



5553 PEACHTREE ROAD, SUITE 175  
ATLANTA, GA 30341 | 470.893.1700  
WWW.THOMASANDHUTTON.COM

September 9, 2024

Ms. Niki K. Vanderslice  
Fayette County Development Authority  
200 Courthouse Square  
Fayetteville, GA 30214

Re: 167 Acre Tract – Site Due Diligence  
Fayette County, Georgia  
Letter Agreement for Services

Dear Ms. Vanderslice:

Thank you for requesting our engineering services for preliminary due diligence and conceptual master planning for the Jackson tract totaling approximately 167-acre located between Hwy 54 E and Banks Road in Fayette County, Georgia.

Our services will consist of the general consulting, site planning, and environmental phases, as set forth in the General Provisions and supplemental exhibits attached hereto, and such additional services as you may request during the course of the Project. We understand that you will furnish Thomas & Hutton with full information as to your requirements, including any special or extraordinary considerations for the Project and will make all pertinent existing data available to us.

#### **SITE PLANNING**

- Project Team Meetings—Consultant will coordinate with the Owner, Project consultants, Owner counsel related to the planning and design of the proposed Project. The level of coordination will be commensurate with the budget provided, to include team meetings, phone calls, requests for information, preparation and sharing of files, and periodic team updates. This fee includes twenty (20) hours of Project coordination time and meetings. Any additional time requested by the Owner will be billed as Additional Services.
- Exhibits –to provide as needed and when needed to market the property, to include site layouts, vicinity maps, and any other exhibits the county may need to land prospect onsite. We will budget \$3,500.00 for now and see where it goes.
- Layout / Master Planning to include building and parcel layout
- Annexation, Rezoning and DRI – assistance with these tasks will be discussed with the owner and scope and fee mutually agreed on at a future point.
- Access – engage GDOT and local municipality on access points and any improvements that may be needed based on Master Plan. (No traffic study will be performed at this time)
- Water and Sewer – Assist with onsite planning and coordinate with Fayette County/City of Fayetteville on capacity and extensions.
- Coordinate other utilities, power, gas, and fiber to determine plan and timing and cost if any to serve site to present to the state.

- Gantt chart—create to show timing of due diligence wetland JD, water, and sewer delivery etc. to present to prospects when they come

## **ENVIRONMENTAL / GEOTECHNICAL / CULTURAL RESOURCES**

- Wetlands – To include wetland and stream delineation, agency review including local issuing authority on buffers etc., agency coordination and Jurisdictional Determination letter even though it will take a while to obtain. We will have justification needed to market the site. (RLC will be subconsultant performing this work through Thomas & Hutton)
- Threatened and Endangered Species Report. (RLC will be subconsultant performing this work through Thomas & Hutton)
- Preliminary cultural resource study/report – Conduct Desktop Literature review to identify previously recorded cultural resources and investigations using GNARHGIS database and other online sources. Results will be summarized in a brief letter report and will include a detailed map of identified previously recorded resources and investigations. (Brockington and Associates, Inc. will provide sub consulting assistance though Thomas & Hutton)
- Phase 1 Environmental Site Assessment (Contour Engineering, LLC will perform this work as subconsultant): The purpose of this ESA is to assist the client in developing information to identify recognized environmental conditions in connection with the site. The ESA will be performed consistent with the procedures included in ASTM E1527–21, Standard Practice for Environmental Site Assessments: Phase I Environmental Assessment Process. A PDF–formatted copy of the final report will be submitted that presents the results of this assessment, based upon the scope of services and limitations described herein. The final report will be signed by an environmental professional responsible for the Phase I ESA, and the report will contain an environmental professional statement as required by 40 CFR 312.21(d).
- Preliminary Geotechnical Exploration (Contour Engineering, LLC will perform this work as a subconsultant):

The associated scope of work for the preliminary geotechnical exploration will consist of the following:

### **FIELD AND LABORATORY SERVICES**

- Consultant will contact Georgia 811 for location of underground utilities.
- A site visit will be conducted to observe and document on-site conditions. Soil test boring locations will be staked using our GPS equipment (CAD file typically required). If a CAD file is unavailable, borings will be laid out based on GPS coordinates of the proposed borings overlaid onto Google Earth and/or based on existing site features. Due to the existing infrastructure, the provided boring locations may be relocated to areas assessable to the drilling equipment.
- A total of fourteen (14) soil test borings will be performed to planned termination depths ranging from approximately 20 to 30 feet below the existing ground surface or auger refusal, whichever is encountered first. For more information regarding the depth and location of each planned boring, refer to the attached boring location plan.
- At the completion of the drilling, each borehole will be backfilled with soil cuttings.

\_\_\_\_\_ **CLIENT'S INITIALS**

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- Consultant will obtain groundwater readings at the time of the drilling operation and then backfill the borings appropriately upon completion.
- Soil samples will be physically examined and assign a visual classification in accordance with the Unified Soil Classification System (ASTM D2487). Soil test boring records that provide standard penetration resistances, detailed soil descriptions, and groundwater conditions will be prepared. Significant soil strata will be delineated, and partially weathered rock or auger refusal will be identified where encountered.

#### GEOTECHNICAL ENGINEERING REPORT

Consultant will prepare an engineering report for the overall development that will outline the results of our exploration and present our evaluation and recommendations concerning site preparation, foundation recommendations, groundwater elevations and their effect on the proposed construction, and remedial measures necessary to deal with soft or loose soils if they are encountered. More specifically, the report will present the following sections:

- **Project Information:** Understanding of the proposed construction will be presented.
- **Site History:** Discussion of the known history of the site as it relates to site grading and foundation support. Discussion of the identification of any previous structures on the site and any unusual conditions including existing foundation structures.
- **Exploratory Procedures:** The report will describe the methods of subsurface exploration and any laboratory testing.
- **Evaluations and Recommendations:** Based upon the field exploration and our experience with similar site and subsoil conditions, present recommendations for several geotechnical aspects of the project as follows:
- **Site Preparation:** Recommendations for methods of site preparation and any remedial measures that may be necessary will be provided which may include methods of dewatering the site, densification of soft and loose surficial soils, etc. To include topsoil thickness estimates for stripping purposes.
- **Groundwater:** Recommendations for control of groundwater during construction and on a permanent basis, if necessary, will be provided.
- **Excavation Characteristics:** The anticipated methods necessary to achieve excavation of subsurface materials based on the results of the borings will be provided.
- **Reuse of Excavated Materials as Structural Fill:** The suitability of excavated materials for reuse as structural fill based on visual soil classifications will be provided.
- **Structural Fill:** Preliminary recommendations for compaction of structural fill will be provided.
- **Earth Slopes:** General recommendations for temporary construction slopes and permanent earth slopes will be provided.
- **Earth Pressures:** Preliminary recommendations for passive and active soil pressures, coefficient of friction, and soil density will be provided for basement wall and concrete retaining wall design.

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- Seismic Design: Based on the results of the test borings, a Site Class will be provided per International Building Code 2018 and ASCE 7. A discussion of the area geology will be included.

Payment for our services will be as described in the attached General Provisions. You will be billed monthly for our services rendered and for Reimbursable Expenses.

We propose that payment for our services will be as follows:

<b>Phase</b>	<b>Fee Structure</b>	<b>Fee or Time &amp; Expense Budget</b>
<b>General Consulting Phase:</b>		
Project Team Meetings	Time & Expense – Budget	\$ 5,000.00
<b>Site Planning:</b>		
Exhibits	Time & Expense – Budget	\$ 3,500.00
Layout / Master Planning	Time & Expense – Budget	\$ 7,500.00
GDOT Access Planning	Time & Expense – Budget	\$ 18,500.00
Annexation, Rezoning / DRI	Time & Expense – Budget	TBD
Water & Sewer Planning	Time & Expense – Budget	\$ 10,000.00
Utility Coordination	Time & Expense – Budget	\$ 3,500.00
Gantt Chart	Time & Expense – Budget	\$ 2,000.00
Preliminary Cut / Fill	Time & Expense – Budget	\$ 5,000.00
<b>Environmental (performed by RLC as sub-consultant):</b>		
Aquatic Resources & State Waters Delineation	Time & Expense – Budget	\$ 14,950.00
Agency Verification Request	Time & Expense – Budget	\$ 3,700.00
Agency Coordination	Time & Expense – Budget	\$ 2,300.00
T&E Species Survey / Report	Time & Expense – Budget	\$ 7,200.00
<b>Cultural Resources (performed by Brockington and Associates, Inc.):</b>		
Cultural Resources Investigation / Literature Review	Lump Sum	\$ 4,000.00
<b>Geotechnical Engineering Services (performed by Contour Engineering, LLC as sub-consultant)</b>		
Phase I Environmental Site Assessment	Time & Expense – Budget (NTE)	\$ 4,350.00
Preliminary Geotechnical Study	Time & Expense – Budget (NTE)	\$ 15,750.00
<b>Reimbursable Expenses</b>	Time & Expense – Budget (NTE)	\$ 1,000.00
<b>Total</b>		<b>\$ 108,250.00</b>

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The above fee arrangements are based on prompt payment of our invoices and the orderly and continuous progress of the Project through completion.

It is necessary that you advise us in writing at an early date if you have budgetary limitations for the overall Project cost or Construction Cost. We will endeavor to work within those limitations. At appropriate times during the Design Phase, we can submit to you our opinions as to the probable Construction Cost of the Project. We do not guarantee that our opinions will not differ materially from bids or negotiated prices.

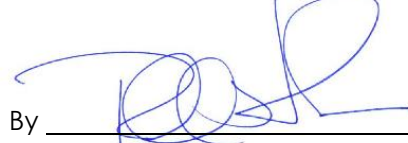
This proposal between Fayette County Development Authority, Inc. ("Client"), and Thomas & Hutton Engineering Co. ("Consultant" or "Thomas & Hutton"), consisting of the Scope of Services, General Provisions, Consulting Services Rate Sheet, and this Letter Agreement with authorizing signatures, represents the entire understanding between Client and Thomas & Hutton with respect to the Project. This Letter Agreement may only be modified if completed in writing and signed by both parties. Thomas & Hutton will begin work on this Project upon receipt of an executed copy of this Letter Agreement.

If the arrangements set forth in this Letter Agreement are acceptable to you, **please sign and initial the enclosed documents in the spaces provided below and return to Thomas & Hutton**. This proposal will be open for acceptance until October 9, 2024, unless changed by Thomas & Hutton in writing. We appreciate the opportunity to prepare this proposal and look forward to working with you on the Project.

The parties agree and acknowledge that this Agreement may be executed by electronic signature, and the parties may rely upon such electronic signatures as an original record of signature.

Respectfully,

**THOMAS & HUTTON ENGINEERING CO.**



By \_\_\_\_\_  
Ralph L. Forbes, PE  
Vice President / Business Development Manager



By \_\_\_\_\_  
Scott C. Greene, PE  
Principal / Regional Director

SCG/kts

Enclosures:    Scope of Services  
                  General Provisions  
                  Consulting Services Rate Sheet

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Ms. Niki Vanderslice  
Fayette County Development Authority  
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September 9, 2024  
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**FAYETTE COUNTY DEVELOPMENT AUTHORITY**

ACCEPTED: \_\_\_\_\_, 20\_\_\_\_

By \_\_\_\_\_

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TITLE

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CLIENT'S INITIALS

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CONSULTANT'S INITIALS

**PAYMENT FOR SERVICES**

For services rendered, CLIENT shall pay CONSULTANT as outlined in the Letter Agreement for Services.

Payment for services on the basis of "Time & Expense" shall be paid according to the Consulting Services Rate Sheet attached hereto.

Project related costs for printing, reproductions, materials, and travel will be billed as reimbursable expenses.

Projects will be billed monthly or at the completion of the work, whichever comes sooner, with payment due upon receipt. Payment will be considered overdue after forty-five (45) days from date of invoice, with interest charged at a monthly rate of 1.5 percent (18 percent annual rate).

CONSULTANT reserves the right to suspend work hereunder or any other work to be performed by CONSULTANT for CLIENT or any of its affiliates under a separate agreement or agreements with CONSULTANT in the event of delinquent payment by CLIENT to CONSULTANT hereunder or in the event of delinquent payment by CLIENT or its affiliates to CONSULTANT under a separate agreement or agreements. For all purposes hereof, affiliate means (i) in the case of an individual, any relative of any person listed among the following, (ii) any officer, director, trustee, partner, manager, employee or holder of 5 percent or more of any class of the voting securities of or equity interest in CLIENT; (iii) any corporation, partnership, limited liability company, trust, or other entity controlling, controlled by, or under common control with CLIENT; or (iv) any officer, director, trustee, partner, manager, employee, or holder of 5 percent or more of the outstanding voting securities of any corporation, partnership, limited liability company, trust, or other entity controlling, controlled by, or under common control with CLIENT.

In the event legal action is necessary to enforce the payment terms of this Agreement, CONSULTANT will be entitled to collect from CLIENT any judgment or settlement sums due, plus reasonable attorneys' fees, court costs, and other expenses incurred by CONSULTANT for such collection action, and, in addition, the reasonable value of CONSULTANT's time and expenses spent for such collection action, computed according to CONSULTANT's prevailing fee schedule and expense policies.

**ASSIGNMENT**

Neither party to this Agreement may transfer, sublet, or assign any rights or duties under or interest in this Agreement, including but not limited to monies that are due or monies that may be due, without the prior written consent of the other party. Subcontracting to subconsultants, normally contemplated by CONSULTANT as a generally accepted business practice, is not considered an assignment for purposes of this Agreement.

**CLIENT'S RESPONSIBILITIES**

**A. Access**

CLIENT shall make provisions for CONSULTANT to enter upon public and private lands as required to perform such work as surveys and inspections in development of the Project.

**B. CLIENT's Representative**

CLIENT shall designate in writing one person to act as CLIENT's Representative with respect to the work to be performed under this Agreement. This Representative will have complete authority to transmit instructions, receive information, and interpret and define CLIENT's policy and decisions, with respect to the product, materials, equipment, elements, and systems pertinent to the work covered by this Agreement.

**C. Fees**

CLIENT is responsible for payment of fees associated with the project. Such fees include permit review and application fees, impact fees, and capacity fees. CONSULTANT will notify CLIENT regarding the amount of fees and timing of payment.

**CONSULTANT'S RESPONSIBILITIES**

In providing services under this Agreement, CONSULTANT will perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locality. No other representation expressed or implied, and no warranty or guarantee is included or intended in the Agreement, or in any report, opinion, document, or otherwise.

**OWNERSHIP OF INSTRUMENTS OF SERVICE**

All reports, drawings, specifications, computer files, electronic files, BIM models, field data, notes and other documents and instruments prepared by CONSULTANT as instruments of service remain the property of CONSULTANT. CONSULTANT retains all common law, statutory, and other reserved rights, including, without limitation, the copyrights thereto. CONSULTANT will retain these records for a period of two (2) years following their completion during which period paper copies will be made available to CLIENT at reasonable times.

**ELECTRONIC FILES**

In accepting and utilizing any drawings, reports, and data on any form of electronic media generated and furnished by CONSULTANT, CLIENT agrees that all such electronic files are instruments of service of CONSULTANT, who will be deemed the author, and will retain all common law, statutory law, and other rights, without limitation, including copyrights.

CLIENT agrees not to reuse these electronic files, in whole or in part, for any purpose other than for the Project. CLIENT agrees not to transfer these electronic files to others without the prior written consent of CONSULTANT. CLIENT further agrees to waive all claims against CONSULTANT resulting in any way from any unauthorized changes to or reuse of the electronic files for any other project by anyone other than CONSULTANT.

CLIENT is aware that differences may exist between the electronic files delivered and the printed hard-copy construction documents. In the event of a conflict between the signed construction documents prepared by CONSULTANT and electronic files, the signed or sealed hard-copy construction documents will govern.

In addition, CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold harmless CONSULTANT, its officers, directors, employees, and subconsultants (collectively, CONSULTANT) against all damages, liabilities, or costs, including reasonable attorneys' fees and defense costs, arising from any changes made by anyone other than CONSULTANT or from any reuse of the electronic files without the prior written consent of CONSULTANT.

Under no circumstances will delivery of electronic files for use by CLIENT be deemed a sale by CONSULTANT, and CONSULTANT makes no warranties, either express or implied, of merchantability and fitness for any particular purpose. In no event will CONSULTANT be liable for indirect or consequential damages as a result of CLIENT's use or reuse of the electronic files.

**CERTIFICATIONS, GUARANTEES, AND WARRANTIES**

CONSULTANT will not be required to sign any documents, no matter by whom requested, that would result in CONSULTANT having to certify, guarantee, or warrant the existence of conditions whose existence CONSULTANT cannot ascertain, or any way might, in the sole judgment of CONSULTANT, increase CONSULTANT's contractual

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or legal obligations or risks, or adversely affect the availability or cost of its professional or general liability insurance. CLIENT also agrees not to make resolution of any dispute with CONSULTANT or payment of any amount due to CONSULTANT in any way contingent upon CONSULTANT signing any such certification.

**ACCESSIBILITY**

CLIENT acknowledges that the requirements of the Americans with Disabilities Act (ADA), Fair Housing Act (FHA) and other federal, state, and local accessibility laws, rules, codes, ordinances, and regulations will be subject to various and possibly contradictory interpretations. CONSULTANT, therefore, will use reasonable professional efforts and judgment to interpret applicable accessibility requirements in effect as of the date of the execution of this Agreement and as they apply to the Project. CONSULTANT, however, cannot and does not warrant or guarantee that CLIENT's Project will comply with all interpretations of the accessibility requirements and/or the requirements of other federal, state, and local laws, rules, codes, ordinances, and regulations as they apply to the Project. Any changes in the applicable law or contrary interpretations of existing law subsequent to the issuance of permits that requires CONSULTANT to perform redesign will be considered an additional service.

**SUBSTITUTIONS**

Upon the written request or direction of CLIENT, CONSULTANT will evaluate and advise CLIENT with respect to proposed or requested changes in materials, products, or equipment. CONSULTANT will be entitled to rely on the accuracy and completeness of the information provided in conjunction with the requested substitution. CONSULTANT will not be responsible for errors, omissions, or inconsistencies in information by others or in any way resulting from incorporating such substitution into the Project. CLIENT will be invoiced for this service on a Time & Expense basis unless both parties mutually agree on a lump sum fee.

**OPINIONS OF PROBABLE COSTS**

Since CONSULTANT has no control over the cost of labor, materials, or equipment, or over the contractor's methods of determining prices, or over competitive bidding or market conditions, opinions of probable construction costs provided for herein are to be made on the basis of experience and qualifications. These opinions represent CONSULTANT's best judgment as a design professional familiar with the construction industry.

However, CONSULTANT cannot and does not guarantee that proposals, bids, or the construction cost will not vary from opinions of probable construction costs prepared by CONSULTANT.

**BETTERMENT**

If, due to CONSULTANT's negligence, a required item or component of the Project is omitted from CONSULTANT's construction documents, CONSULTANT will not be responsible for paying the cost required to add such item or component to the extent that such item or component would have been required and included in the original construction documents. In no event will CONSULTANT be responsible for any cost or expense that provides betterment, upgrades, or enhances the value of the Project.

**CHANGED CONDITIONS**

If, during the term of this Agreement, circumstances or conditions that were not originally contemplated by or known to CONSULTANT are revealed, to the extent that they affect the scope of services, compensation, schedule, allocation of risks, or other material terms of this Agreement, CONSULTANT may call for renegotiation of appropriate portions of this Agreement. CONSULTANT shall notify CLIENT of the changed conditions necessitating renegotiation, and CONSULTANT and 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 hereof.

**CODE COMPLIANCE**

CONSULTANT shall exercise usual and customary professional care in its efforts to comply with applicable laws, codes, and regulations in effect as of the date this agreement was written. Design changes made necessary by newly enacted laws, codes, and regulations after this date will entitle CONSULTANT to a reasonable adjustment in the schedule and additional compensation in accordance with the Additional Services provisions of this Agreement.

In the event of a conflict between laws, codes, and regulations of various governmental entities having jurisdiction over the Project, CONSULTANT shall notify CLIENT of the nature and impact of such conflict. CLIENT agrees to cooperate and work with CONSULTANT in an effort to resolve this conflict.

**VALUE ENGINEERING**

(If) CLIENT has elected to engage in value engineering of the Project, CLIENT has established cost as a primary project objective over other programming, performance, and aesthetic objectives and recognizes that in doing so, it has limited the available design and product options. These limitations may impact the overall project cost, schedule, and performance. CLIENT has accepted these risks and impacts in recognition of the importance it has placed on project cost.

**DELEGATED DESIGN**

Where any design services are provided by persons or entities not under CONSULTANT's direct control, CONSULTANT's role will be limited to its evaluation of the general conformance with the design intent and the interface with CONSULTANT's design and portion of the Project. Except to the extent, it is actually aware of a deficiency, error, or omission in such design by others, CONSULTANT will have no responsibility for such design and may rely upon its adequacy, accuracy, and completeness in all respects.

**LIMITS OF LIABILITY**

Nothing contained in this Agreement will create a contractual relationship with or a cause of action in favor of a third party against either CLIENT or CONSULTANT. CONSULTANT's services under this Agreement are being performed solely for CLIENT's benefit, and no other party or entity will have any claim against CONSULTANT because of this Agreement or the performance or nonperformance of services hereunder. CLIENT and CONSULTANT agree to require a similar provision in all contracts with contractors, subcontractors, subconsultants, vendors, and other entities involved in this Project to carry out the intent of this provision.

To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of CONSULTANT and CONSULTANT's officers, directors, partners, employees, and sub-consultants, and any of them, to CLIENT and anyone claiming by or through CLIENT (including, but not limited to construction contractors & subcontractors), for any and all claims, losses, costs, or damages, including attorneys' fees and costs and expert-witness fees and costs of any nature whatsoever or claims expenses resulting from or in any way related to the Project or the Agreement from any cause or causes shall not exceed **\$100,000 or CONSULTANT's fee for services rendered, under this Agreement, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law. This liability cap may be increased by mutual consent of both parties and in exchange for additional compensation.**

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It is our understanding CLIENT has elected to exclude Construction Observation and Monitoring from this contract. Based on this understanding, CLIENT assumes all responsibility for interpretation of the documents and for construction observation and supervision activities and waives any claims against CONSULTANT that may in any way connected thereto. In addition, CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold harmless CONSULTANT from any loss, claim, or cost including reasonable attorneys' fees resulting from the performance of such services by other persons or entities and all claims arising from clarifications, interpretations, or changes made to the contract documents or work specified therein to reflect field or other changes made except for sole negligence or willful misconduct of CONSULTANT. Any requests for specific construction observation services and agreed to by CONSULTANT will be paid as Additional Services by CLIENT.

**TIME BAR TO LEGAL ACTION**

All legal actions by either party against the other arising out of or in any way connected with this Agreement or the services to be performed hereunder will be barred and under no circumstances will any such legal action be initiated by either party after five (5) years from the date of Substantial Completion, unless this Agreement is terminated earlier, in which case the date of termination of this Agreement will be the date on which such period commences. Nothing in this Agreement is construed to waive any protections granted under existing laws of the state in which the work is performed.

**ACTS OF OTHERS**

CONSULTANT will not be responsible for the means, methods, techniques, sequences, or procedures of construction selected by contractor(s) or the safety precautions and programs incident to the work of contractor(s). CONSULTANT will not be responsible for the failure of contractor(s) to perform the work in accordance with the Contract Documents.

CONSULTANT will not be responsible for the acts or omissions of any contractor, or sub-contractor, or any of the contractor(s)', or sub-contractor(s)' agents, or employees or any other persons (except CONSULTANT's own employees and agents) at the site or otherwise performing any of the contractor(s)' work. However, nothing contained herein will be construed to release CONSULTANT from liability for failure to perform properly the duties undertaken by CONSULTANT in the Contract Documents.

CONSULTANT will not be responsible for the acts, omissions, means, methods, or specifications of other design professionals not directly retained by CONSULTANT. **Unless specifically stated otherwise, CONSULTANT's work and responsibility under this Agreement terminates at the building pad or within five (5) feet of the building, whichever is greater, for any proposed building shown on the plans. CLIENT/Architect/Contractor is responsible for compliance with codes, regulations, manufacturer specifications, and construction methods related to the building structure. In no circumstance is CONSULTANT responsible for any portion of the building, especially as it relates to moisture or mold.**

**INDEMNIFICATION**

CONSULTANT agrees, to the fullest extent permitted by law, to indemnify and hold harmless CLIENT, its officers, directors, and employees (collectively, CLIENT) against all damages, liabilities, or costs, including reasonable attorneys' fees and defense costs, to the extent caused by CONSULTANT's negligent performance of professional services under this Agreement and that of its subconsultants or anyone for whom CONSULTANT is legally liable.

CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold harmless CONSULTANT, its officers, directors, employees, and subconsultants (collectively, CONSULTANT) against all damages, liabilities, or costs, including reasonable attorneys' fees and defense

costs, to the extent caused by CLIENT's negligent acts in connection with the Project and the acts of its contractors, subcontractors, or consultants or anyone for whom CLIENT is legally liable.

Neither CLIENT nor CONSULTANT will be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence or for the negligence of others.

**CONSEQUENTIAL DAMAGES**

Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither CLIENT nor CONSULTANT, their respective officers, directors, partners, employees, contractors, or subconsultants will be liable to the other or will make any claim for any incidental, indirect, or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages includes, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation, and any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract, and breach of strict or implied warranty. Both CLIENT and CONSULTANT 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.

**INSURANCE**

Consultant will provide and maintain, until the services are completed and accepted by Client, the following minimum insurance coverage:

- (1) **Workers' Compensation – As per Statutory requirements.**
- (2) **Employer's Liability – \$1,000,000 per occurrence and \$2,000,000 in aggregate.**
- (3) **Commercial General Liability – \$1,000,000 per occurrence and \$2,000,000 in aggregate.**
- (4) **Automobile Liability – \$1,000,000 per occurrence and \$2,000,000 in aggregate.**
- (5) **Professional Liability – \$1,000,000 per claim and \$2,000,000 in aggregate.**

Any insurance on a "claims made" basis will be maintained for three (3) years after completion of the Services or any period required by this Agreement, whichever is longer. Consultant will include these minimum insurance requirements in its subcontracts.

**DISPUTE RESOLUTION**

Any dispute or claim arising out of or relating to this Agreement will be determined as follows: CONSULTANT and CLIENT will negotiate in good faith to reach agreement. If negotiations are unsuccessful, CONSULTANT and CLIENT agree the dispute will be settled by mediation. In the event the dispute or any issues remain unresolved after the above steps, the disagreement will be decided by such remedies of law as they are available to the parties. The appointment of a mediator and location will be subject to agreement between CONSULTANT and CLIENT with each party being responsible for their portion of those costs.

**JOBSITE SAFETY**

Neither the professional activities of CONSULTANT, nor the presence of CONSULTANT or its employees and subconsultants at a project site, imposes any duty on CONSULTANT, nor relieve a general contractor of its 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

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and any health or safety precautions required by any regulatory agencies. CONSULTANT and its personnel have no authority to exercise any control over any contractor or its employees in connection with their work or any health or safety programs or procedures. CLIENT agrees that the general contractor will be solely responsible for jobsite and worker safety and warrants that this intent will be carried out in CLIENT's contract with the general contractor. CLIENT also agrees that the general contractor will indemnify and hold harmless CLIENT, CONSULTANT, and CONSULTANT's subconsultants. CLIENT also agrees that CLIENT, CONSULTANT, and CONSULTANT's subconsultants will be made additional insureds under the general contractor's policies of general liability insurance.

**DELAYS**

CLIENT agrees that CONSULTANT is not responsible for damages arising directly or indirectly from any delays for causes beyond CONSULTANT's control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions or other natural disasters or acts of God; fires, riots, war, or other emergencies; failure of any government agency to act in timely manner; failure of performance by CLIENT or CLIENT'S contractors or consultants; or discovery of any hazardous substances or differing site conditions.

In addition, if the delays resulting from any such causes increase the cost or time required by CONSULTANT to perform its services in an orderly and efficient manner, CONSULTANT will be entitled to a reasonable adjustment in schedule and compensation.

**HAZARDOUS MATERIAL**

Both parties acknowledge that CONSULTANT's Scope of Services does not include any services related to the presence of any hazardous or toxic materials and/or mold. In the event CONSULTANT or any other person or entity involved in the project, encounters any hazardous or toxic materials and/or mold, or should it become known to CONSULTANT that such materials may be present on or about the jobsite or any adjacent areas that may affect the performance of CONSULTANT's services, CONSULTANT may, at its sole option and without liability for consequential or any other damages, suspend performance of its services under this Agreement until CLIENT retains appropriate qualified consultants and/or contractors to identify and abate or remove the hazardous or toxic materials and warrants that the jobsite is in full compliance with all applicable laws and regulations.

**CLIMATE CHANGE**

In no event will CONSULTANT be responsible or liable for any failure or delay in the performance of its obligations or impact to the project in any way hereunder arising out of or caused by, directly or indirectly, climate change, including but not limited to sea level rise.

**APPLICATIONS FOR PERMITS AND CERTIFICATES REQUESTED ON BEHALF OF CLIENT**

CLIENT shall indemnify and hold harmless CONSULTANT from and against any and all judgments, losses, damages, and expenses (including attorney's fees and defense costs) arising from or related

to claims by third parties to challenge the issuance of permits or certificates for the Project by agencies with jurisdiction over the project. Defense costs include the time and expenses of CONSULTANT's personnel to assist in the defense of the issuance of the permit or certificate.

**TERMINATION**

In the event of termination of this Agreement by either party, within fifteen (15) calendar days of termination CLIENT shall pay CONSULTANT for all services rendered and all reimbursable costs incurred by CONSULTANT up to the date of termination, in accordance with the payment provisions of this Agreement.

Either party may terminate this Agreement for the convenience and without cause upon giving the other party not less than fifteen (15) calendar days' written notice.

Either party may terminate this Agreement for cause upon giving the other party not less than seven (7) calendar days' written notice for any of the following reasons:

- Substantial failure by the other party to perform in accordance with the terms of this Agreement and through no fault of the terminating party;
- Assignment of this Agreement or transfer of the Project by either party to any other entity without the prior written consent of the other party;
- Suspension of the Project or CONSULTANT's services by CLIENT for more than ninety (90) calendar days, consecutive or in the aggregate;
- Material changes in the conditions under which this Agreement was entered into, the Scope of Services or the nature of the Project, and the failure of the parties to reach agreement on the compensation and schedule adjustments necessitated by such changes.

In the event of any termination that is not the fault of CONSULTANT, CLIENT shall pay CONSULTANT, in addition to payment for services rendered and reimbursable costs incurred, for all expenses reasonably incurred by CONSULTANT in connection with the orderly termination of this Agreement, including but not limited to demobilization, reassignment of personnel, associated overhead costs and all other expenses directly resulting from the termination.

**SIGNAGE**

CLIENT agrees to allow CONSULTANT to place a sign on the project site during construction. The sign will include general information relative to CONSULTANT. CONSULTANT will be responsible for the sign installation and removal.

**AMENDMENT**

This Agreement can be amended by addenda if agreed to in writing and signed by both parties.

\_\_\_\_\_ CLIENT'S INITIALS

\_\_\_\_\_ CONSULTANT'S INITIALS

Thomas & Hutton provides services on a time and expense basis as follows:

1. This basis includes allowance for direct salary expenses and for direct non-salary expenses. It also provides for services we may subcontract to others.
2. Direct salary expenses are generally based upon our payroll costs. The payroll costs include the cost of salaries and wages (including sick leave, vacation, and holiday pay) for time directly chargeable to the project; plus, unemployment, excise, payroll taxes, and contributions for social security, employment compensation insurance, retirement benefits, and medical and insurance benefits.

The current hourly rate charges for each skill position for 2024 are as follows:

Hourly Rate	Engineer	Survey	Landscape	GIS	Quality Control	Business/ Administrative
\$ 305.00	Consultant	Consultant	Consultant	Consultant	Consultant	
\$ 280.00	Senior Manager	Senior Manager Survey Party (3-Men)	Senior Manager	Senior Manager	Senior Manager	Senior Manager
\$ 255.00	Project Manager V Project Engineer V	Survey Manager V Project Surveyor V	Landscape Architect V LA Project Manager V	GIS Manager V		
\$ 230.00	Project Manager IV Project Engineer IV	Survey Manager IV Project Surveyor IV	Landscape Architect IV LA Project Manager IV	GIS Manager IV		Senior Application Developer IV, Software/Computer Consultant IV
\$ 220.00	Project Manager III Project Engineer III	Survey Manager III Project Surveyor III	Landscape Architect III LA Project Manager III	GIS Manager III		Senior Application Developer III, Software/Computer Consultant III
\$ 205.00	Project Manager II Project Engineer II	Survey Manager II Project Surveyor II Survey Party (2-Men)	Landscape Architect II LA Project Manager II	GIS Manager II	Construction Administrator II	Senior Application Developer II, Software/Computer Consultant II
\$ 190.00	Project Manager I Project Engineer I	Survey Manager I Project Surveyor I	Landscape Architect I LA Project Manager I	GIS Manager I	Construction Administrator I	Grant Administrator, Senior Application Developer I, Software/Computer Consultant I
\$ 175.00	Designer IV Engineering Technician IV	Staff Surveyor V Survey Field Supervisor	Landscape Designer IV	GIS Analyst IV	Field Representative V	Application Developer IV
\$ 165.00	Designer III Engineering Technician III	Staff Surveyor IV	Landscape Designer III	GIS Analyst III	Field Representative IV	Application Developer III
\$ 150.00	Designer II Engineering Technician II	Staff Surveyor III Survey Party (1-Man)	Landscape Designer II	GIS Analyst II		Permit Coordinator III Application Developer II
\$ 135.00	Designer I Engineering Technician I	Staff Surveyor II	Landscape Designer I	GIS Analyst I	Field Representative III	Application Developer I, Permit Coordinator II, Admin IV
\$ 120.00	CADD Technician III	Staff Surveyor I Survey Technician III	Landscape Technician III	GIS Technician III	Field Representative II	Permit Coordinator I
\$ 110.00	CADD Technician II	Survey Technician II	Landscape Technician II	GIS Technician II		
\$ 105.00	CADD Technician I	Survey Technician I	Landscape Technician I	GIS Technician I		Admin III
\$ 100.00					Field Representative I	Admin II
\$ 95.00						Admin I
\$ 465.00	Expert Witness					

3. When warranted, overtime will be charged for any non-salary employees. Overtime hours will be billed at 1.5 times the individual's charge rate.
4. Direct non-salary (reimbursable) expenses, including printing, reproduction, air travel, lodging, and meals are billed at cost. Travel in company or private vehicles will be billed at the IRS Standard Mileage Rate and may be revised based on fuel pricing. Outside consultant fees will be billed at 1.15 times the cost.
5. All rates and charges are effective through December 31<sup>st</sup>, 2024, including printing, reproductions, materials, and travel and are subject to change at that time. New rates and costs will become immediately effective to contracts in effect at the time of rate changes.