

## **RESOLUTION NO. 13-018**

BE IT RESOLVED by the City Council of the City of Decatur Alabama, that it hereby ratifies and approves the attached Agreement for professional services {STOPA-9215(003)} Additional Lanes on Spring Avenue between GRESHAM, SMITH AND PARTNERS and the CITY to continue the process of that firm providing engineering services for the above described project previously approved by the City Council; and the Mayor is authorized to execute on behalf of the CITY the necessary documents relating to the provision of such services.

ADOPTED this 22<sup>nd</sup> day of January 2013.

**AGREEMENT FOR PROFESSIONAL SERVICES  
STPOA-9215(003)  
ADDITIONAL LANES ON SPRING AVENUE  
FROM DAY ROAD TO CEDAR LAKE ROAD**

This **AGREEMENT** is made and entered into by and between the **CITY OF DECATUR, a Municipal Corporation located in the State of Alabama**, hereinafter referred to as the **CITY**, and **GRESHAM, SMITH AND PARTNERS**, which is qualified to do business in the State of Alabama, and has its principal office at 1400 Nashville City Center, 511 Union Street, Nashville, TN, 37219, hereinafter referred to as the **ENGINEER**. For purposes of this **AGREEMENT**, **ALDOT** refers to the **ALABAMA DEPARTMENT OF TRANSPORTATION**, and **STATE** refers to the **STATE OF ALABAMA**.

**WHEREAS**, **ENGINEER** has agreed and by these presents does agree with the **CITY** for the consideration hereinafter mentioned to provide update and design engineering for **ALDOT Project Number STPOA-9215(003), additional lanes on Spring Avenue from Day Road to Cedar Lake Road**, hereinafter referred to as **PROJECT**, for the **CITY**;

**NOW, THEREFORE**, for and in consideration of the mutual covenants hereinafter stipulated, it is hereby agreed between the parties as follows:

The **ENGINEER** shall meet the requirements for conformance with the Standards adopted by and approved by the Secretary of Transportation in cooperation with the **STATE** and shall ascertain the written practices of the **STATE** prior to beginning any work on this **PROJECT**. All work required under this **AGREEMENT** will be performed in accordance with these standard practices and any special requirements hereinafter set forth. All work performed by the **ENGINEER** under this **AGREEMENT** shall be subject to the Review, Approval and Acceptance of the **CITY, STATE**, and Federal Highway Administration, where applicable.

**THIS AGREEMENT** is effective as of the date of its execution set out below, between **CITY** and **ENGINEER**. The **PROJECT**, of which **ENGINEER's** services under this **AGREEMENT** are a part, is generally described as follows: **ENGINEER** shall update and revise the plans for the Spring Avenue Widening Project previously prepared by **ENGINEER** under separate agreement to 2013 ALDOT standards and provide the required clear zone adjacent to the roadway. **ENGINEER** will make necessary revisions to the plans and Right of Way (**ROW**) acquisition documents as further described in **ENGINEER's** proposal dated December 6, 2012, attached and made a part of this **AGREEMENT** as Exhibit A. **CITY** and **ENGINEER** further agree as follows:

**ARTICLE 1 – ENGINEER'S SERVICES**

**The ENGINEER** shall provide the Basic and Additional Services set forth herein and in Exhibit A. Upon this **AGREEMENT** becoming effective, **ENGINEER** is authorized to begin Basic Services as set forth in Exhibit A.

## ARTICLE 2 – CITY’S RESPONSIBILITIES

### The CITY shall:

- A. Provide **ENGINEER** with **CITY’s** requirements, criteria and information for the **PROJECT**; furnish copies of all design and construction standards which **CITY** will require to be included in the drawings and specifications; and furnish copies of **CITY’s** standard forms, conditions, and related documents for **ENGINEER** to include in the Bidding Documents, when applicable; and furnish any other available information pertinent to the **PROJECT** including reports and data relative to previous designs or investigation at or adjacent to the site.
- B. Furnish or otherwise make available such additional **PROJECT** related information and data as is reasonably required to enable **ENGINEER** to complete its Basic and Additional Services (unless obtaining or providing this information is included in the **ENGINEER’S** scope of services in Exhibit A). Such additional information or data would generally include the following: (1) property descriptions; (2) zoning, deed, and other land use restrictions; (3) property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points; (4) environmental assessments, audits, investigations and impact statements, and other relevant environmental or cultural studies as to the **PROJECT**, the Site, and adjacent areas; (5) data or consultations as required for the **PROJECT** but not otherwise identified in the **AGREEMENT** or the Exhibits thereto; (6) all surveys will be provided in hard copy in addition to digital format.
- C. Give prompt written notice to **ENGINEER** whenever **CITY** observes or otherwise becomes aware of any Constituent of Concern or of any other development that affects the scope or time of performance of **ENGINEER’s** services, or any defect or nonconformance in **ENGINEER’s** services or in the work of any Contractor.
- D. Authorize **ENGINEER** to provide Additional Services as set forth in Exhibit A of the **AGREEMENT** as required.
- E. Arrange for safe access to and make all provisions for **ENGINEER** to enter upon public and private property as required for **ENGINEER** to perform services under the **AGREEMENT**.
- F. Examine all alternate solutions, studies, reports, sketches, drawings, specifications, proposals, and other documents presented by **ENGINEER** and render in writing timely decisions pertaining thereto.
- G. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the **PROJECT** designed or specified by

**ENGINEER** and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the **PROJECT**.

- H. Provide all legal, insurance and accounting services, including auditing services, which may be reasonably necessary at any time for the **PROJECT** to meet the **CITY**'s needs and interests.
- I. Advise **ENGINEER** of the identity and scope of services of independent consultants employed by **CITY** and coordinate the services of such consultants with those services provided by **ENGINEER**.
- J. Furnish to **ENGINEER** data as to **CITY**'s anticipated costs for services to be provided by others for **CITY** so that **ENGINEER** may assist **CITY** in collating the various cost categories which comprise Total **PROJECT** Costs.
- K. If **CITY** designates a construction manager or an individual or entity other than, or in addition to, **ENGINEER** to represent **CITY** at the Site, define and set forth the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of **ENGINEER**.
- L. Provide the services of an independent testing laboratory, if needed, to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of **CITY**, prior to their incorporation into the Work with appropriate professional interpretation thereof.
- M. Provide **ENGINEER** with the findings and reports generated by the entities providing services to **CITY** pursuant to Paragraph L.
- N. Inform **ENGINEER** in writing of any specific requirements of safety or security programs that are applicable to **ENGINEER**, as a visitor to the Site.

### **ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES**

#### **3.01 General**

- A. **ENGINEER** shall complete its obligations within a reasonable time. If specific periods of time for rendering services or specific dates by which services are to be completed are set forth in Exhibit A, they are hereby agreed to be reasonable. If such durations and scheduled dates for the completion of services are not set forth in Exhibit A, then **CITY** and **ENGINEER** shall establish such periods of time and dates as a first order of business upon execution of this **AGREEMENT**.

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

### 3.02 Suspension

- A. If **CITY** fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, or if **ENGINEER**'s services are delayed through no fault of **ENGINEER**, **ENGINEER** may, after giving seven days written notice to **CITY**, suspend services under this **AGREEMENT**.
- B. If **ENGINEER**'s services are delayed or suspended by **CITY** for more than 90 days through no fault of **ENGINEER**, **ENGINEER** shall be entitled to equitable adjustment of rates and amounts of compensation to reflect, reasonable costs incurred by **ENGINEER** in connection with, among other things, such delay or suspension and reactivation and the fact that the time for performance under this **AGREEMENT** has been revised.

## ARTICLE 4 – ENGINEER'S COMPENSATION

### 4.01 Methods of Payment for Services and Reimbursable Expenses

**CITY** shall pay **ENGINEER** for Basic Services as set forth in Exhibit A.

### 4.02 Other Provisions Regarding Compensation

- A. **Preparation of Invoices.** Invoices will be prepared in accordance with **ENGINEER**'s standard invoicing practices and will be submitted to **CITY** by **ENGINEER**, unless otherwise agreed. The amount billed in each invoice will be based on a percentage of the lump sum fee amount for services described in Exhibit A completed during the invoicing period.
- B. **Payment of Invoices.** Invoices are due and payable within 30 days of receipt. If **CITY** fails to make any payment due **ENGINEER** for services and expenses within 30 days after receipt of **ENGINEER**'s invoice therefore, the amounts due **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. In addition, **ENGINEER** may, after giving seven days written notice to **CITY**, suspend services under this **AGREEMENT** until **ENGINEER** has been paid in full all amounts due for

services, expenses, and other related charges. Payments will be credited first to interest and then to principal.

- C. **Disputed Invoices.** In the event of a disputed or contested invoice, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.
- D. **Payments Upon Termination.**

In the event of:

1. Any termination, **ENGINEER** will be entitled to invoice and be paid by **CITY** in accordance with Exhibit A for all services actually performed and all reimbursable Expenses incurred through the effective date of termination.
2. Termination by **CITY** for convenience or by **ENGINEER** for cause, **ENGINEER** shall be entitled to invoice **CITY** and shall be paid a reasonable amount for services and expenses directly attributable to termination, such as reassignment of personnel, costs of terminating contracts with **ENGINEER**'s consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit A.

## **ARTICLE 5 - OPINIONS OF COST**

### **5.01 Opinions of Construction Cost**

**ENGINEER**'s opinions of probable construction cost are to be made on the basis of **ENGINEER**'s experience and qualifications and represent **ENGINEER**'s best judgment as an experienced and qualified professional generally familiar with the construction industry. However, because **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, **ENGINEER** cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from opinions of probable construction cost prepared by **ENGINEER**. If **CITY** requires greater assurance as to probable construction cost, **CITY** must employ an independent cost estimator.

### **5.02 Designing to Construction Cost Limit**

A Construction Cost Limit for the Work is not a requirement of the services performed under this **AGREEMENT**.

### 5.03 Opinions of Total Project Costs

**ENGINEER** assumes no responsibility for the accuracy of opinions of Total **PROJECT** Costs.

## ARTICLE 6 - GENERAL CONSIDERATIONS

### 6.01 Standards of Performance

**A. Standard of Care.** The standard of care for all professional engineering and related services performed or furnished by **ENGINEER** under this **AGREEMENT** will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances, time and location. **ENGINEER** makes no warranties, express or implied, under this **AGREEMENT** or otherwise, in connection with **ENGINEER's** services.

**B. Technical Accuracy.** **CITY** shall not be responsible for discovering deficiencies in the technical accuracy of **ENGINEER's** services. **ENGINEER** shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in **CITY** furnished information.

**C. Consultants.** **ENGINEER** may employ such consultants as **ENGINEER** deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by **CITY**. **ENGINEER** will notify **CITY** of its decision to employ such a consultant so that any objection may be possible before substantial expense is incurred.

**D. Right to Rely.** **CITY** shall be responsible for, and **ENGINEER** may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by **CITY** to **ENGINEER** pursuant to this **AGREEMENT**. **ENGINEER** may use such documentation in performing or furnishing services under this **AGREEMENT**.

**E. Reliance on Others.** Subject to the standard of care set forth herein, **ENGINEER** and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

**F. Compliance with Laws and Regulations.** **ENGINEER** and **CITY** shall comply with applicable laws or regulations. **ENGINEER** shall comply with **CITY**-mandated standards, subject to the standard of care set forth herein and to the extent compliance is not inconsistent with professional practice requirements. This **AGREEMENT** is based on these requirements as of its Effective Date. Changes to these requirements after the Effective Date of this **AGREEMENT** may be the basis for modifications to **CITY's**

responsibilities or to **ENGINEER**'s scope of services, times of performance, or compensation.

**G. Certifications.** **ENGINEER** shall not be required to sign any documents that would result in the **ENGINEER**'s having to certify, guarantee or warrant the existence of conditions whose existence the **ENGINEER** cannot ascertain. **CITY** agrees not to make resolution of any dispute with the **ENGINEER** or payment of any amount due to the **ENGINEER** in any way contingent upon the **ENGINEER**'s signing any such certification.

**H. Contractor's Means and Methods.** **ENGINEER** shall not at any time supervise, direct, control, or have authority over any contractor work, nor shall **ENGINEER** have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work.

**I. Contractor's Performance and Actions.** **ENGINEER** neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents. **ENGINEER** shall not be responsible for the acts or omissions of any Contractor, subcontractor, or supplier, or of any of their employees or of any other persons (except **ENGINEER**'s own agents, employees, and consultants) at the Site or otherwise furnishing or performing any Work; or for any decision made regarding the Contract Documents, or any application, interpretation, or clarification, of the Contract Documents, other than those made by **ENGINEER**.

**J. Site Safety.** While at the Site, **ENGINEER**'s employees and representatives shall comply with the specific applicable requirements of Contractor's and **CITY**'s safety programs of which **ENGINEER** has been informed in writing.

## **6.02 Authorized Project Representatives**

**ENGINEER** and **CITY** shall designate specific individuals to act as representatives with respect to the services to be performed or furnished by **ENGINEER** and responsibilities of **CITY** under this **AGREEMENT**. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the **PROJECT** on behalf of each respective party so as to not delay **ENGINEER**'s services.

## **6.03 Design Without Construction Phase Services**

**ENGINEER** shall be responsible only for those construction phase services expressly required of **ENGINEER** in Exhibit A. With the exception of such expressly required services, **ENGINEER** shall have no design, shop drawing review, or other obligations during construction



and **CITY** 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 in Exhibit A.

#### 6.04 Use of Documents

- A. All Documents are instruments of service in respect to this **PROJECT**, and **ENGINEER** and its consultants shall retain an ownership and property interest therein (including copyright and right of reuse) whether or not the **PROJECT** is completed.
- B. Documents that may be relied upon by **CITY** are limited to the printed copies (also known as hard copies) that are signed or sealed by the **ENGINEER** or its consultants. Files in electronic media format of text, data, graphics, or of other types that are furnished by **ENGINEER** are only for convenience. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- C. The party receiving electronic files agrees that it will perform acceptance tests or procedures within 3 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 3-day acceptance period will be corrected by the party delivering the electronic files.
- D. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.
- E. **ENGINEER** grants **CITY** a non-exclusive license to use the Documents on the **PROJECT** and to make and retain copies of Documents for reference in connection with extensions of the **PROJECT**, and for related uses of the **CITY**, subject to receipt by **ENGINEER** of full payment for all services relating to preparation of the Documents. **CITY** acknowledges that: (1) such Documents are not intended or represented to be suitable for use on the **PROJECT** unless completed by **ENGINEER**, or for use or reuse by **CITY** or others on extensions of the **PROJECT**, on any other project, or for any other use or purpose, without written verification or adaptation by **ENGINEER**; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by **ENGINEER**, as appropriate for the specific purpose intended, will be at **CITY**'s sole risk and without liability or legal exposure to **ENGINEER** or to its officers, directors, members, partners, employees, and consultants, and **CITY**

specifically indemnifies and holds **ENGINEER** harmless to the extent allowed by law for such use, reuse or modification; and (3) such limited license to **CITY** shall not create any rights in third parties.

- F. Any verification or adaptation of the Documents for extensions of the **PROJECT** or for any other project will entitle **ENGINEER** to further compensation at rates to be agreed upon by **CITY** and **ENGINEER**.

#### 6.05 Insurance

- A. **ENGINEER** shall maintain insurance coverage as follows:
  - 1. **WORKERS' COMPENSATION** insurance in amounts required by state law and Employer's Liability Insurance with limits of not less than \$500,000 each accident/each disease/policy limit on disease.
  - 2. **COMMERCIAL GENERAL LIABILITY** insurance with \$1,000,000 per occurrence, \$2,000,000 aggregate.
  - 3. **COMMERCIAL AUTOMOBILE LIABILITY** insurance with \$1,000,000 combined single limit each accident.
  - 4. **PROFESSIONAL LIABILITY** insurance with \$1,000,000 each claim and \$1,000,000 annual aggregate.
- B. **ENGINEER** shall cause **CITY** to be listed as an additional insured on **ENGINEER's** Commercial General and Automobile Liability Insurance. **ENGINEER** shall provide Certificates of Insurance evidencing coverage and additional insured's designation as applicable prior to commencement of services.
- C. **CITY** shall require Contractor to purchase and maintain general liability insurance and other insurance as specified in the Contract Documents and to cause **ENGINEER** and its consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the **PROJECT**.
- D. All policies of property insurance relating to the **PROJECT** shall contain provisions to the effect that **ENGINEER's** and its consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against **ENGINEER** or its consultants, or any insureds, additional insureds, or loss payees thereunder.

## 6.06 Termination

- A. The obligation to provide further services under this **AGREEMENT** may be terminated:
1. For Cause,
    - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
    - b. By **ENGINEER**:
      - (1) Upon seven days written notice if **CITY** demands that **ENGINEER** furnish or perform services contrary to **ENGINEER**'s responsibilities as a licensed professional; or
      - (2) Upon seven days written notice if the **ENGINEER**'s services for the **PROJECT** are delayed or suspended for more than 90 days for reasons beyond **ENGINEER**'s control.
      - (3) **ENGINEER** shall have no liability to **CITY** on account of such termination except for work for which **ENGINEER** has billed the **CITY**.
    - c. Notwithstanding the foregoing, this **AGREEMENT** will not terminate if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30-day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
  2. For convenience, by **CITY** effective upon **ENGINEER**'s receipt of notice from **CITY**.
- B. The terminating party may set the effective date of termination at a time up to 30 days later than otherwise provided to allow **ENGINEER** to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble **PROJECT** materials in orderly files.

## 6.07 Controlling Law

This **AGREEMENT** is to be governed by the law of the State of Alabama.

## 6.08 Dispute Resolution

- A. For all conflicts arising out of this **AGREEMENT** or the **PROJECT**, **CITY** and **ENGINEER** agree to negotiate disputes between them in good faith for a period of 30 days after notice.
- C. **CITY** and **ENGINEER** agree that any disputes not settled between them shall be submitted to non-binding mediation, unless the parties mutually agree otherwise. The mediation shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Mediation shall proceed in advance of legal or equitable proceedings. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the **PROJECT** is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.
- D. If such mediation is unsuccessful in resolving a dispute, then either party may seek to have the dispute resolved by a court of competent jurisdiction. In the event of litigation arising from or related to this **AGREEMENT** or the services provided under this **AGREEMENT**, the prevailing party shall be entitled to recover in accordance with State law.

## 6.09 Environmental Condition of Site

- A. **CITY** has disclosed to **ENGINEER** in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location and represents to **ENGINEER** that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing exist at the Site.
- B. If **ENGINEER** encounters or learns of an undisclosed Constituent of Concern at the Site, then **ENGINEER** shall notify (1) **CITY** and (2) appropriate governmental officials if **ENGINEER** reasonably concludes that doing so is required by applicable laws or regulations.
- C. Both parties acknowledge that **ENGINEER**'s scope of services does not include any services related to Constituents of Concern. If an undisclosed Constituent of Concern is encountered, or if investigative, remedial action or other professional

services are necessary with respect to disclosed or undisclosed Constituents of Concern, then **ENGINEER** may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the **PROJECT** affected thereby until **CITY**: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable laws and regulations.

- D. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of **ENGINEER**'s services under this **AGREEMENT**, then the **ENGINEER** shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this **AGREEMENT** for cause.
- E. **CITY** acknowledges that **ENGINEER** is performing professional services for **CITY** and that **ENGINEER** is not and shall not be required to become an "owner" "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in CERCLA, as amended, which are or may be encountered at or near the Site in connection with **ENGINEER**'s activities under this **AGREEMENT**.

#### 6.10 Allocation of Risks

**A. Indemnification.**

To the fullest extent permitted by law, **ENGINEER** shall indemnify and hold harmless **CITY** and **CITY**'s officers, directors, members, partners, consultants, and employees from and against any and all costs, losses, and damages (including but not limited to reasonable fees and charges of all professionals, and all court costs) to the extent caused by the negligent acts or omissions of **ENGINEER** or **ENGINEER**'s officers, directors, partners, employees, or consultants in the performance services under this **AGREEMENT**.

**B. Mutual Waiver.**

To the fullest extent permitted by law, **CITY** and **ENGINEER** waive consequential damages for claims, disputes or other matters in question arising out of or relating to this **AGREEMENT**. Both the **CITY** and **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**.

**C. Limitation of Liability.**

In recognition of the relative risk of benefits of the **PROJECT** to both **CITY** and **ENGINEER**, the risks have been allocated such that **CITY** agrees, to make a diligent

effort to limit the liability of the **ENGINEER** to the fullest extent permitted by law, to limit the liability of **ENGINEER** and its consultants to the **CITY** and to all construction contractors and subcontractors on the **PROJECT** for any and all claims expenses from any cause or causes. Such claims and causes include, but are not limited to negligence, professional errors or omissions, strict liability, breach of contract or warranty.

#### **6.11 Successors, Assigns and Beneficiaries**

- A.** The **CITY** and **ENGINEER**, respectively, bind themselves, their agents, successors, assigns and legal representatives to this **AGREEMENT**.
- B.** Neither the **CITY** nor **ENGINEER** shall assign this **AGREEMENT** without the written consent of the other.
- C.** 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 **CITY** or **ENGINEER**.

#### **6.12 Miscellaneous Provisions**

- A. Notices.** Notices will be in writing, addressed to the appropriate party at its address on the signature page and given personally, or by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. Survival and Severability.** All express representations, waivers, indemnifications, and limitations of liability included in this **AGREEMENT** will survive its completion or termination for any reason. Should any provisions of this **AGREEMENT** be determined to be invalid, illegal or unenforceable by a court of competent jurisdiction, then such provision shall be deemed void and all remaining provisions shall continue in force. Further, such provision so determined shall be amended by the parties hereto so as to make it valid, legal and enforceable, but keeping it close to the original meaning as possible.
- C. 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**.
- D. Accrual of Claims:** To the fullest extent permitted by law, all causes of action arising under this **AGREEMENT** shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

## 6.13 Definitions

- A. Constituent of Concern.** Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (CERCLA); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (RCRA); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; and (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
- B. Contract Documents.** Those items so designated in the construction contract, including the drawings, specifications, construction agreement, and general and supplementary conditions. Only printed or hard copies of the items listed in the construction contract are Contract Documents. Approved shop drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
- C. Contractor.** Any entity or individual with which **CITY** has entered into a construction contract.
- D. Documents.** Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by **ENGINEER** to **CITY** pursuant to this **AGREEMENT**.
- E. Substantial Completion.** The time at which the Work has progressed to the point where, in the opinion of **ENGINEER**, the Work (or a specified part thereof) is sufficiently complete in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
- F. Total Project Costs.** The sum of the construction cost, allowances for contingencies, and the total costs of services of **ENGINEER** and all design professionals and consultants, together with such other **PROJECT**-related costs that **CITY** furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, **CITY**’s costs for legal, accounting, insurance counseling and auditing services, interest and financing

charges incurred in connection with the **PROJECT**, and the cost of other services to be provided by others to **CITY**.

**G. Work.** The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

**ARTICLE 7 – SCOPE OF THIS AGREEMENT**

**7.01 Total Agreement** - This **AGREEMENT** and the Exhibits thereto represents the entire and integrated agreement between **CITY** and **ENGINEER** and supersedes all prior negotiations, representations or agreements, either written or oral. This **AGREEMENT** may be amended only by written instrument signed by both parties.

**7.02** The Exhibits to this **AGREEMENT** include:  
Exhibit A – **ENGINEER’S** Proposal dated December 6, 2012.

**IN WITNESS WHEREOF, CITY** and **ENGINEER** have caused this **AGREEMENT** to be executed by their duly authorized representatives as of the Effective Date written herein.

**CITY: CITY OF DECATUR, ALABAMA**

Date: \_\_\_\_\_ By: \_\_\_\_\_  
Don Kyle, Mayor

ATTEST:

Date: \_\_\_\_\_ By: \_\_\_\_\_  
Stacy Gilley, City Clerk

Address for Giving Legal Notices: Designated Contact for Engineering Issues

Mayor Don Kyle  
City of Decatur  
402 Lee Street, NE  
Decatur, AL 35601  
(256) 341-4503

Mark Petersohn  
City Engineer  
(256) 341-4744  
mpetersohn@decatur-al.gov



**ENGINEER: GRESHAM, SMITH AND PARTNERS**

Date: \_\_\_\_\_ By: \_\_\_\_\_  
Blair Perry, Project Manager

Phone: (205) 298-9232  
Email: blair\_perry@gspnet.com  
Address for Giving Notices:  
1400 Nashville City Center  
511 Union Street  
Nashville, TN 37219-1733