

**TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT**

TO: Mayor and Councilmembers
FROM/PHONE: Mark A. Kutney, AICP (797-1101)
SUBJECT: Resolution - Proposal

Application No., Project Name and Location:
DA 9-3-01, Proposal for SW 142 Avenue Vacation of Right-of-Way

TITLE OF AGENDA ITEM:

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE TOWN ADMINISTRATOR TO SIGN A PROPOSAL BETWEEN THE TOWN OF DAVIE, AND MILLER LEGG AND ASSOCIATES, INC.; PROVIDING FOR THE PROFESSIONAL SERVICES AND FEES RELATED TO THE VACATION OF SW 142 AVENUE RIGHT-OF-WAY; TO ACKNOWLEDGE SUCH APPROVAL BY AFFIXING THEIR SIGNATURES TO SAID PROPOSAL; AND PROVIDING FOR AN EFFECTIVE DATE.

REPORT IN BRIEF:

On July 3, 2001, Town Council approved the vacation of a portion of right-of-way for SW 142 Avenue, lying between SW 14 Street and SW 26 Street.

This proposal provides the professional services of Miller Legg and Associates, Inc., to vacate a portion of right-of-way for SW 142 Avenue, lying between SW 14 Street and SW 26 Street, through the Town's and Broward County's vacation process for the vacation of the above referenced segment of road right-of-way.

PREVIOUS ACTIONS: None

CONCURRENCES: None

FISCAL IMPACT:

Has request been budgeted? yes

If yes, expected cost: \$ 10,800.00

Account Name:

What account will funds be appropriated from:

Additional Comments:

Vacation Process through the Town	\$ 3,500.00
Vacation Process through Broward County	\$ 4,800.00
Meeting Attendance (Not to Exceed)	<u>\$ 2,500.00</u>
Total Professional Fees	<u>\$10,800.00</u>

RECOMMENDATION(S): Motion to approve.

Attachment(s): Resolution, Proposal.

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE TOWN ADMINISTRATOR TO SIGN A PROPOSAL BETWEEN THE TOWN OF DAVIE, AND MILLER LEGG AND ASSOCIATES, INC.; PROVIDING FOR THE PROFESSIONAL SERVICES AND FEES RELATED TO THE VACATION OF SW 142 AVENUE RIGHT-OF-WAY; TO ACKNOWLEDGE SUCH APPROVAL BY AFFIXING THEIR SIGNATURES TO SAID PROPOSAL; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Davie proposes to vacate a portion of right-of-way for SW 142 Avenue, lying between SW 14 Street and SW 26 Street; and

WHEREAS, Miller Legg and Associates, Inc. has agreed to provide the professional services relating to the vacation of a portion of right-of-way for SW 142 Avenue, lying between SW 14 Street and SW 26 Street.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Town Council of the Town of Davie does hereby authorize the Town Administrator to enter into a Proposal, attached hereto as Exhibit "A", between Miller Legg and Associates, Inc., and the Town of Davie, whereby Miller Legg and Associates, Inc. will provide the professional services through Broward County to vacate a portion of right-of-way for SW 142 Avenue, lying between SW 14 Street and SW 26 Street.

SECTION 2. The Town Administrator and Town Attorney are authorized to make and accept non-substantive revisions to the agreement in order for the agreement to be in final, recordable form.

SECTION 3. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS ____ DAY OF _____, 2001.

MAYOR/COUNCILMEMBER

Attest:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2001.



Proposal

This proposal for professional services dated **September 5, 2001** between

Town of Davie (Client)
6591 Orange Drive
Davie, FL 33314-3399

whose representative is **Geri Baluss and Irene DeGroot**

and

Miller, Legg & Associates, Inc. (MLA) (Consultant)

is prepared in connection with the **Vacation of S.W. 142nd Avenue Right-of-Way** (Project).

1.0 OVERVIEW

- 1.1 Client requests MLA, the Design Professional, to submit a proposal outlining the scope of services and associated fees for the Project.
- 1.2 The Project is generally described as follows: Surveying and Planning services for the vacation of right-of-way for S.W. 142nd Avenue lying within Section 15, Township 50 South, Range 40 East.
- 1.3 Hourly rates are per Exhibit "A" of the Town of Davie Resolution No. R-2001-138.

2.0 ASSUMPTIONS - LIST OF BASIC ASSUMPTIONS

- 2.1 The portion of S.W. 142nd Avenue right-of-way that crosses over the 50 feet of right-of-way for S.W. 20th Street and S.W. 21st Street will not be vacated.
- 2.2 An ALTA Survey is not required.
- 2.3 The sketch and legal for the vacation process will be written as one (1) description.
- 2.4 The signatures of the abutting property owners, as required for the vacation process will be obtained by others, and is not included in

Proposal No. 3946

the vacation processing phase. If needed, a separate hourly phase is provided for Consultant to handle those services.

3.0 INFORMATION TO BE PROVIDED BY CLIENT

- 3.1 Information necessary to complete the right-of-way vacation application, as may be requested from Client by Consultant.

4.0 SCOPE OF BASIC SERVICES AND FEE

The scope of services to be provided by Consultant shall be divided into three (3) phases as follows:

- Phase 1 **Vacation Preparation and Processing Through the Town of Davie** - Consultant shall prepare an application to process a right-of-way vacation through the Town of Davie. Services shall include obtaining a section map and aerial, the preparation of one (1) sketch and legal description of the area to be vacated, the preparation of an application, obtaining utility letters, preparing support data, as required by the Town and attendance at up to four (4) meetings. Subsequent sketch and legal descriptions that may be required will be provided as an additional service.

FEE: Lump sum of \$3,500.

- Phase 2 **Vacation Preparation and Processing Through Broward County** - Upon completion of vacation through the Town, and the receipt of the Town resolution, Consultant shall prepare one (1) vacation application package and process through Broward County. Services shall include obtaining a tax letter; obtaining updated utility consent letters, if needed; preparing support data, as required by Broward County, preparation of one (1) disk of the legal description, posting of an advertisement in a local publication, posting of signs on site; and attendance at two (2) Broward County Commission meetings (a consent agenda and a public hearing). Application fees, advertising, obtaining abutting owner's signatures/consent, and title work are not included.

FEE: Lump sum of \$4,800.

- Phase 3 **Meeting Attendance** - Consultant shall attend meetings at the direction of the Client on an hourly basis. These meetings shall be above and beyond the meetings proposed in the previous phases. The fee for this phase is estimated not to exceed \$2,500 without prior authorization from Client.

Proposal No. 3946

FEE: Hourly per the attached Hourly Rate Schedule.

Phase 4 **Abutting Owners Consent** – It is assumed that the required signatures of all owners abutting the right-of-way sought to be vacated will be obtained by others. If assistance in this portion of the process is required by Consultant, then services will be provided on an hourly basis.

FEE: Hourly per the attached Hourly Rate Schedule.

CLOSURE

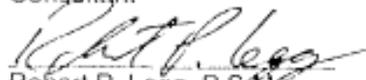
Obligations of Consultant and Client are further detailed in the attached Special Provisions and General Provisions (Form GP06/92) which are made part of this proposal.

This proposal and the attachments represent the entire understanding between Client and Consultant. These may only be modified in writing signed by both parties. This proposal is valid for a period of 30 days.

By signing this proposal Client acknowledges that he has read and understands the Scope of Basic Services and Fee, the *Special Provisions*, and the *General Provisions*.

The undersigned have made and executed this agreement effective the _____ day of _____, 2001.

Consultant


Robert P. Legg, P.S.M.
Senior Vice President
Miller, Legg & Associates, Inc.

Client

Tom Willi
Town Administrator
Town of Davie

RPL/dcs/db

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Corporate Office: 1500 North Douglas Road, Suite 2000, Pembroke Pines, FL 33024-3200
(954) 436-7000 Fax: (954) 436-8664 www.mblegg.com

Project Name: Vacation of S.W. 142nd Avenue
Proposal No: 3946
Date: September 5, 2001

SPECIAL PROVISIONS

Section 1 Additional Services

- 1.1 Additional services shall be provided by Consultant in accordance with Section 2 of the General Provisions.
- 1.2 In addition to additional services identified in Section 2 of the General Provisions, Consultant may provide any of the following services on an hourly basis per the attached Hourly Rate Schedule and upon receipt of authorization by Client: studies; meeting attendance; surveying easement descriptions; phasing agreements; ALTA/ASCM surveys; all agreements related to platting; plat note amendments; reports or alternate designs not included in the Scope of Basic Services; earthwork calculations; cost estimates; traffic engineering; off-site improvement design; and other services agreed upon by Client and Consultant.
- 1.3 Consultant may proceed with work on additional services based on Client's verbal authorization, but shall not continue work beyond seven (7) days without written consent from Client.
- 1.4 Additional services requiring immediate action (as identified in Section 2.2 of the General Provisions) rendered prior to receipt of Client's authorization shall be paid for by Client on an hourly basis per the Hourly Rate Schedule in use when said additional service is to be provided.
- 1.5 The method of payment for additional services requiring authorization in advance shall be agreed upon by Client and Consultant prior to commencement of said services.
- 1.6 Consultant shall evaluate requests for computer disks and/or computer data files. These files shall be of "Line Work Only" and shall be provided for site plans, horizontal control plans, and engineering plans upon governmental approval for use as basis for as-built drawings only. Computer disks and/or computer data files will be released subject to the Computer Disk Agreement that is included as an exhibit of this proposal. Computer files containing

control points, computations, notations, and other layers of information shall remain the Consultant's proprietary property.

Section 2 Payments to Consultant

WAIVED
RPL

- 2.1 ~~A \$2,500 retainer shall be paid by Client prior to Consultant beginning Phase 1 services. This retainer shall be applied to the final invoice for the final phase of services provided under this agreement.~~
- 2.2 Consultant shall discuss with Client the process for review and payment of invoices and schedule of payments for services under this Contract. Client shall assist Consultant in expediting payment of invoices in order to maintain uninterrupted services on project.
- 2.3 Lump sum services shall be invoiced based on the percent of work complete at the time of the submittal of the invoice.
- 2.4 Hourly services shall be invoiced as rendered. Hourly rates shall be as noted on the attached Hourly Rate Schedule.
- 2.5 The attached Hourly Rate Schedule will remain in effect through the current calendar year. On January 1 of each year that this contract is in effect, a new hourly rate will be instituted.
- 2.6 Consultant reserves the right to renegotiate fixed fees on an annual basis to reflect changes in price indices and pay scales applicable to the period when services are, in fact, being rendered.
- 2.7 One hundred percent of the fee for design phase services shall be due upon submittal of applications to government agencies for approval.
- 2.8 Invoices for reimbursable expenses shall include the following: government review and processing fees, title work, plotting, blueprinting, copying and printing, facsimile transmission/reception, courier service, travel mileage, signage for posting on property; advertisement fees, approved subcontracted services, and other necessary and customary costs. Reimbursable expenses shall be invoiced to Client with a multiplier of 1.15 to cover processing costs.
- 2.9 Consultant may require direct payment by Client of any government fee greater than \$200.00.
- 2.10 Client Shall have a fourteen (14) day review time to request clarification or additional information. If no request has been made,

it is expected that payment will be made in the amount of the invoice.

- 2.11 If Client fails to make any payment due Consultant for services and expenses within thirty days after receipt of Consultant's invoice, the amounts due Consultant shall include a charge at the rate of 1-1/2% per month from said thirtieth day.
- 2.12 If Client is to receive funding for Consultant's services from another source, Client shall advise Consultant of these circumstances and shall expedite processing of Consultant's invoices in order to meet the previous requirements.
- 2.13 If Consultant incurs legal fees or collection charges to collect past-due accounts from Client, then such costs shall be included in amounts due and payable to Consultant.
- 2.14 (A) If the project subject to this proposal is delayed and/or put on hold for a period longer than thirty (30) days for any reason, Client shall pay Consultant to re-establish and/or re-activate the project.

(B) If construction is begun more than six (6) months after receipt of government approvals, Client shall pay Consultant for additional services as required to update or extend previous approvals.

Section 3 Schedule

- 3.1 Consultant shall commence services upon Client's authorization and receipt of this signed agreement and receipt of the retainer.
- 3.2 Consultant shall coordinate schedule with Client and governmental agencies.

EXHIBIT A

COMPUTER DATA FILE AGREEMENT

The undersigned, by accepting the attached computer disk and/or computer data file and by signing this agreement, agrees to the following terms and conditions:

1. This disk or computer data file is being supplied for the sole use of the undersigned party and is not to be copied or distributed, in any manner, to a third party, without the express written permission of Miller, Legg & Associates, Inc.
2. The undersigned hereby acknowledges that the information on this disk or computer data file is the sole property of Miller, Legg & Associates, Inc. and is protected by the Copyright Laws of the United States of America.
3. The information on this disk or computer data file is for informational purposes only. It is the responsibility of the undersigned to verify the accuracy of the information therein. Therefore, by signing this agreement, the undersigned agrees to hold Miller, Legg & Associates, Inc. harmless for any damages that may result from the use of the information. The undersigned at his or her own cost shall be responsible for validating any and all information provided by disk or computer file.

Failure to adhere to the conditions of this agreement are grounds for legal action by Miller, Legg & Associates, Inc. against the undersigned. If legal action becomes necessary, the undersigned hereby agrees to pay all costs associated with said action, including court costs and reasonable attorney fees.

Name and Title	Signature	Date
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Project Name, Disk Number (if applicable) and Disk Name

6.549/69401



Corporate Office: 1800 North Douglas Road, Suite 200, Pompano Beach, FL 33024-3200
(954) 436-7000 Fax: (954) 436-8664 www.milelogg.com

SURVEYING SERVICES

2001 HOURLY RATE SCHEDULE

TOWN OF DAVIE

<u>TITLE</u>	<u>HOURLY RATE</u>
PROJECT MANAGER	120.00
PROFESSIONAL SURVEYOR & MAPPER	75.00
GIS MANAGER	110.00
PROJECT SURVEYOR	70.00
TWO PERSON SURVEY CREW	85.00
THREE-PERSON SURVEY CREW	110.00
THREE-PERSON GPS CREW	160.00
CAD TECHNICIAN	55.00
SURVEY TECHNICIAN	50.00
ADMINISTRATIVE	40.00
TWO PERSON SURVEY CREW 1/2 DAY RATE (4 HOURS)	340.00
TWO PERSON SURVEY CREW FULL DAY RATE (8 HOURS)	680.00
THREE-PERSON SURVEY CREW 1/2 DAY RATE (4 HOURS)	440.00
THREE-PERSON SURVEY CREW FULL DAY RATE (8 HOURS)	880.00

A - Non-Project Surveying 11 TTIRS DAVIE/HOURLYRATE 0515.doc

GENERAL PROVISIONS

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GENERAL PROVISIONS

Attached to and made a part of PROPOSAL dated
September 5, 2001 ~~NS90XX~~ between

Town of Davie (OWNER) and
Miller, Legg & Associates, Inc., (CONSULTANT) in respect of the
project (Project) described therein

SECTION 1 – BASIC SERVICES OF CONSULTANT

1.1 General

1.1.1 CONSULTANT shall perform professional services as hereinafter stated which include customary studies, civil, land surveying, traffic, environmental engineering and planning services and other related study and design services.

1.1.2 CONSULTANT shall advise OWNER as to the necessity of OWNER's providing or obtaining from others data or services of the types described in paragraph 3.3 and assist OWNER in obtaining such data and services.

1.1.3 CONSULTANT shall consult with OWNER to clarify and define OWNER's requirements for the Project and review available data.

1.2 Study or Report Phase

After authorization to proceed with the Study or Report Phase:

1.2.1 CONSULTANT shall conduct the necessary research and prepare a written response or report as appropriate.

1.2.2 CONSULTANT shall submit the study or report to OWNER or other appropriate entity.

1.3 Design Phase

After authorization to proceed with the Design Phase:

1.3.1 CONSULTANT shall prepare for incorporation in the Contract Documents drawings to show the general scope, extent and character of the work to be furnished and performed by Contractor(s) (hereinafter called "Drawings") and Specifications.

1.3.2 CONSULTANT shall submit applications and support data to the appropriate government agencies for the engineering approvals required for the project. CONSULTANT, in an effort to secure the approvals sought, shall respond to comments made by the agencies as a result of the submittals. However, CONSULTANT shall not be liable for failure to secure approvals if such failure is the result of decisions, actions, or inactions of OWNER or for other reasons beyond the control of CONSULTANT.

1.4 Bidding Phase

After authorization to proceed with the Bidding Phase:

1.4.1 CONSULTANT shall prepare for review and approval by OWNER, its legal counsel and other advisors contract agreement forms, general conditions and supplementary conditions, and (where appropriate) bid forms, invitations to bid and instructions to bidders (all of which shall be consistent with the forms and pertinent guide sheets prepared by the Engineers Joint Contract Documents Committee), and assist in the preparation of other related documents.

1.4.2 CONSULTANT shall assist OWNER in advertising for and obtaining bids or negotiating proposals for each separate prime contract for construction, materials, equipment and services.

1.4.3 CONSULTANT shall issue addenda as appropriate to interpret, clarify or expand the Bidding Documents.

1.4.4 CONSULTANT shall consult with OWNER concerning and determine the acceptability of substitute materials and equipment proposed by Contractor(s) when substitution prior to the award of contracts is allowed by the Bidding Documents.

1.4.5 CONSULTANT shall attend the bid opening, prepare bid tabulation sheets and assist OWNER in evaluating bids or proposals and in assembling and awarding contracts for construction, materials, equipment and services.

1.5 Construction Phase

During the construction phase:

1.5.1 CONSULTANT shall consult with and advise OWNER and act as his representative as provided in Articles 1 through 17, inclusive, of the Standard General Conditions of the Construction Contract, No. 1910-8 (1983 edition as amended from time to time or any supplementary or replacement thereof) of the Engineers Joint Contract Documents Committee. The extent and limitations of the duties, responsibilities, and authority of CONSULTANT as assigned in said Standard General Conditions shall not be modified except as CONSULTANT may agree in writing. All of OWNER's instructions to Contractor(s) will be issued through CONSULTANT who will have authority to act on behalf of OWNER to the extent provided in said Standard General Conditions except as otherwise provided in writing.

1.5.2 In connection with observations of the work of Contractor(s) while it is in progress:

1.5.2.1 The CONSULTANT shall make visits to the site at intervals appropriate to the various stages of construction as CONSULTANT deems necessary in order to observe as an experienced and qualified design professional the progress and quality of the various aspects of Contractor(s) work. Based on information obtained during such visits and on such observations, CONSULTANT shall endeavor to determine in general if such work is proceeding in accordance with the Contract Documents and CONSULTANT shall keep the OWNER informed of the progress of the work. CONSULTANT shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of such work.

1.5.2.2. The purpose of CONSULTANT's visits to the site will be to enable CONSULTANT to better carry out the duties and responsibilities assigned to and undertaken by CONSULTANT during the Construction Phase, and, in addition, by exercise of CONSULTANT's efforts as an experienced and qualified design professional, to provide for OWNER a greater degree of confidence that the completed work of Contractor(s) will conform generally to the Contract Documents and that the integrity of the design concept as reflected in the Contract Documents has been implemented and preserved by Contractor(s). On the other hand, CONSULTANT 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 CONSULTANT have authority over responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor(s), for safety precautions and programs incident to the work of Contractor(s) or for any failure of Contractor(s) to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor(s) furnishing and performing their work. Accordingly, CONSULTANT can neither guarantee the performance of the construction contracts by Contractor(s) nor assume responsibility for Contractor(s)' failure to finish and perform their work in accordance with the Contract Documents.

1.5.2.3 During such visits and on the basis of such observations, CONSULTANT may disapprove of or reject Contractor(s) work while it is in progress if CONSULTANT believes that such work will not produce a completed Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the Project as reflected in the Contract Documents.

1.5.3 CONSULTANT shall issue necessary interpretations and clarifications of the Contract Documents and in connection therewith prepare change orders as required.

1.5.4 CONSULTANT shall review (or take appropriate action in respect of) Shop Drawings (as that term is defined in the aforesaid Standard General Conditions) and samples, and other data which Contractor(s) are required to submit, but only for conformance with the information given in the Contract Documents. Such review or other action shall not extend to means, methods, sequences, techniques, or procedures of construction or to safety precautions and programs incident thereto.

1.5.5 CONSULTANT shall determine the acceptability of substitute materials and equipment proposed by Contractor(s), but subject to the provisions of paragraph 2.2.1.

1.5.6 CONSULTANT shall have authority, as OWNER's representative, to require special inspection or testing of the work, and shall receive and review all certificates of inspections, testings, and approvals required by laws, rules, regulations, ordinances, codes, orders or the Contract Documents (but only to determine generally that their content complies with the requirements of, and the results certified indicate compliance with, the Contract Documents).

1.5.7 CONSULTANT shall act as initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the work thereunder and make decisions on all claims of OWNER and Contractor(s) relating to the acceptability of the work thereunder and make decisions on all claims of OWNER and Contractor(s) relating to the acceptability of the work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the work, but CONSULTANT shall not be liable for the results of any such interpretations or decisions rendered by him in good faith.

1.5.8 Based on CONSULTANT's on-site observations as an experienced and qualified design professional and on review of applications for payment and the accompanying data and schedules,

1.5.8.1 The CONSULTANT shall determine the amount owing to Contractor(s) and recommend in writing payments to Contractor(s) in such amounts. Such recommendations for payment will constitute a representation to OWNER, based on such observations and review, that the work has progressed to the point indicated; that, to the best of CONSULTANT's knowledge, information and belief, the quality of such work is in accordance with the Contract Documents (subject to an evaluation of such work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any qualifications stated in his recommendation). In the case of unit price work, CONSULTANT's recommendations of payment will include final determinations of quantities and classifications of such work (subject to any subsequent adjustments allowed by the Contract Documents).

1.5.8.2 By recommending any payment CONSULTANT will not thereby be deemed to have represented that continuous or exhaustive or detailed reviews or examinations have been made by CONSULTANT to check the quality or quantity of Contractor(s)' work as it is furnished and performed beyond the responsibilities specifically assigned to the CONSULTANT in this Agreement and the Contract Documents. CONSULTANT's review of Contractor(s)'

work for the purposes of recommending payments will not impose on CONSULTANT responsibility to supervise, direct or control such work or the means, methods, sequences, techniques, or procedures of construction or safety precautions or programs incident thereto or Contractor(s) compliance with laws, rules, regulations, ordinances, codes or orders applicable to their furnishing and performing the work. It will also not impose responsibility on CONSULTANT to make any examination to ascertain how or for what purposes any Contractor(s) has used the moneys paid on account of the Contract Price, to determine that title of any of the work, materials or equipment has passed to OWNER free and clear of any lien, claims, security interests or encumbrances, or that there may not be other matters at issue between OWNER and Contractor that might affect the amount that should be paid.

1.5.9 CONSULTANT shall receive and review maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection which are to be assembled by Contractor(s) in accordance with the Contract Documents, but such reviews will only be to determine that their content complies with the requirements of, and in the case of certificates of inspection, tests and approvals, the results certified indicate compliance with, the Contract Documents, and shall transmit them to OWNER with written comments.

1.5.10 CONSULTANT shall conduct a visit to determine if the Project is substantially complete and a final visit to determine if the completed work is acceptable so that CONSULTANT may recommend, in writing, final payment to Contractor(s) and may give written notice to OWNER and Contractor(s) that the work is acceptable (subject to any conditions therein expressed), but any such recommendation and notice shall be subject to the limitations expressed in paragraph 1.5.8.2.

1.5.11 CONSULTANT shall not be responsible for the acts or omissions of any Contractor, or any subcontractor or supplier, or any of Contractor(s) or subcontractors' agents or employees or any other persons (except CONSULTANT's own employees and agents) at the site or otherwise performing any of Contractor(s)' work; however, nothing contained in paragraphs 1.5.1 through 1.5.10., inclusive, shall be construed to release CONSULTANT from liability for failure to perform properly duties undertaken by CONSULTANT in the Contract Documents.

SECTION 2 – ADDITIONAL SERVICES OF CONSULTANT

2.1 Services Requiring Authorization in Advance

If authorized in writing by OWNER, CONSULTANT shall furnish or obtain from others Additional Services of the types listed in paragraphs 2.1.1 through 2.1.15, inclusive. These services are not included as part of the Basic Services.

2.1.1 Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private and governmental grants, loans, or advances in connection with the Project.

2.1.2 Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by OWNER (except as included under Basic Services).

2.1.3 Services resulting from significant changes in the general scope, extent, or character of the Project or major changes in documentation previously accepted by OWNER where changes are due to causes beyond CONSULTANT's control.

2.1.4 Preparing documents for alternate bids requested by OWNER for work which is not executed or for out-of-sequence work or for preparing bid documents requested by OWNER for work that has not received the necessary engineering approvals from the governing authorities.

2.1.5 Investigations and studies involving, but not limited to detailed consideration of operations, maintenance and overhead expenses, providing value engineering during the course of design, and the preparation of rate schedules, and expense statements, cash flow, and economic evaluations, feasibility studies, and appraisals. Assistance in obtaining financing for the Project, evaluating processes available for licensing, detailed quantity surveys of material, equipment and labor; and audits or inventories required in connection with construction performed by OWNER.

2.1.6 Furnishing services of independent professional associates and consultants for other than Basic Services (which include, but are not limited to customary studies, traffic, civil and environmental engineering and planning services) and providing data or services of the types described in paragraph 3.3 when OWNER employs CONSULTANT to provide such data or services in lieu of furnishing the same in accordance with paragraph 3.3.

2.1.7 Services resulting from the award of more than one prime contract for construction, materials, equipment or services for the Project, or from the construction contract containing cost-plus or incentive-savings provisions for Contractor's basic compensation, or from arranging for performance by persons other than the principal prime contractors or from administering OWNER's contracts for such services.

2.1.8 Services during out-of-town travel required of CONSULTANT other than visits to the site or OWNER's office.

2.1.9 Assistance in connection with bid protests, rebidding or renegotiating contracts for construction, materials, equipment or services.

2.1.10 Preparation of operating, maintenance, and staffing manuals.

2.1.11 Services after completion of the Construction Phase (unless included under Basic Services).

2.1.12 Preparing to serve or serving as a consultant or witness in any litigation, arbitration or other legal or administrative proceeding involving the project.

2.1.13 Providing services normally furnished by OWNER.

2.1.14 Services required as a result of a lapse of six months or more from receipt of government approvals to the beginning of construction.

2.1.15 Additional services in connection with the Project, including services which are to be furnished by OWNER in accordance with Article 3, and services not otherwise provided for in this Agreement.

2.2 Services Requiring Immediate Action

When required by the Contract Documents in circumstances beyond CONSULTANT's control, CONSULTANT shall furnish or obtain from others, as circumstances require during construction and without waiting for specific authorization from OWNER, Additional Services of the types listed in paragraphs 2.2.1 through 2.2.6, inclusive. These services are not included as part of the Basic Services. CONSULTANT shall advise OWNER promptly after starting any such Additional Services which will be paid for by OWNER as indicated in PROPOSAL.

2.2.1 Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitutions proposed by Contractor(s); and services after the award of each contract in evaluating and determining the acceptability of an unreasonable or excessive number of substitutions proposed by Contractor.

2.2.2 Services resulting from significant delays, changes or price increases occurring as a direct or indirect result of material, equipment or energy shortages.

2.2.3 Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) a significant amount of defective or neglected work of any Contractor, as determined by CONSULTANT in CONSULTANT's sole opinion, (3) acceleration of the progress schedule involving services beyond normal working hours, and (4) default by any Contractor.

2.2.4 Services in connection with any partial utilization of any part of the Project by OWNER prior to Substantial Completion.

2.2.5 Evaluating an unreasonable or extensive number of claims submitted by Contractor(s) or others in connection with the work as determined by CONSULTANT in CONSULTANT's sole opinion.

2.2.6 Services provided beyond normal working hours when necessitated by Contractor(s) working beyond normal working hours.

SECTION 3 – OWNER'S RESPONSIBILITIES

Owner shall do the following in a timely manner so as not to delay the services of CONSULTANT.

3.1 OWNER's Representative

3.1.1 Designate in writing a person to act as OWNER's representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions with respect to CONSULTANT's services for the Project.

3.1.2 If more than one prime contract is to be awarded for construction, materials, equipment and services for the entire Project, designate a person or organization to have authority and responsibility for coordinating the activities among the various prime Contractors.

3.2. OWNER's Requirements

Provide all criteria and full information as to OWNER's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and budgetary limitations; and furnish copies of all design and construction standards which OWNER will require to be included in the Drawings and Specifications.

3.3 Data to be Provided by OWNER

Furnish to CONSULTANT, as required for performance of CONSULTANT's Basic Services, the following:

3.3.1 All available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.

3.3.2 Data prepared by or services of others, including without limitation borings, probings, and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment.

3.3.3 Appropriate professional interpretations of all of the foregoing.

3.3.4 Environmental assessment and impact statements.

3.3.5 Property, boundary, easement, right-of-way, topographic and utility surveys.

3.3.6 Property descriptions

3.3.7 Zoning, deed and other land use restrictions.

3.3.8 Other special data or consultations not covered in Section 2.

3.3.9 Data or estimated figures as to OWNER's anticipated costs for services to be provided by others for OWNER (such services pursuant to paragraphs 3.5 through 3.6., inclusive) so that CONSULTANT may make the necessary findings to support opinions of probable Total Project Costs.

3.4 Project Access

Arrange for access to and make all provisions for CONSULTANT to enter upon public and private property as required for CONSULTANT to perform services under this Agreement.

3.5 OWNER's Decisions

Examine all studies, reports, sketches, Drawings, Specifications, proposals and other documents presented by CONSULTANT, obtain advice of any attorney, insurance counselor and other consultants as OWNER deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of CONSULTANT.

3.6 Financial Services

Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, such legal services as OWNER may require or CONSULTANT may reasonably request with regard to legal issues pertaining to the Project including any that may be raised by Contractor(s), such auditing services as OWNER may require to ascertain how or for what purposes any Contractor has used the moneys paid under the construction contract, and such inspection services as OWNER may require to ascertain that Contractor(s) are complying with any law, rules, regulation, ordinance, code or order applicable to their furnishing and performing the work.

3.7 OWNER's Attendance

Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings and substantial completion inspections and final payment inspections.

3.8 Notification to CONSULTANT

Give prompt written notice to CONSULTANT whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of CONSULTANT's services, or any defect or nonconformance in the work of any Contractor.

3.9 Additional Services

Direct CONSULTANT to provide, Additional Services as stipulated in paragraph 2.1 of this Agreement or other services as required.

3.10 Cost to OWNER

Bear all costs incident to compliance with the requirements of this Section 3.

SECTION 4 – PERIODS OF SERVICE

4.1 Compensation Beyond Contract Period

The provisions of this Section 4 and the various rates of compensation for CONSULTANT's services provided elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of this

Project through completion of the Construction Phase. CONSULTANT's obligation to render services hereunder will extend for a period which may reasonably be required for the design, award of contracts, construction and initial operation of the Project including extra work and required extensions thereto. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided and if such dates are exceeded through no fault of CONSULTANT, all rates, measures and amounts of compensation provided herein shall be subject to adjustment based on CONSULTANT's then current rates.

4.2 Extension of Contract Period

If OWNER has requested significant modifications or changes in the general scope, extent or character of the Project, the time of performance of CONSULTANT's services shall be adjusted equitably.

SECTION 5 – MISCELLANEOUS

5.1 Reuse of Documents

All documents including Drawings and Specifications prepared by CONSULTANT pursuant to this Agreement are instruments of service in respect of the Project. They are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by CONSULTANT for the specific purposes intended will be at OWNER's sole risk and without liability or legal exposure to CONSULTANT; and OWNER shall indemnify and hold harmless CONSULTANT from any claims, damages, losses and expenses including attorney's fees arising out of or resulting therefrom. Any such verification or adaptation will entitle CONSULTANT to further compensation at rates to be agreed upon by OWNER and CONSULTANT.

5.2 Opinions of Cost

Since CONSULTANT has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, his opinions of probable Project Cost and Construction Cost provided for herein are to be made on the basis of his experience and qualifications and represent his best judgement as an experienced and qualified professional engineer, familiar with the construction industry, but CONSULTANT cannot and does not guarantee that proposals, bids or actual Project or Construction Cost will not vary from opinions of probable cost prepared by him. If prior to the Bidding or Negotiating Phase OWNER wishes greater assurance as to Project or Construction Cost he shall employ an independent cost estimator. Consulting services to modify the Contract Documents to bring the Construction Cost within any limitation established by OWNER will be considered Additional Services and paid for as such by OWNER.

5.3 Termination

5.3.1 CONSULTANT may, after giving seven days' written notice to OWNER, suspend services without liability under this Agreement until he has been paid in full all amounts due him for services and expenses.

5.3.2 The obligation to provide further services under this Agreement may be terminated by either party upon seven 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. In the event of any termination, CONSULTANT will be paid for all services rendered to the date of termination, all reimbursable expenses and termination expenses.

5.4 Successors and Assigns

5.4.1 OWNER and CONSULTANT each binds himself and his partners, successors, executors, administrators, assigns and legal representatives to the other party of this Agreement and to the partners, successors, executors, administrators, assigns, and legal representatives of such other party, in respect to all covenants, agreements and obligations of this Agreement.

5.4.2 Neither OWNER nor CONSULTANT shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, and except to the extent that the effect of this limitation may be restricted by law.

Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent CONSULTANT from employing such independent consultants, associates and subcontractors as he may deem appropriate to assist him in the performance of services hereunder.

5.4.3 Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than OWNER and CONSULTANT.

5.5 Mediation

All claims, counterclaims, disputes and other matters in question between the parties hereto arising out of or relating to this Agreement or the breach thereof shall be submitted to non-binding mediation.

5.6 Limitation of Liability

CONSULTANT's liability and the liability of its employees, agents, representatives, directors, officers, and shareholders to OWNER and to all of OWNER's construction contractors and subcontractors due to CONSULTANT's professional negligent acts, errors, or omissions shall be limited such that the combined total aggregate liability for all claims under this agreement, to all those named above shall not exceed \$100,000 or CONSULTANT's total fee for all engineering services rendered under this agreement to OWNER, whichever is the lesser of the two. It is the intention of the parties that the CONSULTANT's combined total aggregate liability to all claimants for all claims made under this agreement shall not exceed the lesser of \$100,000 or the CONSULTANT's total fee for all engineering services rendered to OWNER under this agreement.

END