

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

FIRST AMENDMENT TO AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

THIS FIRST AMENDMENT is made and entered into by and between Fort Bend County, (hereinafter “County”), a body corporate and politic under the laws of the State of Texas, and Kavi Consulting, Inc., (hereinafter “Consultant”), a company authorized to conduct business in the State of Texas.

WHEREAS, the parties executed and accepted that certain Consulting Agreement on October 12, 2021, (hereinafter the “Agreement”) pursuant to SOQ 14-025, for certain Professional Engineering services for the 2020 Mobility Bond Project No. 20406 (hereinafter “services”); and

WHEREAS, the parties desire to amend the Agreement for additional services to be provided and increase the total Maximum Compensation under the Agreement for the completion of such additional services.

NOW, THEREFORE, the parties do mutually agree as follows:

1. County shall pay Consultant an additional One Hundred Sixty-Eight Thousand Four Hundred Forty-Three dollars and no/100 (\$168,443.00), for the Services as described in Consultant’s proposal dated June 17, 2022, attached hereto as Exhibit “A” and incorporated herein for all purposes.
2. The Maximum Compensation payable to Project Manager for Services rendered is hereby increased to an amount not to exceed Seven Hundred Thirty-Five Thousand Five Hundred Ninety-Two dollars and no/100 (\$735,592.00), authorized as follows:

\$567,149.00	under the Agreement	
\$168,443.00	under this Amendment	
	TOTAL:	\$735,592.00

3. In no case shall the amount paid by County for all Services under the Agreement, as amended, exceed the Maximum Compensation without written agreement executed by both parties.

4. Certain State Law Requirements for Contracts

- a. Agreement to Not Boycott Israel Chapter 2270 Texas Government Code: By signature below, Project Manager verifies Project Manager does not boycott Israel and will not boycott Israel during the term of this Agreement.
- b. Texas Government Code Section 2251.152 Acknowledgment: By signature below, Project Manager represents pursuant to Section 2252.152 of the Texas Government Code, that Project Manager is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that that are identified under Section 806.051, Section 807.051 or Section 2253.153.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the date signed by the last party hereto.

FORT BEND COUNTY

KAVI CONSULTING, INC

KP George, County Judge

Vijaya Rapolu

Authorized Agent – Signature

Date

VIJAYA RAPOLU

Authorized Agent – Printed Name

ATTEST:

PRESIDENT

Title

Laura Richard, County Clerk

07/25/2022

Date

APPROVED:

J. Stacy Slawinski

J. Stacy Slawinski, P.E., County Engineer

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$ _____ to accomplish and pay the obligation of Fort Bend County under this contract.

Robert Ed Sturdivant, County Auditor

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EXHIBIT A

Kavi Consulting, Inc.

June 17, 2022

Rober McBride, P.E.
Sr. Project Manager, LJA
3600 W. Sam Houston Parkway S,
Suite 600
Houston, Texas 77042

RE: Carwright Road- 400' west of Brightwater to 400' west of FM 1092

Dear Mr. McBride:

Attached please find the fee proposal, from Halff Associates, Inc, for the SUE portion of the design of Carwright Road- 400' west of Brightwater to 400' west of FM 1092. Our proposed fee including all subs for Design Phases of the project is \$168,443.00. The breakdown is as follows:

Phase	Fee
Sue (Half)	\$153,130.00
Coordination (KAVI)	\$15,313.00
Total	\$168,443.00

Please call me at 281-772-9643 if you have any questions. We look forward to working with LJA and Fort Bend County on this project.

Sincerely,

Vijaya Rapolu, P.E.

Vijaya Rapolu, P.E.
Kavi Consulting, Inc.

Encl:

Scope of Services

- Contract from Halff Associates, dated 06-13-2022

1011 Highway 6S, # 307
Houston TX-77077
Ph: 281.772.9643

E-Mail: rapolu.vijaya@kaviconsultinginc.com



June 13, 2022
AVO/P45153.001

Kavi Consulting, Inc.
1011 Highway 6S, #307
Houston, TX 77077

Attn: Mr. Vijaya Rapolu
rapolu.vijaya@kaviconsulting.com

RE: **Proposal for SUE Level 'B' Utility Location Services along Cartwright Road as apart of Fort Bend County, Precinct 4, 2020 Mobility Projects.**

Dear Mr. Rapolu,

Halff Associates, Inc. (Halff) is pleased to submit this proposal for the professional surveying services shown above. Please see the Surveying Scope of Services in Exhibit A below.

SUE Level 'B' Utility Location

SUE Level 'B' Utility Locations, Halff will provide these services for an estimated 65,000 linear feet of underground utilities. Halff will perform these services in accordance with ASCE CI/ASCE 38-02. See attached SUE Scope of Services (Exhibit A).

- The **FEE for the SUE Level 'B' Utility Location services** shall be on a Time and Materials basis with a not to exceed fee of **\$77,630**. See Exhibit B for fee breakdown.

OPTIONAL ITEMS (not included in the above scope)

- Optional Additional Services: **SUE Level 'A' Utility Location (Test Holes)**

Should Fort Bend County require SUE Level 'A' Utility Locations, Halff can provide these services. The fee below is a per Test Hole fee. Halff will perform these services in accordance with ASCE CI/ASCE 38-02. See attached SUE Scope of Services (Exhibit A).

The **FEE for this optional additional service** shall be: **\$1,575 LUMP SUM (per Test Hole.)**

- Optional Additional Services: **Additional Daily Traffic Control Rates**

For activities that require more than one day of traffic control, Halff will contract with a local Traffic Control Contractor.

The **FEE for this optional additional service** shall be: **\$2,200 LUMP SUM (per day.)**





We trust this proposal is satisfactory and appreciate the opportunity to be of service to you. If this proposal meets with your approval, please sign, initial and date in the spaces provided below and return one copy as your order to proceed and approval of the budget.

Yours very truly,
HALFF ASSOCIATES, INC.

A handwritten signature in blue ink that reads "Carolyn S. Swann".

Carolyn Swann, PE
Senior Utility Coordinator

SUE SCOPE OF SERVICES (EXHIBIT A)

Client: Kavi Consulting, Inc. (Kavi)

City/County Name: Missouri City/Fort Bend

Project: Cartwright Road

Halff will perform SUE in accordance with ASCE CI/ASCE 38-02 “Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data.” This standard defines the following Quality Levels:

Quality Level-A: Precise horizontal and vertical location of utilities obtained by the actual exposure (or verification of previously exposed and surveyed utilities) and subsequent measurement of subsurface utilities, usually at a specific point. Minimally intrusive excavation equipment is typically used to minimize the potential for utility damage. A precise horizontal and vertical location, as well as other utility attributes, is shown on plan documents.

Quality Level-B: Information obtained through the application of appropriate surface geophysical methods to determine the existence and approximate horizontal position of subsurface utilities. Quality Level-B data should be reproducible by surface geophysics at any point of their depiction. This information is surveyed to applicable tolerances defined by the project and reduced onto plan documents.

Quality Level-C: Information obtained by surveying and plotting visible above-ground utility features and by using professional judgment in correlating this information to Quality Level-D information.

Quality Level-D: Information derived from existing records or oral recollections.

Quality Level-A Utility Test Holes (Vacuum Excavation):

If desired, up to ten (10) test holes will be performed on various utilities at locations specified by Kavi for an optional additional fee. Halff will cut up to a 12” square test hole, excavate down to utility, record the depth to top of utility, backfill & compact the hole, and restore the surface to its original condition. An iron rod with cap or “x-cut” will be set to mark the approximate centerline location of the utility. A jackhammer will be utilized for work to be performed in asphalt and concrete areas. This Scope of Services includes all test holes being performed under one (1) mobilization.

If test holes are requested on non-conductive/untonable utilities depicted as Quality Level-D where the horizontal location is assumed, Halff will coordinate with Client and respective utility owner, on-site personnel if private property and available records to pinpoint the location to perform the test hole. Due to the concrete/ground conditions, one (1) attempt shall be made, which may or may not expose the subject utility. Should the utility not be exposed, Halff will coordinate with Kavi for direction on digging additional test holes if required and shall be compensated for each test hole dug.

Quality Level-B Utility Designating:

Halff will designate the approximate horizontal position of conductive/toneable utilities within the project limits using geophysical prospecting equipment and mark using paint and/or pin flags. We anticipate the designation of approximately 65,000 linear feet of utilities including buried communication, electric, natural gas, petroleum pipeline, traffic signal, water, waste water/sanitary sewer, and storm drain/storm sewer. Designation of irrigation lines, HDPE lines, gathering lines, asbestos concrete and/or pvc lines, as well as pvc lines without tracer wire or access are not part of this Scope of Services.

Because of limited utility record information and the possibility of non-conductive/un-toneable utilities, Halff cannot guarantee all utilities will be found and marked within the project limits.

Quality Level-C Surveying:

Quality Level-C, survey of above ground utility appurtenances, will be included in the survey scope.

Quality Level B Utility Designation paint markings, pin flags, and above ground utility appurtenances as well the iron rod with cap or “x-cut” for Quality Level-A Test Holes will be surveyed and tied utilizing project survey control provided by Kavi.

Quality Level-D Records Research:

Any available Records will be provided to Halff by Kavi. Halff will perform additional utility record research as needed to successfully complete the project.

As utilities will be depicted based on surveyed appurtenances and provided utility records for Quality Level C/D efforts, Halff will notify Kavi if records are not available or received from respective utility owner.

Because there are situations where the utility does not have a metallic composition, a metallic tracer line attached, or access to insert a tracer line, the approximate location of the utility may be determined by the use of utility records and direct correspondence with the utility owner/representative. In these areas, the information will be considered Quality Level-D, depicted according to utility record information only.

SUE Field Manager / Professional Engineer:

A SUE Field Manager will be on-site for a portion of this project for field crew supervision, field quality control, and coordination with on-site personnel. A Professional Engineer will be responsible for QA/QC, management of the contract, coordination with the project team and signing the final deliverables if required.

SUE Deliverables / CADD:

The Quality Level-B 2D Utility Designation data will be referenced into the survey plans and will be color coded. Deliverables for the Quality Level-A Test Hole excavations will be an 8.5-in. x 11-in. Test Hole Data Form for each Test Hole performed indicating depth, size, location, and other notable characteristics of the utility. Electronic files will be provided in MicroStation and/or AutoCAD format along with PDFs and photos.

Right-of-Entry:

Right-of-Entry is not part of this Scope of Services as work is anticipated within the existing road right-of-way. If right-of-entry is required, it will be performed and provided to Halff by Kavi. Halff will coordinate with property owner(s) once right-of-entry has been obtained.

Permitting:

Street Cut permits will be coordinated with Fort Bend County and/or TxDOT as required.

Work Zone Traffic Control:

Halff will provide standard temporary work zone traffic control consisting of cones and free-standing signage for this project in accordance with the TMUTCD. As exact test holes locations are unknown, certified traffic control such as lane closure(s), flag person(s), changeable message board(s), and/or arrow board(s), if needed or required by Fort Bend County, will be provided by a certified traffic control provider such as Houston Barricade and Supply.

This Scope of Services does not include an engineered traffic control plan and if required for permit approval, Halff will notify Kavi and submit a supplemental agreement for authorization prior to proceeding with additional work.

Schedule:

Halff will complete the Quality Level-C/D records research investigation within Forty-Five (45) calendar days upon receipt of written notice to proceed from Fort Bend County.

Halff will complete the Quality Level-B Utility Designation investigation within Sixty (60) calendar days upon receipt of written notice to proceed from Kavi.

Halff will complete the Quality Level-A Test Hole services within Thirty (30) calendar days upon receipt of the test hole layout from Kavi and approved permits from Fort Bend County and/or TxDOT.

Due to uncontrollable factors such as ground conditions, weather, and safety hazards, Halff reserves the right to request more time to facilitate field efforts should one of these circumstances exist.

Work performed in the right-of-way shall be performed Monday through Friday, 9 am to 4 pm and Saturday and Sunday, 7 am to 7 pm barring foul weather.

WORK PLAN (EXHIBIT B)
I. DESIGNATING (UTILITY LOCATING) (QL-B)

Description	Quantity	Authorized Rate	Unit	Estimated Cost
Designating 1-Man Crew	72	\$100.00	hour	\$7,200.00
Designating 2-Man Crew	150	\$200.00	hour	\$30,000.00
QC Manager	4	\$280.00	hour	\$1,120.00
Project Manager	12	\$230.00	hour	\$2,760.00
SUE Manager	30	\$150.00	hour	\$4,500.00
SUE Field Manager	80	\$120.00	hour	\$9,600.00
Utility Coordinator	4	\$155.00	hour	\$620.00
RPLS	2	\$175.00	hour	\$350.00
Survey Tech	16	\$105.00	hour	\$1,680.00
CADD Tech	72	\$95.00	hour	\$6,840.00
Survey Crew 2-Man	72	\$180.00	hour	\$12,960.00

 Subtotal: \$77,630.00
II. POT HOLING (VACUUM EXCAVATION) (QL-A)

Depth	Quantity	Authorized Rate	Unit	Estimated Cost
All Depths	20	\$1,575.00	each	\$31,500.00

 Subtotal: \$31,500.00
III. POTHOLING - MISCELLANEOUS

Certified Traffic Control (Provided by Houston Barricade)	20	\$2,200.00	day	\$44,000.00
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 Subtotal: \$44,000.00
TOTAL \$153,130.00

Note: This is an estimate based upon the anticipated hours and personnel categories to perform Quality Level-D Utility Records Research through Quality Level-B Utility Designation and the number Quality Level-A Test Hole requested within the project limits. Due to the unknown timing of project approval and personnel availability, Halff will invoice actual hours worked and personnel categories utilized, in accordance with the attached 2022 Halff SUE Rate Schedule, and the number of test holes attempted (whether utility is located or not.) If quantities are exceeded or additional test holes are required, Halff will notify Kavi Consulting, Inc for authorization and submit a supplemental agreement to increase the fee prior to proceeding with any additional work.

Halff's services will be performed in a manner consistent with that degree of skill and care ordinarily exercised by members of the same profession currently practicing under similar circumstances. Halff will make a good faith effort to locate all utilities, but shall be compensated for work performed even if the utility is not located. This proposal is valid for 30 days.

EXHIBIT A
STANDARD FORM OF AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN
KAVI CONSULTING, INC. (CLIENT) AND HALFF ASSOCIATES, INC. (ENGINEER)

I. SCOPE. Halff Associates, Inc. (hereinafter "Engineer") agrees to perform the professional services described in the attached Scope of Services which incorporates these terms and conditions. Unless modified in writing by the Parties hereto (i.e. Client and Engineer), the duties of Halff shall not be construed to exceed those services specifically set forth in the Scope of Services. The Scope of Services and this Standard Form of Agreement (hereinafter referred to jointly as "Agreement"), when executed by *Kavi Consulting, Inc. a Texas Corporation* (hereinafter "Client"), shall constitute a binding Agreement on both Parties. Engineer shall perform its obligations under this agreement as an independent contractor and not as an agent or fiduciary of any other Party.

II. COMPENSATION. Client agrees to pay monthly invoices or their undisputed portions within 30 days of receipt. Payment later than 30 days shall include interest at 1 percent per month or lesser maximum enforceable interest rate, from the date the Client received the invoice until the date Engineer receives payment. Such interest is due and payable when the overdue payment is made.

It is understood and agreed by the Parties that Engineer's receipt of payment(s) from Client is not contingent upon Client's receipt of payment, funding, reimbursement, or any other remuneration from others.

Time-related charges will be billed as specified in this Agreement. Unless stated otherwise in this Agreement, direct expenses, subcontracted services, and direct costs will be billed at actual cost plus a service charge of 10 percent. Mileage will be billed at current IRS rates.

III. RESPONSIBILITY. Engineer is employed to render a professional service only, and any payments made by Client are compensation solely for the services rendered and the recommendations made in carrying out the work. Engineer agrees to follow the normal and customary standard practices of the engineering profession to make findings, provide opinions (including opinions of probable costs of construction), make factual presentations, and provide professional advice and recommendations. Nothing contained herein shall be argued to have created any warranty or certification, and Engineer shall not be required to provide any certification, assignment, or warranty of its work, but upon request and for a separate mutually agreed fee and fully executed contract amendment and at Engineer's sole discretion, Engineer may agree to provide certain specific written statements regarding its services. Such statements shall be in a form prepared by and acceptable to Engineer and shall be requested with sufficient advance notice to allow Engineer to review the documents and prepare a suitable statement.

Engineer's review or supervision of work prepared or performed by Client or by other individuals or firms employed by Client shall not relieve Client or those individuals or firms of complete responsibility for the adequacy of their work. It is understood that any site visits, resident engineering or, if specifically required in the applicable scope of services, inspection services provided or performed by Engineer shall be for the sole and exclusive purpose of reviewing the general compliance of such activities with respect to the technical provisions of the project specifications and such services by Engineer shall not constitute any form of guarantee with respect to the performance of any contractor. Engineer does not assume responsibility for means, methods or appliances used by a contractor, for safety conditions, or for compliance by contractors with applicable laws, rules, and regulations.

Neither the professional activities of Consultant, nor the presence of Consultant or its employees and subconsultants at a construction/project site, shall impose any duty on Halff, nor relieve the contractor or others of its/their obligations, duties, and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending, and coordinating the Work in accordance with the contract documents and any health or safety precautions required by any regulatory agencies, Consultant and its personnel have no authority to exercise any control over any construction contractor or its employees in connection with their work or any health or safety programs or procedures. The Client agrees that the contractor or others shall be solely responsible for jobsite and worker safety and warrants that this intent shall be carried out in the Client's contract(s) with others. The Client also agrees that the Client, Consultant, and Consultant's subconsultants shall be made additional insureds under the contractor's and other policies of general liability insurance.

The Engineer's preparation of any estimate of probable construction costs, preliminary or otherwise, and any updated estimates of probable construction costs, prepared by the Consultant, represent the Consultant's judgment as a

design professional. Client and Owner understand and agree that neither the Consultant nor the Client or Owner has control over the cost of labor, materials, or equipment; the contractor's methods of calculating and estimating bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Consultant cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget or from any other estimate or evaluation, prepared or agreed to by the Consultant.

IV. SCOPE OF CLIENT SERVICES. The Client shall furnish, at the Client's expense, all required and reasonable information, requirements, reports, data, access, surveys, and instructions required by this Agreement, Consultant may use such information, requirements, reports, data, surveys, and instructions in performing its services and is entitled to rely upon the accuracy and completeness thereof. Consultant shall not be held responsible for any errors or omissions that may arise as a result of erroneous or incomplete information provided by the Client and/or the Client's consultants and contractors.

V. OWNERSHIP OF DOCUMENTS. Upon Engineer's completion of services and receipt of payment in full, Engineer shall grant to Client a non-exclusive license to possess the final drawings and instruments produced in connection with Engineer's performance of the work under this Agreement, if any. Said drawings and instruments may be copied, duplicated, reproduced, and used by Client for the purpose of constructing, operating and maintaining the improvements. Client agrees that such documents are not intended or represented to be suitable for reuse by Client or others for purposes outside the Scope of Services of this Agreement. Notwithstanding the foregoing, Client understands and agrees that any and all computer programs, GIS applications, proprietary data or processes, and certain other items related to the services performable under this Agreement are and shall remain the sole and exclusive property of Engineer and may not be used or reused, in any form, by Client without the express written authorization of Engineer. Client agrees that any reuse by Client, or by those who obtain said information from or through Client, without written verification or adaptation by Engineer, will be at Client's sole risk and without liability or legal exposure to Engineer or to Engineer's employees, agents, representatives, officers, directors, affiliates, shareholders, owners, members, managers, attorneys, subsidiary entities, advisors, subconsultants or independent contractors or associates. Client agrees to indemnify Engineer, Engineer's subconsultants and independent associates for all damages, liability or cost arising from such reuse. Engineer may reuse all drawings, reports, data, and other information developed in performing the services described by this Agreement in Engineer's other activities. Under no circumstances shall delivery of electronic files for use by the Client be deemed a sale by Engineer, and Engineer makes no warranties, either express or implied, of merchantability or fitness for any particular purpose. In no event shall Engineer be liable for any damages, including but not limited to indirect or consequential damages, as a result of the Client's unauthorized use or reuse of the electronic files. The Client is aware that differences may exist between the electronic files delivered and the printed hard-copy original documents. In the event of a conflict between the signed original documents prepared by Engineer and any electronic or other files or data provided it is understood and agreed that the original signed or sealed hard-copy documents shall govern.

VI. INSURANCE. Engineer agrees to maintain during the life of the Agreement the following minimum insurance:

- A.** Commercial general liability insurance, including personal injury liability, blanket contractual liability, and broad form property damage liability in an amount of not less than \$2,000,000 per occurrence/aggregate.
- B.** Automobile bodily injury and property damage liability insurance with a limit of not less than \$1,000,000.
- C.** Workers' Compensation and Employer's Liability: Insurance as required by applicable state and/or federal law (including Longshoremen's and Harbor Workers' Act and the Jones Act). The employer's liability policy limit shall not be less than \$1,000,000.
- D.** Professional liability insurance (Errors and Omissions) with a limit of \$2,000,000 per claim/annual aggregate.
- E.** Excess or Umbrella insurance with a limit not less than \$5,000,000 per occurrence/general aggregate.

VII. SUBCONTRACTS. Engineer shall be entitled to subcontract any portion of the work described in the Scope of Services.

VIII. ASSIGNMENT. This Agreement is binding on the heirs, successors, and assigns of the Parties hereto. Neither this Agreement, nor any claims, rights, obligations, suits, or duties associated hereto, shall be assigned or assignable by either Client or Engineer without the prior written consent of the other Party.

IX. INTEGRATION. This Standard Form of Agreement and the Scope of Services, including fee and schedule are fully incorporated herein and represent the entire understanding of Client and Engineer. No prior oral or written understanding shall be of any force or effect with respect to those matters covered herein. The Agreement may not be modified or altered except in writing signed by both Parties.

X. JURISDICTION AND VENUE. This Agreement shall be administered under the substantive laws of the State of **Texas** (and not its conflicts of law principles) which shall be used to govern all matters arising out of, or relating to, this Agreement and all of the transactions it contemplates, including without limitation, its validity, interpretation, construction, performance, and enforcement. Exclusive venue shall lie in any court of competent jurisdiction in **Harris County, Texas**.

XI. SUSPENSION OF SERVICES. If work under this Agreement is suspended for more than thirty (30) calendar days in the aggregate, the Engineer shall be compensated for services performed and charges incurred prior to receipt of notice to suspend, including an equitable adjustment in fees resulting from the demobilization and, as appropriate, remobilization. Additionally, Client agrees to equitably adjust the work schedule based on the delay caused by the suspension. If work under this Agreement is suspended for more than ninety (90) calendar days in the aggregate, the Engineer may, at its option, terminate this Agreement upon giving notice in writing to the Client. Further, Engineer may request that the work be suspended by notifying Client, in writing, of circumstances or conditions interfering with normal progress of the work. If the Client fails to make timely payments to Engineer or is otherwise in breach of this Agreement, the Engineer may suspend performance of services upon five (5) calendar days' notice to the Client. The Engineer shall have no liability to the Client for any costs or damages resulting from a suspension occasioned by any breach or perceived breach of this Agreement by Client.

XII. TERMINATION OF WORK. Either the Client or the Engineer may terminate this Agreement at any time with or without cause upon giving the other Party ten (10) calendar days' prior written notice. Client agrees that termination of Engineer for Client's convenience shall only be utilized in good faith and shall not be utilized if either the purpose or the result of such termination is the performance of all or part of Engineer's services under this Agreement by Client or by another service provider. Following Engineer's receipt of such termination notice the Client shall, within ten (10) calendar days of Client's receipt of Engineer's final invoice, pay the Engineer for all services rendered and all costs incurred up to the date of Engineer's receipt of such notice of termination.

XIII. TAXES. The fees and costs stated in this Agreement, unless stated otherwise, exclude all sales, consumer, use and other taxes. Client agrees to fully reimburse Engineer and its subconsultants for taxes paid or assessed in association with the work under this Agreement, whether those taxes were in effect as of the date of this Agreement or were promulgated after the date of this Agreement. This clause shall not apply to taxes associated with reimbursable or other project related expenses, which shall be identified in the applicable invoice for reimbursement by Client.

XIV. ALTERNATIVE DISPUTE RESOLUTION. Any conflicts or disputes that arise under or through this Agreement or that may exist following the completion thereof shall be discussed at a meeting of one senior management person from Client and one from Engineer. This meeting shall be a condition precedent to the institution of any legal or equitable proceedings, unless such meeting will infringe upon schedules defined by applicable statutes of limitation or repose. Should such a situation arise, the Parties agree that such meeting shall still be required, but the institution of said proceedings shall not be precluded for failure to meet this specific meeting requirement.

XV. MERGER AND SEVERABILITY. This Agreement constitutes, represents, and is intended by the Parties to be the complete and final statement and expression of all of the terms and arrangements between the Parties to this Agreement with respect to the matters provided for in this Agreement. This Agreement supersedes any and all prior or contemporaneous agreements, understandings, negotiations, and discussions between the Parties and all such matters are merged into this Agreement. Should any one or more of the provisions contained in this Agreement be determined by a court of competent jurisdiction or by legislative pronouncement to be void, invalid, illegal, or unenforceable in any respect, such voiding, invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be considered as if the entirety of such void, invalid, illegal, or unenforceable provision had never been contained in this Agreement.

XVI. EXCLUSIVITY OF REMEDIES. The Parties acknowledge and agree that the remedies set forth in this Agreement (Agreed Remedies) are and shall remain the Parties' sole and exclusive remedy with respect to any claim arising from, or out of, or related to, the subject matter of this Agreement. The Parties agree that Engineer is to have no liability or responsibility whatsoever to Client for any claim(s) or loss(es) of any nature, except as set forth in this Agreement. No Party shall be able to avoid the limitations expressly set forth in this Agreement by electing to pursue some other remedy.

XVII. TIMELINESS OF PERFORMANCE. Engineer shall perform its professional services with due and reasonable diligence consistent with sound professional practices.

XVIII. PROJECT ENHANCEMENT/BETTERMENT. IF A COMPONENT OF THE CLIENT'S PROJECT IS OMITTED FROM THE ENGINEER'S CONTRACT DOCUMENTS DUE TO THE BREACH OF CONTRACT OR NEGLIGENCE OF THE ENGINEER, THE ENGINEER WILL NOT BE LIABLE TO THE CLIENT TO THE EXTENT OF ANY BETTERMENT OR ADDED VALUE TO THE PROJECT. SPECIFICALLY, THE CLIENT WILL BE RESPONSIBLE FOR THE AMOUNT IT WOULD HAVE PAID TO THE CONSTRUCTION CONTRACTOR (OR SUPPLIER OR SUBCONTRACTOR OR OTHER) FOR THE COMPONENT AS IF SUCH HAD BEEN INCLUDED IN THE ENGINEER'S CONTRACT DOCUMENTS. NOTWITHSTANDING THE FOREGOING, THE ENGINEER WILL BE RESPONSIBLE, IF AT ALL, TO THE EXTENT REASONABLE AND NECESSARY TO PLACE CLIENT IN THE SAME POSITION IT WOULD HAVE BEEN BUT FOR SUCH BREACH OR NEGLIGENCE, FOR THE REASONABLE (I) RETROFIT EXPENSE, (II) WASTE, OR (III) INTERVENING INCREASE IN THE COST OF THE COMPONENT FURNISHED THROUGH A CHANGE ORDER FROM THE CONTRACTOR. TO THE EXTENT THAT CONTRACTOR PROVIDED UNIT PRICING THE CLIENT UNDERSTANDS AND AGREES THAT THE ISSUE OF INTERVENING UNIT COST INCREASES WOULD ONLY BE APPLICABLE TO NEWLY IDENTIFIED ITEMS, NOT INCREASES IN QUANTITY OF EXISTING ITEMS.

IF IT IS NECESSARY TO REPLACE A COMPONENT OF THE PROJECT DUE TO THE BREACH OF CONTRACT OR NEGLIGENCE OF THE ENGINEER, THE ENGINEER WILL NOT BE LIABLE TO THE CLIENT FOR THE ENHANCEMENT OR UPGRADE OF THE COMPONENT BEYOND THAT ORIGINALLY INCLUDED IN THE CONTRACT DOCUMENTS. IN ADDITION, IF THE COMPONENT HAS AN IDENTIFIABLE USEFUL LIFE THAT IS LESS THAN THE SYSTEM/STRUCTURE/IMPROVEMENT ITSELF, THE DAMAGES OF THE OWNER SHALL BE REDUCED TO THE EXTENT THAT THE USEFUL LIFE OF THE COMPONENT WILL BE EXTENDED BY THE REPLACEMENT THEREOF.

SHOULD AN ALLEGATION OF ERROR, NEGLIGENCE, BREACH OR OTHER DEFICIENCY IN THE SERVICES OF (DESIGN PROFESSIONAL) OR ANY OF ITS CONSULTANTS, AND SHOULD SUCH ALLEGATION RELATE TO A CONDITION, COMPONENT, OR ITEM, IN THE SERVICES OR THE PROJECT THAT IS ALLEGED OR OTHERWISE CLAIMED TO BE INACCURATE OR OMITTED FROM THE DESIGN PROFESSIONAL'S DRAWINGS, INSTRUMENTS OR OTHER DOCUMENTS PREPARED UNDER THIS AGREEMENT, IT IS UNDERSTOOD AND AGREED BY ALL PARTIES THAT (DESIGN PROFESSIONAL) AND ITS CONSULTANT'S LIABILITY, IF ANY, SHALL EXCLUDE ANY AND ALL DAMAGES, COSTS, OR EXPENSES THAT CREATE OR RESULT IN ADDED VALUE, UPGRADE, BETTERMENT OR ENANCEMENT OF THE PROJECT AS SUCH RELATE TO THE INACCURATE OR OMITTED CONDITION, COMPONENT, OR ITEM AS ORIGINALLY DESIGNED.

XIX. AGREED REMEDIES.

A. IT IS THE INTENT OF THE PARTIES TO THIS AGREEMENT THAT ENGINEER'S SERVICES UNDER THIS AGREEMENT SHALL NOT SUBJECT ENGINEER'S INDIVIDUAL EMPLOYEES, OFFICERS OR DIRECTORS TO ANY PERSONAL LEGAL EXPOSURE FOR CLAIMS AND RISKS ASSOCIATED WITH THE SERVICES THAT ARE EITHER PERFORMED OR PERFORMABLE UNDER THIS AGREEMENT. FOR PROJECTS/SERVICES PERFORMED IN FLORIDA OR PURSUANT TO FLORIDA LAW, FLORIDA STATUTE 558.0035 STATES THAT, AN INDIVIDUAL EMPLOYEE OR AGENT MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE.

B. IN RECOGNITION OF THE RELATIVE RISKS AND BENEFITS OF THE PROJECT TO BOTH THE CLIENT AND THE ENGINEER, AND ACKNOWLEDGING THAT THE ALLOCATION OF RISKS AND LIMITATIONS OF REMEDIES ARE BUSINESS UNDERSTANDINGS BETWEEN THE PARTIES AND THESE RISKS AND REMEDIES SHALL APPLY TO ALL POSSIBLE LEGAL THEORIES OF RECOVERY. CLIENT FURTHER AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, AND NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS AGREEMENT OR ANY REFERENCE TO INSURANCE OR THE EXISTENCE OF APPLICABLE INSURANCE COVERAGE, THAT THE TOTAL LIABILITY, IN THE AGGREGATE, OF THE ENGINEER AND ENGINEER'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND SUBCONSULTANTS TO THE CLIENT OR TO ANYONE CLAIMING BY, THROUGH OR UNDER THE CLIENT, FOR ANY AND ALL CLAIMS, LOSSES, COSTS OR DAMAGES WHATSOEVER ARISING OUT OF, RESULTING FROM, OR IN ANY WAY RELATED TO, THE SERVICES UNDER THIS AGREEMENT FROM ANY CAUSE OR CAUSES OF THE ENGINEER OR THE ENGINEER'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND SUBCONSULTANTS, SHALL NOT EXCEED THE ENGINEER'S FEE RECEIVED FOR THE SERVICES PERFORMED, ADJUSTED DOWNWARD TO ACCOUNT FOR SUBCONSULTANT/SUBCONTRACTOR FEES INCURRED AND REIMBURSEABLE EXPENSES, UNDER THIS AGREEMENT OR \$50,000, WHICHEVER IS LOWER. INCREASED LIMITS MAY BE NEGOTIATED FOR ADDITIONAL FEE.

C. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, ENGINEER SHALL HAVE NO LIABILITY TO THE CLIENT FOR CONTINGENT, CONSEQUENTIAL OR OTHER INDIRECT DAMAGES INCLUDING, WITHOUT

LIMITATION, DAMAGES FOR LOSS OF USE, REVENUE OR PROFIT; OPERATING COSTS AND FACILITY DOWNTIME; OR OTHER SIMILAR BUSINESS INTERRUPTION LOSSES, HOWEVER, THE SAME MAY BE CAUSED.

D. CLIENT MAY NOT ASSERT ANY CLAIM AGAINST ENGINEER AFTER THE SHORTER OF (1) 3 YEARS FROM SUBSTANTIAL COMPLETION OF SERVICES GIVING RISE TO THE CLAIM, OR (2) THE STATUTE OF LIMITATION PROVIDED BY LAW.

E. IT IS UNDERSTOOD AND AGREED BY BOTH PARTIES TO THIS AGREEMENT THAT THE FIRST TEN DOLLARS (\$10.00) OF REMUNERATION PAID TO ENGINEER UNDER THIS AGREEMENT SHALL BE IN CONSIDERATION FOR INDEMNITY/INDEMNIFICATION PROVIDED FOR IN THIS AGREEMENT.

XX. MISCELLANEOUS PROVISIONS

A. Changed Conditions If, during the term of this Agreement, circumstances or conditions that were not originally contemplated by or known to Engineer are revealed, to the extent that they affect the scope of services, compensation, schedule, allocation of risks, or other material terms of this Agreement, Engineer may call for renegotiation of appropriate portions of this Agreement. Engineer shall notify the Client of the changed conditions necessitating renegotiation, and Engineer and the Client shall promptly and in good faith enter into renegotiation of this Agreement to address the changed conditions. If terms cannot be agreed to, the parties agree that either party has the absolute right to terminate this Agreement in accordance with the Termination provision herein.

B. Changes in the work Engineer shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents and may authorize minor changes in the work not involving an adjustment in the Contract Sum or an extension of the Contract Time, which are not inconsistent with the intent of the Contract Documents. Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of instruments of Service shall be considered as Additional Services, and the Client will pay Engineer for these services in accordance with the Additional Services provisions of this Agreement.

C. Construction observation If included in the Scope of Services of this Agreement, Engineer shall visit the site at intervals appropriate to the stage of construction, or as otherwise agreed to in writing by the Client and Engineer, in order to observe the progress and quality of the work completed by the Contractor. Such visits and observation are not intended to be an exhaustive check or a detailed inspection of the Contractor's work but rather are to allow Consultant to become generally familiar with the work in progress and to determine, in general, if the work is proceeding in accordance with the Contract Documents. Based on this general observation, Consultant shall keep the Client informed about the progress of the work and shall advise the Client about observed deficiencies in the Work.

If the Client desires more extensive project observation or full-time project representation, the Client shall request that such services be provided by Consultant as Additional Services in accordance with the terms of this Agreement.

Consultant shall not supervise, direct, or have control over the Contractor's work nor have authority over any responsibility for the construction means, methods, techniques, sequences, or procedures selected by the Contractor nor for the Contractor's safety precautions or programs in connection with the Project. These rights and responsibilities are solely those of the Contractor in accordance with Contractor's contract with the Client.

Engineer shall not be responsible for any acts or omissions of the Contractor, any subcontractor, any entity performing any portions of the Work or any agents or employees of any of them or for any decision made on interpretations or clarifications of the construction contract given by Client without consultation and advice of Engineer.

Engineer does not guarantee the performance of the Contractor and shall not be responsible for the Contractor's failure to perform its work in accordance with the Contractor's contract with the Client or any applicable laws, codes, rules, or regulations.

D. Design without construction observation Unless Construction Observation is specifically noted in Engineer's Scope of Services, it is understood and agreed that Engineer's services do NOT include Construction Observation nor review of the Contractor's performance or any other construction phase services, and that such services will be provided by the Client. As such, the Client assumes all responsibility for interpretation of the Contract Documents and for Construction Observation, and the Client waives any claims against Consultant that may be in any way connected thereto, including claims resulting from unauthorized modifications to the construction plans and construction errors or omissions.

In addition, the Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Engineer, its officers, directors, employees, and subconsultants (collectively, Engineer) against all damages, liabilities, or costs, including reasonable attorneys' fees and defense costs, arising out of or in any way connected with the performance of such services by other persons or entities and from any and all claims arising from modifications, clarifications, interpretations, adjustments, or other modifications made to the Contract Documents to reflect changed field or other conditions.

E. ATTORNEY'S FEES. In the event that any suit or action is instituted to enforce any provision in this Agreement, the substantially prevailing party in such dispute shall be entitled to recover from the other party all fees, costs, and expenses of enforcing any right of such prevailing party under or with respect to this Agreement, including without limitation, such reasonable fees and expenses of attorneys and accountants, which shall include, without limitation, all fees, costs, and expenses of appeals.

XXI. WAIVER. Any failure by Engineer to require strict compliance with any provision of this Agreement shall not be construed as a waiver of such provision, and Engineer may subsequently require strict compliance at any time, notwithstanding any prior failure to do so.

Representation on Authority of Parties/Signatories. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized, and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

APPROVED:

Engineer: **HALFF ASSOCIATES, INC.**

Signature: _____

Name: _____

Title: _____

Date: _____

APPROVED:

Client: **KAVI CONSULTING, INC.**

Signature: _____

Name: _____

Title: _____

Date: _____