

**AGENDA  
SMOKY VALLEY LIBRARY DISTRICT  
BOARD OF TRUSTEES MEETING  
Round Mountain Public Library  
Round Mountain, Nevada**

**Monday September 14, 2020 – 10:00 AM**

Members:     Rebecca Lim, Chairperson             Sara Keehfuss, Treasurer  
                  Gwenn Snow, Vice-Chairperson         Frank Wagener-Member  
                  Mallory Barber, Secretary/Clerk

**SPECIAL NOTE:** Below is the agenda items scheduled to be considered. All items are approximate except for bid openings, public hearings, and any other items agendized at a specific time. Items on the agenda without a time designation may be taken out of order. The Board may combine two or more agenda items for consideration. The Board may remove an item from the agenda or delay discussion relating to an item on the agenda at any time.

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DUE TO THE CURRENT STATE OF EMERGENCY DECLARED BY THE GOVERNOR BECAUSE OF THE COVID-19 VIRUS, AND MORE SPECIFICALLY GOVERNOR’S DIRECTIVE 003, NO MORE THAN 10 PEOPLE MAY BE IN ATTENDANCE AT ANY GATHERING. THIS MEETING WILL BE HELD THROUGH EMAIL AND TEXT WITH BOARD MEMBERS ONLY. PUBLIC COMMENT WILL BE TAKEN BUT WILL BE REQUIRED TO BE SUBMITTED IN WRITING VIA EMAIL TO THE LIBRARY DIRECTORS AND WILL BE READ AND PLACED ON THE RECORD DURING PUBLIC INPUT.

[jeanneb@svld.net](mailto:jeanneb@svld.net) or [andream@svld.net](mailto:andream@svld.net)

This meeting will be conducted through email, phone or text. All material will be added in minutes to reflect decisions.

Action may be taken on those items denoted (FOR POSSIBLE ACTION)

**ITEM#/SUBJECT**

1. Call meeting to order – For Possible Action
2. GENERAL PUBLIC COMMENT – (Three-minute time limit per person.) Action will not be taken on the matter considered during periods until specifically included on an agenda as an action item.
3. Approval of Agenda – For Possible Action
4. Reading, correction and approval of minutes - For Possible Action, Nothing at this time.
5. OPEN DISCUSSION – (This item is for discussion only. No action will be taken at this time. There may be a time limit placed on this discussion if necessary.)
6. INFORMATIONAL ITEMS
  - a. Nothing at this time
7. DISTRICT MONTHLY REPORTS- For possible action
  - a. SVLD -
  - b. Children’s Wing report -
8. OLD BUSINESS - For Possible Action

9. NEW BUSINESS – For Possible Action
  - a. Discussion and possible decision to accept the proposal from Lumos & Associates for the Manhattan Roof Project –
10. CORRESPONDENCE – For possible Action
  - a.
11. FINANCE – For possible Action
  - a. Approve and sign expenditures- Nothing at this time.
12. GENERAL PUBLIC COMMENT – (Three-minute time limit per person.) Action will not be taken on the matter considered during periods until specifically included on an agenda as an action item.
13. SET DATE AND TIME FOR NEXT MEETING
14. ADJOURN – For Possible Action

Supporting information for this agenda can be obtained from Andrea Madziarek at the Round Mountain Public Library at 775-377-2215 or [andream@svld.net](mailto:andream@svld.net)

**All agendas are posted at the following locations:**

Round Mountain Post Office	Round Mountain Public Library	Manhattan Public Library
83 Hadley Circle	73 Hadley Circle	7 Mineral Street
Round Mountain, NV 89045	Round Mountain, NV 89045	Manhattan, NV 89022

Also can be found on the Department of Administration website <https://notice.nv.gov>  
County – Nye County - Smoky Valley Library Board.

Any member of the public who is disabled and requires accommodations or assistance at this meeting is requested to notify the Round Mountain Public Library in writing or call (775) 377-2215.

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**Reno**  
9222 Prototype Drive  
Reno, Nevada  
775.827.6111

## EXHIBIT A

September 1, 2020  
LA20.650

Mr. Andrea Madziarek  
Co-Director  
**SMOKY VALLEY LIBRARY DISTRICT**  
73 Hadley Circle  
Round Mountain, NV 89045

**RE: MANHATTAN HISTORIC SCHOOLHOUSE ROOFING REPAIR PROJECT  
PROPOSAL FOR STRUCTURAL ENGINEERING SERVICES**

Dear Ms. Madziarek:

It is our pleasure to submit this proposal for professional structural engineering services associated with the above-referenced project. A discussion of our scope of services for the project follows.

### Project Description

It is our understanding that the existing tin roofing on the Manhattan School House building is leaking and in need of replacement. Lumos & Associates (Lumos) has been requested to assist with this project. As part of the project, you would like the roof framing evaluated to verify that it can support the new roofing, including the weight of new plywood that will likely need to be installed on the roof. Since the schoolhouse is an historic structure, the project will need to be in compliance with State of Nevada Historic Building Standards.

### Scope of Services

Our scope of services relative to this project involves the following tasks:

1. Our first task involves conducting a site visit to inspect the existing roofing system and document the details of its construction. The building, including the roof framing, will be measured and the framing inspected to identify the presence of broken or deteriorated members.
2. In Task 2, the existing roof framing will be analyzed to determine if it is capable of supporting loads from the new roofing applied in conjunction with other loads including snow loads. If it is not capable of supporting these loads, we will design and detail strengthening of the roof framing. It is not the intent of this task to bring the roof framing into compliance with modern codes but to increase the factor of safety against damage due to overstress and to prolong the life of the roof.

This work will be performed in general accordance with the requirements of the International Existing Building Code (IEBC), which is a national code developed to provide guidance for work on existing structures, including historic structures.

3. Since the existing tin roofing is a primary historic element, we will conduct research into how the new roofing can be specified to replicate the existing roofing in accordance with historic building standards. We will coordinate these efforts with the State of Nevada Historic Preservation Office.
4. Upon completion of Tasks 1-3, construction documents consisting of structural drawings and technical specifications will be prepared. The drawings will include details describing the roof framing strengthening requirements should that be necessary. The technical specifications will include specifications for the replacement roofing system.

A structural engineer from Lumos will seal the drawings and specifications for submittal to the building department and other reviewing agencies. We will respond to any plan review comments that might be issued.

5. During the Bidding Phase, we will assist in identifying contractors who will bid on the work. We will prepare addenda clarifying any questions that the contractor may have during the bid process.
6. During the construction phase, we will provide Construction Administration services such as review of submittals and shop drawings. Two site visits will be made to meet with the contractor. After the second site visit, we will prepare a punch list of corrective items that the contractor will need to address.

### Compensation

Due to the numerous unknowns associated with this project, we propose to provide our services for Tasks 1-4 on a Time and Expense basis with an estimated fee in the range of \$16,000 to \$20,000. Fees for Tasks 5 and 6 will be developed once the entire scope is established. These budgetary fees represent our best estimate based on the available information and may change subject to future developments. No work will be performed beyond the not-to-exceed estimates without your prior authorization.

Should this proposal be acceptable, please return a signed copy of the attached Professional Services Agreement, initial each page of the Standard Provisions and return the executed agreement to us. The site visit will be scheduled upon receipt of your authorization. We anticipate having documents ready for submittal within 6 to 8 weeks from receiving your authorization.

### Additional Services

The following services have not been specifically included in our scope of services. However, if added to our scope, they can be provided on a Time and Expense or other negotiated basis:

- a. Analysis of other portions of the building to demonstrate compliance with the IEBC.
- b. Preparation of an opinion of probable construction cost.
- c. Preparation of bidding documents and General Conditions of the Contract.

Lumos & Associates appreciates the opportunity to provide this proposal and we look forward to working with you. Please feel free to contact me should you have any questions relating to this proposal.

Sincerely,  
**LUMOS & ASSOCIATES**



**TERRENCE R. TOBEY, P.E., S.E.**  
*Director - Structural Engineering Division*

**AGREEMENT**  
**To Engage the Services of**  
**LUMOS & ASSOCIATES, INC.**

THIS AGREEMENT, entered into on the 1st day of September 20 20, by and  
 by and between Smoky Valley Library District

whose mailing address is 73 Hadley Circle, Round Mountain, NV 89045  
 hereinafter called "CLIENT," and LUMOS & ASSOCIATES, INC., hereinafter called "CONSULTANT," is as follows:

CLIENT intends to pursue work on Manhattan Historic Schoolhouse (Project Name)  
 hereinafter called the "PROJECT" and whose location is Manhattan, Nevada

THE CLIENT/contact person for this project is Andrea Madziarek  
 Phone 775.377.2215 Email andream@svld.net

CLIENT and CONSULTANT, for mutual consideration hereinafter set forth, agree as follows:

A. CONSULTANT agrees to perform certain consulting, design, advisory, surveying, and/or testing  
 services for CLIENT as follows: See the proposal attached hereto as Exhibit "A"

B. CLIENT agrees to pay CONSULTANT as compensation for his/her services as follows:  
See the proposal attached hereto as Exhibit "A"

This Agreement does not include any agency fees advanced on the CLIENT's behalf. All fees advanced for this project  
 will be assessed a 15% handling fee in accordance with company policy. Should CLIENT wish to avoid the 15%  
 charge, all agency and outside fees will be required 24 hours prior to submittal deadline.

C. CLIENT agrees to provide the following to CONSULTANT to aid in his/her work:  
See the proposal attached hereto as Exhibit "A"

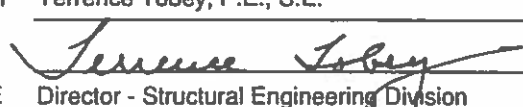
D. CONSULTANT will begin work on or about September 10 20 20; and have said  
 work completed See the proposal attached hereto as Exhibit "A"

CONSULTANT contact for this project is Terrence Tobey, S.E. Phone (775) 827-6111

The attached Standard Provisions of Agreement are incorporated hereinto and made a part of this Agreement. In the  
 event of any conflicts or inconsistencies between the terms contained in Exhibit "A" and those contained in the  
 Standard Provisions of Agreement, the terms of the Standard Provisions of Agreement shall govern and control.

All notices, requests, demands, and other communications required under this Agreement shall be in writing and shall  
 be deemed duly given and received: (i) if personally delivered, on the date of delivery; (ii) if mailed, three (3) days  
 after deposit in the United States Mail, registered or certified, return receipt requested, postage prepaid; and/or (iii) if  
 by a courier delivery service providing overnight or "next-day" delivery, on the next business day after deposit with  
 such service. All written communications shall be addressed to CONSULTANT at 9222 Prototype Drive, Reno, NV  
 89521, or to CLIENT at the address written above.

IN WITNESS WHEREOF, the parties hereto have accepted, made and executed this Agreement upon the terms,  
 conditions, and provisions written above and incorporated herein as set forth in the attached, on the date first written  
 above.

CONSULTANT:  
 PRINT Terrence Tobey, P.E., S.E.  
 SIGN   
 TITLE Director - Structural Engineering Division  
 DATE September 1, 2020

CLIENT:  
 PRINT \_\_\_\_\_  
 SIGN \_\_\_\_\_  
 TITLE \_\_\_\_\_  
 DATE \_\_\_\_\_

## STANDARD PROVISIONS OF AGREEMENT

### 1. AGREEMENT

These Standard Provisions of Agreement are deemed part of the attached Agreement. As used herein, the term "Agreement" will mean the attached Agreement, the Proposal attached thereto as Exhibit "A," these Standard Provisions of Agreement, and any other exhibits attached hereto and specifically incorporated herein. Consultant shall provide for the Client the scope of services described in the referenced Proposal, and all services not specifically described therein are excluded from Consultant's scope of services.

### 2. BILLING AND PAYMENT

Fees and other charges shall be billed monthly as the work progresses and shall be due and payable at the time of billing. Ten (10) days are allowed for processing payment, and any unpaid balance remaining twenty (20) days after the date of the original invoice shall be considered past due. Any unpaid balance remaining thirty (30) days after the date of the original invoice shall be considered Critically Past Due. Consultant reserves the right to suspend services on accounts with outstanding balances that are Critically Past Due. Consultant shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension. Upon payment in full by the Client, Consultant shall resume services under this Agreement, and the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension. In the event Client fails to pay Consultant within forty-five (45) days or more after invoices are rendered, Client agrees that Consultant shall have the right in its sole discretion to consider said default a material breach of the Agreement and the duties of Consultant under this Agreement terminated, without requiring the seven (7) days written advance notice otherwise required for termination pursuant to Section hereof.

Any payment not received within thirty (30) days of date of the original invoice shall accrue interest at the rate of eighteen percent (18%) per annum.

Client hereby agrees that the balance as stated on any invoice from Consultant to Client is correct and is acceptable to Client unless, within ten (10) days from the date of the original invoice, Client notifies Consultant in writing of the particular item that is alleged to be in error or is otherwise in dispute.

Client shall pay the costs for checking and inspection fees, zoning and annexation applications fees, assessment fees, soils engineering fees, soils testing fees, aerial topography fees, and all other fees, permits, bond premiums, title company charges, blueprints and reproductions, and all other charges not specifically covered by the terms of this Agreement.

For projects that extend for more than one (1) year from the date of the Agreement, Consultant shall be entitled to an increase in fees in proportion to the increase in the Consumer Price Index over the preceding year, for the duration of the Agreement.

### 3. TERMINATION

This Agreement may be terminated by either party upon seven (7) days advance 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 all or any portion of the services performed or partially performed by Consultant be suspended, abandoned, or terminated, Client shall pay Consultant for all fees, charges and services provided up to the date of termination. In return, Consultant shall provide Client with copies of all drawings, specifications and reports prepared or partially prepared up to the date of termination, at Client's expense and for use solely with respect to the Project. Payment in full up to the date of termination shall be a condition precedent to Consultant's providing copies of all drawings, specifications and reports, regardless of the pendency of any dispute.

### 4. ADDITIONAL SERVICES

Client may request that Consultant provide services beyond those set forth in Consultant's Proposal ("Additional Services"). The scope of such Additional Services and the compensation therefore shall be as mutually agreed upon in writing by Client and Consultant prior to commencement of such Additional Services.

The Consultant shall comply with applicable laws, codes and regulations in effect as of the date it provides its services pursuant to the standard of care in the industry. Changes to Consultant's services made necessary by newly enacted laws, codes and regulations after such date shall entitle the Consultant to a reasonable adjustment in the schedule and additional compensation in accordance with this Additional Services provision. In addition, the Consultant shall be entitled to rely reasonably on interpretations and approvals given by government officials with responsibility for enforcing such laws, codes, and regulations and shall not be responsible for changes made by such officials to interpretations or approvals previously given.

5. STANDARD OF CARE

Consultant shall perform its services in a manner consistent with the level of care and skill ordinarily exercised by members of Consultant's profession currently practicing in the same locality under similar circumstances and with reasonable diligence and expediency consistent with sound professional practices ("Standard of Care"). Nothing contained herein shall be construed to constitute a guarantee, warranty or assurance, either express or implied of the services to be provided herein.

6. COST ESTIMATES

Consultant makes no representation concerning estimates of construction costs other than that these are estimates only and Consultant shall not be responsible for fluctuations in cost factors. Any such estimates prepared or agreed to by Consultant represent the Consultant's judgment as a design professional. It is recognized that neither the Consultant nor the Client has control over the cost of labor, materials or equipment; the contractor's methods of determining 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 Client's budget or from any estimate of construction cost prepared or agreed to by the Consultant.

7. LIMITATIONS ON RESPONSIBILITIES

Consultant shall not be responsible for the acts or omissions of the Client, Client's other consultants, contractors, subcontractors, their agents or employees, or other persons providing work or services on the Project. Consultant does not guarantee the completion or quality of performance of work performed by the construction contractor(s) or other third parties. Site safety is the sole responsibility of the contractor. Consultant shall neither have control over nor be in charge of, nor be responsible for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with work for the Project.

Unless retained to perform a geotechnical investigation, Consultant makes no representations concerning soil conditions and Consultant is not responsible for any liability that may arise out of the making or failure to make soils surveys, or subsurface soil tests, or general soil testing.

Unless specifically included in the Proposal's scope of services, Consultant is neither responsible for notifying Client of any expiration or renewal dates for permits and/or approvals of any type or description, nor for renewing or requesting a renewal from any agency, municipality, or authority of any permits and/or approvals that may be due to expire.

8. OWNERSHIP OF DOCUMENTS

Drawings, details, specifications, reports, and other documents prepared by Consultant, including those in electronic form, are instruments of service for use solely with respect to this Project. Consultant shall be deemed the author and owner of the Consultant's instruments of service and shall retain all common law, statutory and other reserved rights, including copyrights. Upon execution of this Agreement Consultant grants to Client a nonexclusive license to reproduce the Consultant's Instruments of Service solely for purposes of the Project, provided the Client shall comply with all obligations, including prompt payment of all sums when due, under this Agreement. Client shall not use the instruments of service for future additions or alterations to this Project or for other projects without Consultant's prior written consent. Any unauthorized use, reuse or modifications of the instruments of service shall be at the Client's sole risk and without liability to Consultant, and Client agrees to defend, indemnify and hold harmless Consultant from all claims and damages arising out of or purported to arise out of the use, reuse, or modification of the Instruments of Service.

9. INDEMNIFICATION

Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Consultant from and against any claims, damages, liabilities, suits, demands, losses, expenses or costs (including reasonable attorneys' fees and costs of defense) ("Claims"), to the extent caused by Client's negligent acts, errors, or omissions and those of its contractors, subcontractors or consultants or anyone for whom Client is legally liable, except for claims or litigation arising through the sole negligence or willful misconduct of Consultant.

Consultant agrees, to the fullest extent permitted by law, to indemnify and hold harmless Client from and against any claims, damages, liabilities, suits, demands, losses, expenses to the extent they are determined to have been caused by the negligent acts, errors or omissions of Consultant or anyone for whom Consultant is legally liable, to the extent consistent with the Limitation of Liability provision herein. Consultant shall not have an obligation to indemnify and hold harmless Client for claims or litigation arising through the sole negligence or willful misconduct of Client or anyone for whom Client is legally liable.

Neither party shall have an upfront duty to defend the other but shall reimburse reasonably incurred defense fees and costs (for fees and costs actually incurred in defending claims attributable to the other party's fault) to the extent of its indemnity obligation herein. Neither the Client nor the Consultant shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.



10. RIGHT OF ENTRY

Client shall secure the permission necessary to allow Consultant's personnel and equipment access to the project site and any adjacent properties necessary to perform the services at no cost to Consultant. While Consultant will take all reasonable precautions to minimize any damages to the property, it is understood by the Client that in the normal course of field work some damage may occur, the correction of which is not part of this Agreement.

11. SAMPLES

Samples obtained for materials testing will be discarded upon completion of testing, and portions of samples not tested or unused shall be preserved for not longer than thirty (30) days.

12. GOVERNING LAW; DISPUTES

This Agreement shall be governed by the laws of the state, in which the Project is located, and all dispute resolution proceedings shall be venued in the county and state in which the services are rendered unless the parties mutually agree otherwise in writing.

The parties agree to first endeavor in good faith to resolve any dispute arising out of or related to this Agreement by mediation pursuant to the Construction Industry Mediation Rules of the American Arbitration Association or JAMS. Mediation shall be a condition precedent to the instigation of any legal proceedings. If the claim or controversy is not resolved by mediation, the claim or controversy may be resolved by final and binding arbitration, if the parties so mutually agree in writing prior to the commencement of any arbitration proceeding. Absent express mutual consent to arbitrate, all disputes shall be litigated in a court of competent jurisdiction in the state in which the Project is located.

13. NO THIRD PARTY BENEFICIARIES

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or the Consultant.

14. WAIVER OF CONSEQUENTIAL DAMAGES

Notwithstanding any other provision in this Agreement, and to the fullest extent permitted by law, neither the Consultant nor the Client shall be liable to the other for, or shall 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 shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, damage to reputation or any other consequential damages either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty.

15. FORCE MAJEURE

Client and Consultant are aware that many factors outside the Consultant's control may affect the Consultant's ability to complete the services to be provided under this Agreement. 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; fires, riots, war or other emergencies or acts of God; failure of any government agency to act in a timely manner; failure of performance by Client or Client's contractors or consultants; or discovery of any hazardous substances or differing site conditions.

16. SOLE CORPORATE REMEDY

It is intended by the parties to this Agreement that the Client's obligations and Consultant's services in connection with the Project shall not subject the Client's or Consultant's individual shareholders, officers, directors, members, managers or employees to any personal legal exposure for the risks associated with this Project. Therefore, and notwithstanding anything to the contrary contained herein, the parties agree that as their sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against the business entities that are the parties to this Agreement and not against any of the parties' individual shareholders, officers, directors, members, managers or employees, except for acts of willful misconduct or as otherwise prohibited by law.

17. HAZARDOUS MATERIALS

The Consultant shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site. In the event the Consultant or any other party encounters any

hazardous materials, or should it become known to the Consultant that such materials may be present on or about the jobsite or any adjacent areas that may affect the performance of the Consultant's services, the Consultant may, at its option and without liability for consequential or any other damages, suspend performance of its services under this Agreement until the Client retains appropriate consultants 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. Consultant shall not be responsible for locating or abating any hazardous materials.

18. LIMITATION OF LIABILITY

In recognition of the relative risks and benefits of the Project to both the Client and the Consultant relating to Consultant's provision of services in accordance with this Agreement, the risks have been allocated such that the Client agrees that Consultant's total liability to Client for any and all injuries, claims, losses, expenses or damages whatsoever (including attorneys' fees and costs and expert witness fees and costs) arising out of or in any way related to the services provided for the Project and/or under this Agreement, regardless of theories of liability or causes of action asserted (unless otherwise prohibited by law) including, but not limited to, allegations of Consultant's negligence, errors, omissions, strict liability, breach of contract or breach of warranty, shall not exceed the total sum of \$50,000 or the total amount of fees paid to Consultant under this Agreement, whichever is less. In no event shall Consultant's liability exceed the sum of Consultant's available professional liability insurance coverage at the time of settlement or judgment. Client and Consultant hereby acknowledge that this provision was expressly negotiated and agreed upon.

19. MISCELLANEOUS

(a) Client and Consultant each respectively bind themselves, their partners, successors, executors, administrators, and assigns to the Agreement.

(b) Client agrees to cooperate fully with Consultant on the Project and to provide any and all information and/or documents reasonably necessary for Consultant to perform the agreed scope of services as detailed in the Agreement, and Consultant shall be entitled to rely upon the accuracy and completeness thereof.

(c) Neither Client nor Consultant shall assign its interest in the Agreement without the prior express written consent of the other.

(d) It is expressly understood that Consultant is an independent contractor and in no event will the Consultant, its agents, employees, representatives, or servants, be considered as the agent, employee, representative or servant of Client. Nothing contained in this Agreement or any action by Consultant shall be construed to impose a fiduciary duty on Consultant or create a fiduciary relationship between Consultant and Client or between Consultant and any third party.

(e) If any provision of this Agreement is invalid or unenforceable, such provision shall (i) be modified to the minimum extent necessary to render it valid and enforceable, or (ii) if it cannot be so modified, be deemed not to be a part of this Agreement and shall not affect the validity or enforceability of the remaining provisions.

(f) Waiver of any provision of this Agreement by either party shall not be deemed to constitute a waiver of any other provision of this Agreement, nor shall such waiver constitute a continuing waiver.

(g) This Agreement, and the attachments hereto, shall constitute the entire understanding between the parties, and no modification shall be binding unless in writing and signed by the parties.

20. RETAINER

Client agrees to deposit the sum of Zero \$ 0.00 as a retainer, receipt of which is a prerequisite for Consultant to perform services for Client. The retainer will be held by Consultant to secure payment of Consultant's invoices in Consultant's general accounts with all benefits accruing to Consultant. Consultant, at its sole discretion, may apply the retainer to any outstanding invoices which Client has failed to pay in the time frames set forth in this Agreement; however, nothing herein shall be interpreted to relieve Client from paying Consultant's invoices as set forth in this Agreement. If any portion of the retainer is applied to an outstanding invoice, Client shall, within five (5) days of Consultant's request, replenish the retainer account to the original amount listed herein. The retainer, or unused portion thereof, shall be refunded to Client within thirty (30) days after Consultant's services conclude or termination of this Agreement, whichever comes first, provided that there is no balance owed to Consultant. If a balance is owed to Consultant when services conclude or this Agreement is terminated, Client will be refunded the difference between the amount owed and the remaining retainer, if any. Nothing herein shall limit Consultant's rights to collect any remaining balance owed by Client once the retainer is depleted.