7 Opinions of Probable Construction Cost: The Engineer's opinions of probable construction cost are to be made on the basis of the Engineer's experience and qualifications and represent the Engineer's best judgment as an experienced and qualified professional generally familiar with the construction industry. However, because the Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, the Engineer cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from opinions of probable construction cost prepared by the Engineer.

2.8 Design Without Construction Phase Services: The Engineer shall be responsible only for those Construction Phase services expressly required of the Engineer in this Agreement. With the exception of such expressly required services, the Engineer shall have no design, shop drawing review, or other obligations during construction and the Client assumes all responsibility for the application and interpretation of the construction standards, review and response to Contractor claims, contract administration, revisions during construction, construction surety bonding and insurance

requirements, construction observation and review, review of payment applications, and all other necessary Construction Phase engineering and professional services. The Client waives all claims against the Engineer that may be connected in any way to Construction Phase engineering or professional services except for those services that are expressly required herein.

2.9 Construction Engineering Site Presence: If the Engineer provides a site presence during project construction as part of this Agreement, the purpose of such visits is to observe as an experienced and qualified design professional the progress of Contractor's executed work. Based on information obtained during such visits and observations, the Engineer will determine in general if the Work is proceeding in accordance with the construction standards, and the Engineer shall keep the Client informed of the progress of the work.

2.9.1 Such visits by the Engineer are not intended to be exhaustive or to extend to every aspect of Contractor's work or to involve detailed inspections of Contractor's work beyond the responsibilities specifically assigned to the Engineer in this Agreement, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the work based on the Engineer's exercise of professional judgment.

2.9.2 The Engineer shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over Contractor's work, nor shall the Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the site, for safety precautions and programs incident to Contractor's work, nor for any failure of Contractor to comply with laws and regulations applicable to Contractor's furnishing and performing the work. Accordingly, the Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish or perform the work.

2.9.3 While at the project site, the Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's and the Client's safety programs of which the Engineer has been informed in writing.

2.10 Limitation of Responsibilities: The Engineer shall not be responsible for the acts or omissions of any contractor, supplier, or others performing or furnishing any of the work, for safety or security at the site, or for safety precautions and programs incident to contractor's work, during the Construction Phase or otherwise. The Engineer shall not be responsible for the failure of any contractor to perform or furnish the work in accordance with the contract documents.

## ARTICLE 3 – USE OF DOCUMENTS

3.1 All documents authored by Engineer and/or the Consultants, in the performance of the Engineer's services are instruments of service (the "Instruments of Service") in respect to the project, and the author of the Instruments of Service shall retain the ownership, reserved rights and property interests therein (including the copyright and the right of reuse) whether or not the project is completed. The Client shall not rely on any Instrument of Service unless it is in printed form, signed by the Engineer or one of the Consultants.

3.2 Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such files will be at the user's sole risk. Hard copies govern on any discrepancy with the electronic files.

3.3 The Client may make and retain copies of the Instruments of Service in connection with use on the project. The Engineer grants the Client a limited license to use the Instruments of Service on the project, subject to receipt by the Engineer of full payment for all the Engineer's services relating to the project. The Client acknowledges that such Instruments of Service are not intended or represented to be suitable for use on the project unless completed by the Engineer, or for use by the Client or others on extensions of the project, on other projects, or for other purposes, without written verification by the Engineer.

3.4 If the Engineer at the Client's request verifies the suitability of the Instruments of Service for use by the Client or others on extensions of the project, on other projects, or for other purposes, or adapts them for any other purpose, then the Client shall compensate the Engineer in an amount to be agreed upon by the Client and the Engineer.

3.5 Unauthorized Use of Instruments of Service: The Client shall not alter or amend any Instrument of Service without the written authorization of the Engineer. To the fullest extent permitted by law, the Client shall indemnify, defend and hold harmless the Engineer and the Consultants and their past and current owners, officers, directors, employees and agents, and each of them, from and against any and all claims, liabilities, damages, costs and expenses (including reasonable attorneys' fees and costs and expenses of dispute resolution) arising out of or based in whole or in part upon any unauthorized use or modification of the Instruments of Service by the Client or any person or entity that obtained the Instruments of Service from or through the Client or the Client's agents or representatives.

## ARTICLE 4 – INSURANCE

4.1 The Engineer represents that it now carries – and will continue to carry during the term of this Agreement – insurance policies to cover Worker's Compensation, Employer's Liability, Commercial General Liability, and Business Automobile Liability. If requested, the Engineer shall provide to the Client certificates of the aforementioned insurance.

## ARTICLE 5 – SUSPENSION AND TERMINATION

5.1 Suspension: The Client may suspend the project for up to 90 days upon advance written notice to the Engineer. The Engineer may, after giving advance written notice to the Client, suspend services if the Engineer's performance is substantially delayed through no fault of the Engineer.

5.2 Termination: Services under this Agreement may be terminated for the following:

5.2.1 *For Cause:* Termination may be made by either party upon 30-day written notice in the event of failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

5.2.2 *For Convenience:* Termination may be made by the Client effective upon the Engineer's receipt of notice from the Client.

5.3 Payments Upon Suspension/Termination: In the event of suspension/termination, the Engineer will be entitled to receive full payment for all services performed or furnished in accordance with this Agreement incurred through the effective date of suspension/termination. If the Client terminates this Agreement without cause, the Client shall pay to the Engineer the Engineer's reasonable fees and expenses on a time and materials basis to wind down the project in the Engineer's office.

**ARTICLE 6 – SUCCESSORS, ASSIGNS, AND BENEFICIARIES**

6.1 the Client and the Engineer are hereby bound and the successors, executors, administrators, and legal representatives of the Client and the Engineer are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives of such other party, in respect of all Agreement covenants and obligations.

6.2 Assignment: Neither the Client nor the Engineer shall transfer or assign this Agreement, whether before or after the completion of the Engineer's services, without the prior written consent of the other. Neither the Client nor the Engineer shall transfer or assign any right, interest or claim for damages arising under this Agreement, whether before or after the completion of the Engineer's services, without the prior written consent of the other. Any assignment of this Agreement or any right, interest or claim for damages without such prior written consent shall be null, void and of no effect.

6.3 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 other 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 the Engineer agree to require a similar provision in all contracts with contractors, subcontractors, Consultants, vendors and other entities involved in the work of this Agreement to carry out the intent of this provision.

**ARTICLE 7 – DISPUTE RESOLUTION**

7.1 The Client and the Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice. If the parties fail to resolve a dispute through negotiation, the Engineer and the Client agree to submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("Disputes") to mediation. If such mediation is unsuccessful in resolving a Dispute, then the parties may exercise their rights under law.

**7.2 Legal Action by the Client: All legal actions by the Client against the Engineer or the Consultants alleging any failure to perform the Engineer's services in accordance with this Agreement or in accordance with the standard of care required by applicable law, or alleging any other cause of action arising out of the Engineer's services, shall be barred two years from the date the Client knew or should have known of Client's claim, provided, however, no such legal action shall under any circumstances be asserted by the Client more than four years after the substantial completion date of Engineer's services.**

**ARTICLE 8 – INDEMNIFICATION AND LIMITATION OF LIABILITY**

8.1 Indemnification:

8.1.1 The Engineer agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Client, and its present and former officers, directors, partners, employees, shareholders and owners from and against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Engineer's negligent performance of professional services under this Agreement and that of the Consultants or anyone for whom the Engineer is legally liable.

8.1.2 The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Engineer, and its present and former officers, directors, partners, employees, shareholders, owners and the Consultants from and against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Client's negligent acts in connection with the Project and the acts of its contractors, subcontractors or consultants or anyone for whom the Client is legally liable.

8.1.3 Neither the Client nor the Engineer shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence or for the negligence of others.

8.2 Limitation of Liability: In recognition of the relative risks and benefits of the Project to both the Client and the Engineer, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of the Engineer and the Consultants, and their present and former officers, directors, partners, employees, shareholders, owners and subconsultants for any and all claims, losses, costs, damages or liabilities of any nature whatsoever, or claims expenses from any cause or causes, including attorneys' fees and costs and expert-witness fees and costs, so that the total aggregate liability of the Engineer and the Consultants, and their present and former officers, directors, partners, employees, shareholders, owners and subconsultants shall not exceed $50,000, or the Engineer's total fees for services rendered on the Project, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising (including, without limitation, breach of contract, tort, strict liability or statutory liability), unless otherwise prohibited by law.

8.3 Consequential Damages: Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Client, the Engineer not the Consultants, nor their respective present or former officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to this Agreement or services performed pursuant to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation and any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of express or implied warranty. Both the Client and the Engineer shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.

**ARTICLE 9 – CONFIDENTIALITY**

9.1 The Engineer agrees to keep confidential and not to disclose to any person or entity, other than the Engineer's employees, the Consultants and the general contractor and subcontractors, if appropriate, any data or information not previously known to or generated by the Engineer that is furnished to the Engineer and marked "Confidential" by the Client. These provisions shall not apply to information in whatever form that is in the public domain, nor shall they restrict the Engineer from giving notices required by law or complying with an order to provide information or data when such an order is issued by a court, administrative agency or other legitimate authority, or if disclosure is reasonably necessary for the Engineer to defend itself from any legal action or claim.

**ARTICLE 10 – EXPERT INVESTIGATION, EXPERT CONSULTING AND EXPERT WITNESS SERVICES**

10.1 Indemnification for Claims by Parties or Participants to Dispute: If the Client has requested that the Engineer's services include expert investigation, expert consulting or expert witness services for or in connection with any distress to any structure, or any real or personal property, any possible or alleged defect in any structure or any real or personal property, or any possible or alleged negligence or other fault of any person or entity that may have caused injury or damage to the Client, the Client agrees to indemnify, defend and hold harmless the Engineer and the Consultants and their past and current owners, officers, directors, employees and agents, and each of them (the "Indemnitees"), from and against any and all claims, liabilities, damages, costs and expenses (including reasonable attorneys' fees and costs and expenses of dispute resolution) arising out of or based in whole or in part upon any claims or demands made or threatened against the Indemnitees, or any one or more of them, by any persons or entities a party to, a participant in or associated with any dispute, lawsuit, arbitration or other legal or administrative proceeding concerning the distress, defect, or negligence or other fault that is the subject of the expert investigation, expert consulting and/or expert witness services of this Agreement, which claims or demands are in whole or in part based upon or arise out of, or are in any manner related to, the expert investigation, expert consulting, or expert witness services provided by the Indemnitees, or any one or more of them, provided, however, the Client shall not be required to indemnify or hold harmless the Indemnitees, or any one or more of them, from or against any claim or demand if the Indemnitees, or any one or more of them, are adjudicated in a final unappealed or unappealable judgment to have engaged in fraud, perjury or other intentional wrongful conduct in the performance of the expert investigation, expert consulting or expert witness services of this Agreement.

10.2 Repair or Remediation Recommendations: If the Client has requested that the Engineer's services include expert investigation, expert consulting or expert witness services for or in connection with any distress to any structure or any real or personal property, if the Engineer provides any recommendations for the repair or remediation of any structure or any real or personal property in the performance of such expert investigation, expert consulting or expert witness services, the Client understands and agrees that such repair or remediation recommendations are made for the sole purpose of the preparation by others of final engineering plans and specifications of the repair or remediation recommended by the Engineer and/or of the preparation by others of cost of repair estimates or reports of the repair or remediation recommended by the Engineer. Such repair or remediation recommendations made by the Engineer are not final engineering plans or specifications and are not issued by the Engineer for construction of the repair or remediation recommended by the Engineer. Unless the Engineer enters into a separate written agreement with the Client or others to provide the final engineering plans and specifications for a repair or remediation of a structure or other real or personal property recommended by the Engineer and the Engineer issues for construction final professionally sealed plans and specifications for the repair or remediation, the Engineer is not the engineer of record of any repair or remediation of any structure or real or personal property performed by Client or others following Engineer's issuance of repair or remediation recommendations.

**ARTICLE 11 – MISCELLANEOUS PROVISIONS**

11.1 Controlling Law: This Agreement is to be governed by the law of the state or jurisdiction in which the project is located.

11.2 Notices: Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by fax, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

11.3 Survival: All representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive the completion of the Engineer's services for the project and the termination of the Agreement for any reason.

11.4 Severability: Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the Client and the Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

11.5 Waiver: A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.